Guide to Land Use Planning for South Carolina

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FOREWORD

This publication is offered as a resource to county officials when trying to determine whether land use planning is a service their community wants or needs. It is also an attempt to aid those jurisdictions which have decided to engage in land use planning.

We recognize that not every official who is involved in the land use planning process is a full-time expert and this publication is intended to give a layperson a starting point for an examination of issues facing their community. This is by no means a one size fits all solution. The text offers a discussion of land use planning in general, not a prescription. The forms and samples in the appendices are offered as drafting checklist intended to point out decisions which may be made. It is important to consult with local decision makers and the county attorney when drafting ordinances, forms or designing a land use plan.

In preparing this document, the SCAC staff received advice, suggestions, forms, and support from many county officials. We would like to specifically thank the following for generously sharing their time, expertise and documents: Penelope Karangounis, Planning Director, Lancaster County; Phil Lindler, Planning & Zoning Director, Greenwood County; Audra Miller, Director, York County Planning & Development; Stephen Strohminger, Director, Aiken County Planning & Development; Janet Carter, Planning & Zoning Director, Horry County; Jeff Anderson, Lexington County Attorney; and Michael Kendree, York County Attorney.

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OVERVIEW

The ability of local governments to engage in land use planning is derived primarily from the South Carolina Local Government Comprehensive Planning Enabling Act (frequently referred to as "Planning Act" or "the Act" hereafter), found at Chapter 29 of Title 6 in the South Carolina Code of Laws. There are several other acts and Code provisions which affect the authority and procedures contained in the Act, but the foundation and most of the details are found in the Act. A copy of the Act is included in this publication as Appendix BB.

What is Land Use Planning?

"Planning" usually means activities to prepare and organize for the future. Planning can be defined as the process used by local governments to:

1. identify local problems and needs
2. collect information and facts necessary to study local problems and needs
3. arrive at a consensus on local goals and objectives
4. develop plans and programs for fulfilling the adopted goals and objectives
5. utilize available powers to execute plans and programs in an efficient and organized manner.

Applying the process above to all public and private land development and use is commonly referred to as "land use planning." Local government activities intended to influence the appearance and growth of the community also fall under the land use planning definition. Land use planning is the most visible form of planning because of its potential impact on the fundamental design of a community. It is important to understand the difference between land use planning and zoning. Zoning is only one of several regulatory devices available for local governments to carry out land use planning.

Need for Public Input

The need for public input is critical throughout the planning process described above. Direct citizen involvement in the preparation of plans is the best, and perhaps only, way to accurately assess community problems and needs. Citizen input is important to the adoption of community goals and objectives. Developing plans and programs requires a close and continuous collaboration between citizens and local government officials. Most successful planning programs are distinguished by the level and character of citizen participation in the process.

The Role of Local Government Planning

Growth may lead to conflicting land uses or pushing existing activities out of an area, or population concentrations that make planning more desirable. Planning often begins to address road congestion, prevent overcrowding and to preserve an orderly community.

Early land use planning efforts were adopted to lessen conflicting land uses from impacting residential areas. Rapid population growth can put people in conflict. Devices such as subdivision

regulations and zoning may be enacted to attempt to balance public and private interests. These and other tools may be used to allow public services, such as transportation, schools and emergency services, to keep pace with growth or facilitate growth with less conflicting uses. Land use planning does not solely focus on zoning, but includes elements for public facility planning to serve the public living in the community.

A community may wish to examine land use planning as a method to preserve elements of what attracted growth to an area. These features may be the historical character of an area. Another feature which may spur the exploration of land use planning is preservation of green space or family farms.

Land use planning is also used to create buffers to protect community assets, such as an airport, industrial park or military facility from encroachment by conflicting land uses on neighboring land. During recent base consolidation and closure efforts, one frequently cited reason a particular facility may have been more likely to close was the development of incompatible uses up the borders of a military facility, thereby putting the military facility in conflict with its neighbors, inhibiting existing operations or preventing future expansion.

Occasionally, land use planning is looked at when a neighboring jurisdiction adopts new or stricter developmental standards. As that jurisdiction begins enforcement, it may have the effect of encouraging undesirable land uses to relocate to areas without land use measures or less stringent land use measure. Examples include junkyards, landfills, sexually oriented businesses and odious industries.

Local Planning Organization

The land use planning statutes in South Carolina influence the manner in which local government organize for land use planning. The Planning Act and common practice combine to form four integral parts of the government planning organization:

1. the governing body
2. planning commission
3. planning staff
4. administration and boards.

Notably absent from the list above is the most important part of the organization - the public. The public is a part of each of these four parts of the planning organization. The public plays a part in every aspect of the planning organization through solicited input at community meetings, participation in formal public hearings, as members of the boards and commissions that form the four parts mentioned above and through daily contact with planning staff and officials. Public involvement in the process can be the reason for the ultimate success or failure of the local planning program.

Governing Body

The role of the county or city governing body is a major influence in the success of a local planning program. The strength of a local planning program can be judged by how the governing body decides issues concerning community growth and development, and how closely these determinations reflect

adopted plans. As policy and decision makers, councils have the power, through planning activities, to decide how their community develops and grows.

One of the primary planning functions of the governing body is the establishment of its planning organization. The initial step is creating the various boards and commissions necessary for the planning program prescribed by the Planning Act. The governing body can create, by ordinance, a planning commission and appoint its members. The ordinance should clearly set forth the appointment process and terms of the planning commission members. Another organizational responsibility of the governing body is providing the planning commission with the technical assistance to achieve its purpose. The governing body has wide latitude in how it provides for the technical support of the planning commission, including hiring local staff, contracting for services with another entity or entities.

The governing body also participates in the planning process through its role in monitoring plan preparation and reviewing plans and ordinances prior to formal adoption. In addition to directly affect specific plans and ordinances, the governing body makes decisions in other areas which affect the planning process. These decisions on capital projects and public improvements through the budget process has a significant impact on plan implementation. Budget decisions funding levels for boards, commissions support resources also greatly impacts the planning program. Another aspect of governing body influence on the success of the planning program is through the appointment process. The skills and abilities of the people appointed to the planning commission and boards can also determine the program's success.

Planning Commission

The first step for developing a planning process is the creation of a planning commission. In essence, the planning commission serves as a citizen advisory group to the governing body on planning matters. The planning commission gives the governing body its advice in the form of recommendations on the adoption of plans and planning related ordinances. Typically, planning commission members are lay persons from the community. The Planning Act encourages consideration of professional and community knowledge of the members and the goal is to represent a broad cross section of the community. The size of the planning commission is variable in order to allow for meeting that goal.

The powers and duties of the planning commission are set out in the Planning Act. In general, the commission carries out a continuing planning program for the benefit of the community it serves. To accomplish that goal, the planning commission prepares and reviews plans, studies and planning-related ordinances. Depending upon funds, the commission may use staff or contract with outside experts for assistance.

A planning commission fulfills its responsibilities to the governing body and the community by making recommendations on planning, zoning and land development matters. As the advisory and oversight body on planning matters, the commission drafts the comprehensive plan, zoning ordinance and land development or subdivision regulations. Depending upon the authority given to the commission in the ordinance creating it, a commission may have the responsibility for approving land development of subdivisions and site plans. Because it is a commission comprised of laypersons, the planning commission seldom produces the plans or studies itself. The planning staff

usually performs the work necessary to complete plans and studies and the commission ensures the completion of plans and studies.

The Planning Staff

A planning commission, comprised of citizen volunteers, often lacks the time and expertise to ensure necessary information is gathered and analyzed in a professional manner. To fulfill its statutory duties, a planning commission may need professional assistance. Sometimes that assistance is from a contracted expert or firm, but more often it is from a full-time, local professional staff.

The governing body may make an appropriation to the commission to allow it to employ professional assistance in some manner. In some communities, the planning staff operates in a department and is responsible to the chief administrative officer. The commission can contract with outside consultants or enter agreements with another jurisdiction or share staff. In whatever form, a planning staff provides research time and professional expertise to the local planning process.

Although the Planning Act sets many planning powers and duties of the governing body and planning commission, it does not establish the role of the planning staff. The role and organization of the planning staff is left to the local ordinance or other, less formal, verbal guidance and administration. In general, the planning staff plays a technical advisory role to the planning commission and performs those tasks and functions assigned by the commission. While there is no set administrative and organization scheme, planning staff organization usually divides its staff assignments among short-range planning studies, long-range plans and day to day land use and development regulations. The level of available personnel resources influences the organizational scheme.

Administration and Boards

Three other components are important to local government planning; zoning administration, the board of zoning appeals and the board of architectural review.

Zoning Administration

The zoning administrator plays a vital role in implementing a planning program. The zoning ordinance sets the powers and duties of the zoning administrator. The zoning administrator issues zoning permits or certificates of occupancy. He also has the authority to withhold building or zoning permits and makes sure submitted plans comply with the zoning ordinance. Decisions of the zoning administrator may be appealed to the board of zoning appeals. Zoning administration is sometines assigned to a building code official because building code permitting usually involves a determination of zoning ordinance compliance.

Board of Zoning Appeals

The board of zoning appeals, sometimes called the board of adjustment, is an integral part of administration and enforcement of a zoning ordinance. Created and appointed by the governing body, a board of zoning appeals serves as an appeals board for disputes arising out of the enforcing the zoning ordinance.

The Planning Act spells out three major responsibilities for the board of zoning appeals:

a. hear appeals from decisions of the zoning administrator
b. grant variances from the zoning ordinance
c. permit uses by special exception

For example, the board hears and decides appeals where it is alleged that there is an error made by an administrative official in the enforcement of the zoning ordinance. The board may also provide relief from strict application of the zoning ordinance by granting a variance from the ordinance. When hearing appeals, the board acts like a court of law. It renders a decision based on evidence heard and an interpretation of the zoning ordinance. Decisions on zoning matters made by the board can be appealed to the circuit court.

Board of Architectural Review

Local governments use boards of architectural review to preserve and protect valued historic structures and districts. The board derives its authority through the text of a zoning ordinance that establishes historical and architecturally valuable districts, neighborhoods or scenic areas. Review and approval by the board of architectural review is required prior to undertaking various building activities within defined districts. The review is generally concerned with, but not limited to, the exterior appearance of buildings and structures. A board of architectural review can be charged, through the terms of the ordinance, with the responsibility of hearing appeals on matters under its jurisdiction.

Chapter 1
Planning

Statutory Basis for Land Use Planning

As early as the 1920's, the General Assembly granted counties and other local governments the authority to undertake planning activity, adopt zoning ordinances and regulate the development of land. In 1994, in an effort to modernize and coordinate land use planning, the General Assembly enacted the Local Government Comprehensive Planning Enabling Act (commonly referred to as the Planning Act, or 1994 Act.) All local government comprehensive plans, zoning and land development ordinances must conform to the Planning Act, which is codified in Chapter 29 of Title 6 of the S.C Code of Laws.

Local Planning Commissions

Local governments must establish a local planning commission before they can begin a comprehensive planning program. There are several types of planning commissions that may be created by ordinance depending on the jurisdictional limits of the planning programs in the area. See S.C. Code § 6-29-320 through § 6-29-380.

County Planning Commission

A county council can create a county planning commission of five to twelve members. The authority of the commission is limited to the unincorporated areas of the county. See Appendix A for a model ordinance.

Municipal Planning Commission

A municipal council can create a municipal planning commission of five to twelve members. The commission's authority is limited to the corporate boundaries of the municipality.

Joint Municipal-County Planning Commission

A municipal council (or multiple councils) and a county council can create a joint planning commission. Each participating municipal council and the county council must adopt the ordinance. If the commission serves two political subdivisions, it can have five to twelve members. If the commission serves three or more political subdivisions (e.g., two municipalities and the unincorporated county area), its size cannot be greater than four times the number of jurisdictions it serves. For example, a commission serving three municipalities and a county can have a maximum of 16 members. The membership of the commission must be proportional to the population inside and outside municipal limits. Its authority is limited to the corporate limits of the participating municipalities and the unincorporated county area. The ordinance must specify how many members each participating municipal council and county council can appoint. See Appendix B for a model ordinance.

Municipal Planning Commission with Extraterritorial Jurisdiction

If approved by the county and municipality, a municipal planning commission can expand its planning authority outside the corporate limits of the municipality. The two councils must adopt an ordinance stating (1) the affected geographic area, (2) the number or proportion of commission members who must be appointed from that area, (3) any limitations on the authority of the municipality in that area, and (4) representation on the municipality's boards and commissions that affect the unincorporated area.

Depending on the adopted ordinance, either the municipal or county council appoints the planning commission members from the area outside the municipal limits. The commission's size is limited to five to twelve persons. See Appendix D for a model ordinance.

County Planning Commission Designated as Municipal Commission

A municipal council may designate the county planning commission as the official planning commission of the municipality. The municipal and county councils must adopt an ordinance addressing the issues of equitable representation of the municipality and county on the planning commission and other boards and commissions resulting from ordinances adopted by the county council that affect the municipal area.

Planning Commission Serving Multiple Municipalities

Two or more municipal councils may create a joint planning commission to serve them. This could be especially useful for contiguous municipalities. The ordinance creating the joint planning commission should address, among other things, the number of members each council appoints. If the commission serves only two municipalities, its size is limited to five to twelve members. If a commission serves three or more municipalities, its size is limited to four times the number of participating municipalities.

Consolidated Political Subdivision Planning Commission

In response to a 1972 constitutional mandate, the General Assembly passed Act No. 319 of 1992, allowing a county, municipalities, and special purpose districts within the county to consolidate into a new local government. The governing body of such a local government may create a planning commission to serve the consolidated local government. The commission is limited to five to twelve members.

Jurisdiction of Counties and Municipalities

A county may exercise planning, zoning, and land development powers in the total unincorporated area or in specifically designated parts of the unincorporated area. This provision gives flexibility to the county governing body and county planning commission in deciding the extent of planning, zoning, and land development regulation necessary to meet local needs. A municipality may exercise its power in the entire area within its corporate limits. S.C. Code § 6-29-330(A).

Local Planning Commission Function and Duties

A local planning commission has a duty to develop and carry out a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its authority. The minimum nine elements of the comprehensive plan and any other elements prepared for the particular jurisdiction must be designed to promote the public health, safety, morals, convenience, prosperity, general welfare, efficiency, and economy of its area of concern. Each element of the comprehensive plan must be based upon careful and comprehensive surveys and studies of existing conditions and probable future development, and include recommended means of implementing the plans. See S.C. Code § 6-29-340.

Specific Planning Activities

In carrying out its responsibilities, the local planning commission is authorized to prepare and implement the comprehensive plan as follows:

1. **Comprehensive plan.** Prepare and periodically revise development and/or redevelopment plans and programs.

2. **Implementation.** Prepare and recommend measures for carrying out the plan. The appropriate governing bodies must approve the measures. They include the following.

    a. **Zoning ordinances** that include zoning district maps and any necessary revisions. For a more detailed discussion see Chapter 2.

    b. **Regulations for land subdivision or development.** The planning commission is responsible for overseeing the administration of the regulations once they are adopted by the local governing body. For a more detailed discussion see Chapter 5.

    c. **An official map** and appropriate revisions showing the exact location of existing or proposed public streets, highways, utility rights-of-way, and public building sites. The commission is responsible for developing regulations and procedures for administering the official map ordinance. For a more detailed discussion see Chapter 6.

    d. **A landscaping ordinance** providing required standards for planting, tree preservation and other aesthetic considerations.

    e. **A capital improvements program** listing required projects to carry out the adopted plans. Also, the planning commission must submit an annual list of priority projects to the appropriate governmental bodies for consideration when they prepare their annual capital budgets. The commission should take these priority projects from the adopted plans.

    f. **Policies and procedures** to help carry out the adopted comprehensive plan elements. These policies and procedures could cover such things as expanding the corporate limits, extending the public water and sewer systems, accepting dedicated streets,

accepting drainage easements, and offering economic development incentive packages.

The local governing body or the planning commission may add activities beyond the items outlined in the Planning Act.

Zoning Functions Not a Function of Planning Commission

The Planning Act makes it clear that the planning commission cannot administer the zoning ordinance. The commission makes no final decisions regarding zoning. There are no provisions for appeals to or from the planning commission. It cannot grant variances, special exceptions, or use variances. The Act does not allow the planning commission or governing body to grant "special uses," "conditional uses," or "uses upon review." Appeals, variances, special exceptions, and conditional uses requiring review are the exclusive authority of the board of zoning appeals.

The following are planning commission functions related to zoning:

1. **Comprehensive plan.** Adopt, recommend, review, and update at least the land use element. See S.C. Code §§ 6-29-510 to 530, § 6-29-720. All zoning ordinances and amendments must conform to the plan. A local government must adopt at least the land use element before it can enact a zoning ordinance.

2. **Zoning ordinance.** Prepare and recommend to the governing body a zoning ordinance text and maps. See S.C. Code §§ 6-29-340 and 6-29-720. Review and make recommendations concerning amendments. Hold public hearings on amendments when authorized by the governing body. S.C. Code § 6-29-760. See Chapter 2.

Land Development Functions

The planning commission administers the land and subdivision development regulations. See Chapter 5 for a more detailed discussion of these regulations. The board of zoning appeals is not involved. In some jurisdictions, the zoning administrator, or similar professional planning staff member, serves as planning commission secretary and provides staff support for administering land development regulations.

Landscaping and Aesthetics

The landscaping ordinance is particularly important to areas concerned with the aesthetics of their communities. This ordinance can apply to particular sections, zoning districts, or entrance corridors of the community instead of the entire planning jurisdiction. The ordinance might include provisions limiting curb cuts, requiring parallel frontage drives, and requiring landscaping plans for property strips next to street rights-of-way. It might also include provisions requiring landscaping of areas within off-street parking lots.

The local government can use the landscaping ordinance to prevent cutting specimen trees on private property within a specified distance of the street rights-of-way.

A landscaping ordinance imposing requirements on private developments is much easier to promote in communities that have made tangible commitments to landscaping of public sites and street rights-of-way. The landscaping ordinance of the Town of Hilton Head Island is a good example of blending aesthetic improvements on street rights-of-way and private property. S.C. Code § 6-29-340(B)(2)(d).

Capital Improvements Program

Capital improvements programming had virtually become a lost art in the thirty years before the Planning Act. During that period, public capital improvements priorities were often decided by available federal grants instead of a systematic evaluation of community needs. The comprehensive plan is required to include long term planning for community facilities, such as water, sewer, medical and educational facilities. The local planning agency is required to analyze the potential funding (federal state and local) that may be available for a ten (10) year period, and to prioritize the importance the projects to be funded. The commission must catalog the public improvements, place them in a logical chronological order then rank them. A realistic and credible capital improvements plan will include only those proposals that are feasible. S.C. Code § 6-29-340(B)(2)(e).

The planning commission may appoint an advisory committee of representatives from all the affected agencies. The committee could help develop the capital improvements program and the annual list of priority projects recommended to the governmental bodies. Limited resources will always be an issue; however, involving others in developing the annual list should help hold down competition for the limited dollars. It is also an excellent vehicle with which to coordinate bond issues that various public entities (e.g., school board, library board, and other autonomous or semi-autonomous groups) will propose. This coordination should help eliminate public confusion when several groups propose bond issues at the same time.

Membership, Organization, and Operation

The Planning Act provides specific planning commission requirements. The local government must observe them when creating a planning commission.

Membership

The authorized sizes and various types of planning commissions were discussed earlier. The Planning Act contains the following additional specific provisions concerning commission membership. S.C. Code § 6-29-350.

1. **Other Office.** A planning commission member cannot hold another public office in the municipality or county making the appointment.

2. **Terms.** The governing body must appoint members for staggered terms. Members serve until their successors are appointed and qualified.

3. **Compensation.** The local government creating the commission sets compensation, if

any, for commission members. Usually, members serve without pay. They may receive reimbursement for authorized expenses incurred in the performance of their duties.

4. **Vacancy.** The local government making the original appointment must fill any vacancy for the unexpired term.

5. **Removal.** The local governing body may remove for cause any member it appoints.

6. **Appointments.** When making appointments, the local governing body must consider professional expertise, community knowledge, and concern for the future welfare of the total community and its citizens.

7. **Community interest.** Commission members must represent a broad cross section of community interests and concerns.

Financing

The local planning commission usually will request annual appropriations from the local government creating it. The commission uses the funds to pay for its annual work program. The commission may cooperate with, contract with, or accept funds from federal government agencies, state government agencies, local general purpose governments, school districts, special purpose districts - including those from other states - public or eleemosynary agencies, or private individuals or corporations. The planning commission can spend the funds and carry out cooperative undertakings and contracts as it considers necessary and consistent with the appropriated funds. S.C. Code §§ 6-29-360(B) and 6-29-380.

The Comprehensive Planning Process

This section deals with the work of the local planning commission as it develops a planning program to prepare and periodically revise the comprehensive plan. The Planning Act provides the comprehensive plan as the essential first step of the planning process. The Act outlines the scope and substance of the comprehensive plan's contents.

The Planning Process

The planning commission must establish and maintain a planning process that results in the systematic preparation, continuing evaluation, and updating of the comprehensive plan. The commission must use this process for each comprehensive plan element. S.C. Code § 6-29510(A).

The planning process for each comprehensive plan element must include, but is not limited to the following items:

1. **Inventory of existing conditions.** The inventory could include a description of existing conditions as they relate to the particular planning element under consideration. The commission could use surveys and studies while conducting the inventory. The surveys and studies must consider the plan's effect on adjacent jurisdictions. Also, the surveys

and studies must consider any regional plan or issues that may impact them.

2. **A statement of needs and goals.** A vision statement should establish where the community wants to go. To achieve the vision, short and long term goals and objectives will need to be developed. These will help identify needed improvements. It is important to involve the community in identifying needs and goals. This creates broader community support for the plan and minimizes future objections to specific programs. When preparing or periodically updating the comprehensive plan elements, the planning commission may appoint advisory committees. Committee members should come from the planning commission, neighborhood, or other groups and individuals in the community. If the local government maintains a list of groups expressing an interest in being informed of planning proceedings, it must mail meeting notices relating to the planning process to them.

3. **Implementation strategies with time frames.** Implementation strategies should include specific objectives, steps, and strategies for accomplishing the objectives. The strategies should specify time frames for actions and persons or organizations who will take the actions.

Elements of the Comprehensive Plan

There should be broad-based citizen participation when developing the comprehensive plan elements. Each element must address all relevant factors listed in the Planning Act; however, the Act does not dictate how extensively they need to be covered. The level of detail devoted to each element of a plan will vary from county to county. The extent of detail in an element should be based on specific community needs.

At a minimum, a comprehensive plan must include at least the following nine elements. S.C. Code § 6-29-510(D).

1. **Population element.** The population element includes information related to historic trends and projections; number, size, and characteristics of households; educational levels and trends; income characteristics and trends; race; sex; age; and other information. This information should give commission members a clear understanding of how the population affects the existing situation and the future potential of the area.

2. **Economic element.** The economic element includes historic trends and projections on the numbers and characteristics of the labor force, where the people who live in the community work, where people who work in the community reside, available employment characteristics and trends, an economic base analysis, and any other matters affecting the local economy. Tourism, manufacturing, and revitalization efforts may be appropriate factors to consider.

3. **Natural resources element.** This element could include information on coastal resources, slope characteristics, prime agricultural and forest lands, plant and animal habitats, unique park and recreation areas, unique scenic views and sites, wetlands, and soil types. This element could also include information on flood plain and flood way

areas, mineral deposits, air quality, and any other matter related to the natural environment of the area.

EDITOR'S NOTE: If there is a separate community board addressing any or all aspects of natural resources planning, the Planning Act makes that board responsible for preparing the element. The planning commission could incorporate the element into the local comprehensive plan by reference. S.C. Code § 6-29-510(D)(3).

4. **Cultural resources element.** This element could include historic buildings and structures, unique commercial or residential areas, unique natural or scenic resources, archeological sites, educational, religious, or entertainment areas or institutions, and any other feature or facility relating to the cultural aspects of the community. As with the natural resources element, a separate board may prepare this element. The planning commission can incorporate the work of a separate board into the comprehensive plan by reference.

5. **Community facilities element.** This element includes many activities essential to the community's growth, development, or redevelopment. The commission should give separate consideration to the following plans:

    a. water supply, treatment, and distribution plan,
    b. sewage system and wastewater treatment plan,
    c. solid waste collection and disposal plan,
    d. fire protection plan,
    e. emergency medical services plan,
    f. plan for any necessary expansion of general government facilities (e.g., administrative, court, or other facilities),
    g. plan for educational facilities, and
    h. plan for libraries and other cultural facilities.

PRACTICE POINTER: The community facilities element should include plans for public safety and emergency preparedness. Preparing the community facilities element may require involving various special purpose district boards, governmental and quasi-governmental entities such as the library board, school board, historic preservation society, and public utilities board.

EDITOR'S NOTE: The community facilities element must be adopted before the local government may adopt subdivision or other land development regulations. S.C. Code § 6-29-1130.

6. **Housing element.** This element includes an analysis of existing housing by age and condition, owner and renter occupancy, location, type, and affordability. It also contains projections about housing needs to accommodate the existing and future populations as identified in the population and economic elements. Counties must also analyze "unnecessary nonessential regulatory requirements." These are defined in § 6-29-1110(6) as development standards and procedures that are determined by the local body as not essential to protect the public health, safety or welfare, and would otherwise make a proposed housing development economically infeasible. Counties are required to analyze the use of market-based incentives that may be offered to encourage development of

affordable housing. Such incentives may include density bonuses, design flexibility, and streamlined permitting processes.

7. **Land use element.** This element deals with the development characteristics of the land. It considers existing and future land use by categories including residential, commercial, industrial, agricultural, forestry, mining, public and quasi-public, recreation, parks, open space, and vacant or undeveloped land. All previously described elements influence the land use element. The findings, projections, and conclusions from each of the previous six elements will influence the amount of land needed for various uses.

EDITOR'S NOTE: The land use element must be adopted before the local government adopts a zoning ordinance. S.C. Code § 6-29-720.

8. **Transportation element.** This element requires a comprehensive examination of the county's transportation facilities, including major road improvements, new road construction, transit projects, and pedestrian and bicycle projects. The transportation element must be developed in coordination with the current land use element found in § 6-29-510(D)(7).

9. **Priority Investment Element.** This element requires an analysis of likely sources of federal and state funding for public infrastructure that may be available, and a recommendation of projects for expenditure of those funds over the next 10 years. This element requires that the prioritization of projects must be done through coordination with adjacent and relevant jurisdictions and agencies. This section defines these groups as counties, municipalities, public service districts, school districts, public and private utilities, transportation agencies, and other public entities that are affected by or have planning authority over the public project. Coordination requires the written notification by the local planning commission or its staff to the relevant and adjacent jurisdictions or agencies providing them the opportunity to submit comments to the planning commission or its staff concerning the project. Failure to identify or notify an adjacent relevant jurisdiction/agency does not invalidate the plan or give rise to a civil cause of action.

These elements are the minimum elements required of a comprehensive plan. Counties and other local bodies are free to, and should, include any other elements unique to the jurisdiction when developing their plan. Jurisdictions should also include references to any other plans that will affect or be affected by the plan, such as capital improvement plans.

The required nine planning elements plus any other locally determined elements make up the local comprehensive plan. All planning elements represent the planning commission's recommendations to the local governing body. The elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, future growth, development, and redevelopment of its area of jurisdiction. Also, the elements must be an expression of the commission's consideration of the fiscal impact on property owners. S.C. Code § 6-29-510(E).

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Please insert between pages 14 and 15

10. Resiliency element. Act No. 163 of 2020 added a new required element to county comprehensive plans. The new resiliency element (10) requires jurisdictions to consider the potential impacts of flooding or other natural hazards on citizens and the community. This element should be considered in coordination with the relevant jurisdictions adjacent to the county (i.e., municipalities and SPDs.) Counties should begin examining the flood potential or natural hazards and must incorporate resiliency planning in the next 5 or 10-year comprehensive plan review.

SECTION 6-29-510. Planning process; elements; comprehensive plan.

(10) a resiliency element that considers the impacts of flooding, high water, and natural hazards on individuals, communities, institutions, businesses, economic development, public infrastructure and facilities, and public health, safety and welfare. This element includes an inventory of existing resiliency conditions, promotes resilient planning, design and development, and is coordinated with adjacent and relevant jurisdictions and agencies. For the purposes of this item, "adjacent and relevant jurisdictions and agencies" means those counties, municipalities, public service districts, school districts, public and private utilities, transportation agencies, and other public entities that are affected by or have planning authority over the public project. For the purposes of this item, "coordination" means written notification by the local planning commission or its staff to adjacent and relevant jurisdictions and agencies of the proposed projects and the opportunity for adjacent and relevant jurisdictions and agencies to provide comment to the planning commission or its staff concerning the proposed projects. Failure of the planning commission or its staff to identify or notify an adjacent or relevant jurisdiction or agency does not invalidate the local comprehensive plan and does not give rise to a civil cause of action. This element shall be developed in coordination with all preceding elements and integrated into the goals and strategies of each of the

Other agencies may have prepared some elements of the comprehensive plan. The planning commission must consider plans prepared by other agencies. If the commission determines that the plans meet the legal requirements, it can recommend them by reference to the local governing body for adoption as part of the comprehensive plan.

Periodic Revision Required

The planning commission must review the comprehensive plan or particular elements of the plan as necessary. Changes in the growth or direction of development taking place in the community dictate when a review is necessary. Economic setbacks resulting in the unanticipated loss of jobs could also trigger a need to reevaluate the comprehensive plan. As the plan or elements are revised, it is important to amend the capital improvements program and any ordinances based on the plan. They need to conform to the most current comprehensive plan.

S.C. Code § 6-29-510(E) requires that:

1. The planning commission must reevaluate the comprehensive plan elements at least every **five years.** There is no requirement to rezone the entire county or city at once; therefore, it appears that the land use element could be reviewed and updated in stages or by neighborhoods. See Moineier v. John McAlister, Inc., 231 S.C. 526, 99 S.E.2d 177 (1957).

2. The comprehensive plan, including all elements, must be updated at least every **ten years.** Every ten years, the planning commission must prepare and recommend a new plan, and the governing body must adopt a new comprehensive plan. A comprehensive plan or any element over ten years old may be subject to a legal challenge.

Procedure for Adopting Plan or Amendments

When the plan, any element, amendment, extension, or addition is completed and ready for adoption, the following steps must be taken according to S.C. Code §§ 6-29-520 and 6-29-530.

1. **Resolution.** By majority vote of the entire membership, the planning commission must adopt a resolution recommending the plan or element to the governing body for adoption. The resolution must refer explicitly to maps and other descriptive material intended by the commission to form the recommended plan.

2. **Minutes.** The resolution must be recorded in the official minutes of the planning commission.

3. **Recommendation.** The commission must send a copy of the recommended comprehensive plan or element to the local governing body being requested to adopt the plan. The commission must also send a copy to all other legislative or administrative agencies affected by the plan.

4. **Hearing.** Before adopting the recommended plan, the governing body must hold a public hearing. It must give at least 30 days' notice of the hearing time and place notice in a general circulation newspaper in the community. See Appendix I for a model notice

form.

5. **Ordinance.** The local governing body must adopt the comprehensive plan or any element by ordinance.

Review of Public Project

After the comprehensive plan or an element relating to proposed development is adopted, a public agency or entity proposing a public project must submit its development plans to the planning agency. After review, the planning commission decides whether the proposal is compatible with the comprehensive plan. The information submitted must contain the location, character, and extent of the development. S.C. Code § 6-29-540.

If the planning commission finds the proposal conflicts with the comprehensive plan, it sends its findings and an explanation of its reasoning to the public entity proposing the facility. Then, the governing or policy-making body of the entity can decide whether to bring the project into conformity or to proceed with the development in conflict with the plan. If it decides to proceed, the entity must publicly state its intention to proceed and its reasons. The entity must send the statement to the local governing body and the local planning commission. It must also publish the statement and reasons as a public notice in a general circulation newspaper in the community. The notice must appear at least 30 days before awarding a contract or beginning construction.

S.C. Code § 6-29-540 requires everyone involved in creating the built environment heed the community's adopted comprehensive planning elements. The process for commission review is a major tool to help ensure that public investments move the community toward carrying out the comprehensive plan. To minimize potential conflicts, the planning commission should appoint advisory committees as it develops the various comprehensive planning elements. The commission should place individuals and representatives of agencies and groups in the community on the advisory committees.

PRACTICE POINTER: Telephone, sewer, gas, or electric utilities/providers, whether publicly or privately owned, are exempt from this provision if the local governing body, state regulatory agency, or federal regulatory agency approves their plans. Electric suppliers, utilities and providers operating according to Chapter 27 or Chapter 31 of Title 58, or Chapter 49 of Title 33 are also exempt from this provision. These utilities must submit construction information to the appropriate local planning commission.

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 1allowed 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:

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5. Commission reviews
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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. III. 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 tolerate 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 fasting 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.

Chapter 3
Board of Architectural Review

The Planning Act allows a local government to create a board of architectural review or similar body in the local zoning ordinance. In some communities, this board is called the historic district board, the landmarks commission, design review board, or other titles. The title of the board is left to the discretion of the local governing body (for purposes of clarity this manual will refer generally to the "board of architectural review.") The zoning ordinance should specifically reference the board title.

A board of architectural review is a part of the administrative mechanism designed to carry out the local zoning ordinance for specific areas. The board has no legislative authority. S.C. Code § 6-29-870.

Appendix E provides a model ordinance for creation of a board of architectural review.

Purpose

To create a board of architectural review, the zoning ordinance must make specific provisions for one or more of the following activities.

1. Preservation and protection of historic and architecturally valuable districts and neighborhoods.

2. Preservation and protection of significant or natural scenic areas.

3. Protection or provision for the unique, special or desired character of a defined district, corridor or development area.

The zoning ordinance must include restrictions and conditions governing the right to erect, demolish, remove (in whole or in part), or alter the exterior appearance of all buildings or structures within the designated areas. S.C. Code § 6-29-870(A).

Composition and Qualifications

Board members are appointed by the local governing body. A board of architectural review may have no more than ten members, although the Code does not set a minimum number. S.C. Code § 6-29-870(B). Members cannot hold any other public office or position in the local government. S.C. Code § 6-29-870(C).

The zoning ordinance may set membership qualifications for the board, including specific professional or residency qualifications. The governing body making the appointments can remove board members. A finding of cause is not required. S.C. Code § 6-29-870(B). The governing body decides the amount of compensation, if any, for board members. S.C. Code § 6-29-870(C).

Powers and Authority of the Board

The zoning ordinance provides the powers of the board of architectural review. These powers will differ among various local governments depending on what purposes the local governing body is trying to achieve. It is critical to the board's operation for the zoning ordinance to state clearly the board's powers and duties. The ordinance should specifically state what matters the board can and cannot consider. Broad, general language in the zoning ordinance can lead to unnecessary conflict and dissension. S.C. Code § 6-29-880.

Appeals

1. **Appeal to board.** A party may appeal from the zoning administrator or other administrative official actions for matters under jurisdiction of the board of architectural review. S.C. Code § 6-29-880. The appeal follows essentially the same procedure as an appeal to the board of zoning appeals. S.C. Code § 6-29-890. The following steps should be taken in an appeal:

    a. The party must file notice of appeal with the board and the officer from whom the appeal is taken within the time provided by the zoning ordinance or rules of the board.

    b. The officer appealed from must send the board all documents in the record upon which the action appealed was taken.

    c. An appeal stays all proceedings to enforce the action, unless the officer certifies that a stay would cause imminent peril to life and property. The board or circuit court may grant a restraining order.

    d. The board sets a reasonable time for hearing the appeal, giving public notice, and giving notice to parties in interest. The Planning Act does not set the time limit for giving notice. The zoning ordinance should set the time limit.

    e. A party may appear in person or be represented at the hearing by an agent or attorney.

    f. The board may remand a matter to an administrative official if it determines the record is insufficient for review. The board must set a time for rehearing the remanded matter within sixty days unless another time is agreed by the parties. No public notice is required for the rehearing, but notice is required to anyone who has expressed interest in the matter. S.C. Code § 6-29-890.

    EDITOR'S NOTE: Although the statutes do not specifically require the following two steps, they follow the board of zoning appeals' procedures. The board of architectural review should use these procedures also.

    g. The board should conduct the hearing following its adopted procedural rules. The written decision should include findings of fact and conclusions of law. The board should develop a form for decisions or adopt the sample form for board of zoning

appeals decisions. See Appendix U for a sample order.

h. The board should serve a copy of its decision on parties in interest by certified mail and keep a copy as a permanent public record.

2. Appeal to Council. There is no provision for an appeal from any administrative officer or the board of architectural review action to the governing body.

3. Appeal to Circuit Court

a. Petition. A person having a substantial interest in a decision may make an appeal from a board decision to circuit court. The person must file a written petition with the clerk of court stating why the decision is contrary to law. The person must file the appeal within thirty days of receiving notice of the decision of the board. Although not required, the party should serve the petition on the board. The clerk of court is required to give immediate notice of the appeal to the board secretary.

A 2003 amendment to the Comprehensive Land Use Act allows parties affected by a decision of a board of architectural review to opt for pre-trial mediation. A party may file a notice of appeal with a request for pre-litigation mediation. Notice must be filed within thirty days after the decision of the board is postmarked. S.C. Code § 6-29-900(B).

b. Transcript. Within thirty days after notice from the clerk of court, the board must file with the clerk of court a certified copy of the board proceedings, a transcript of testimony, evidence, and the board decision including findings of fact and conclusions. S.C. Code § 6-29-920. There is no requirement for the board to serve the certified record on parties in interest; however, the attorney should file a return to the petition and send it with a copy of the certified record to the counsel for appealing party.

c. Standard of Review. The board's findings of fact are final and conclusive on review. The court may not take additional evidence. The court may determine only whether the board decision is correct as a matter of law. The court must allow the board decision to stand if there is any evidence in the record to support it. If the record is insufficient for review, the circuit court judge must send it back to the board for rehearing. S.C. Code § 6-29-930. See Wells v. Finley, 260 S.C. 291, 195 S.E.2d 623 (1973).

4. Appeal to Supreme Court. A party may appeal a circuit court decision to the Supreme Court in the same manner as other circuit court judgments. S.C. Code § 6-29-940. A party must serve a notice of appeal to the Supreme Court within thirty days after receiving written notice of entry of the order of the circuit court.

Enforcement

The zoning ordinance creates the board of architectural review and its regulations. Therefore, enforcement of the board regulations and orders is done in the same manner as for zoning regulations and orders. See Chapter 4.

Historic Preservation Ordinance

A local government may encourage preservation of the character of the community through a local board of architectural review. S.C. Code §§ 6-29-870 and 6-29-880. Some communities rename these boards, using "historic preservation" or "landmarks" in the title. Local historic preservation legislation may be a part of the zoning ordinance. It could be a separate ordinance that is incorporated into the zoning ordinance by reference to comply with S.C. Code § 6-29-870(A).

Historic Preservation Ordinance Elements

A preservation ordinance should contain procedures and standards for designating historic property, setting design guidelines, and reviewing proposed changes to historic properties. It is suggested the following be included in a historic preservation ordinance.

1. **Title.** Architectural review, historic preservation, and landmarks are terms used in existing ordinance titles.

2. **Purposes.** The generally stated purposes are to protect, preserve, and enhance the distinctive architectural heritage and history of the community; to promote educational, cultural, economic, and general welfare; to ensure harmonious, orderly, and efficient growth and development; to strengthen the local economy; and to stabilize and improve property values.

3. **Legal authority.** S.C. Code §§ 6-29-870 and 6-29-880 should be referenced.

4. **Definitions.** Key terms, especially those having a particular technical meaning (e.g., historic district, historic property, landmark, substantial hardship) should be defined in the ordinance.

5. **Creation of Board.** If a board is created specifically for historic preservation, the following factors should be considered.

    a. **Qualification.** The board should have both an architect and a historian, if available. All members should have a demonstrated interest in historic preservation.

    b. **Powers and duties.** The board approves, denies, or approves with conditions the demolition or alteration of building exteriors. It also reviews proposed new construction in a historic district. The board should maintain an inventory of local historic properties, promote education about historic preservation and procedures,

review and comment on National Register nominations, and exercise other duties specifically needed by a community.

c. **Designation of historic properties.** Based on the local inventory and criteria, the board recommends individual properties to the local governing body for historic property designation. The process includes owner notification and public hearings.

d. **Design guidelines.** The board uses guidelines set by the ordinance for reviewing applications. Typically, the U.S. Secretary of Interior's "Standards for Rehabilitation" are incorporated by reference and used with additional local standards.

e. **Application procedure.** The ordinance should establish a process for changes that require a permit, the application procedure itself, required documents, exterior elements included in the permit, and the requirements for a certificate of appropriateness as a condition for receiving a building permit.

f. **Appeal.** The appeal process is described earlier in this chapter. For example, substantial economic hardship may be the basis for appeal of a design review decision.

g. **Substantial hardship.** When denying a certificate of appropriateness results in substantial economic hardship, the ordinance may allow the owner to reapply to the board citing the hardship. Economic hardship should not be allowed as a basis for review until an application is rejected for noncompliance with the design guidelines.

6. Enforcement. Enforcement is discussed in Chapter 4.

Chapter 4
Zoning Enforcement Procedures

As with any law, the zoning ordinance will only be as effective as its level of enforcement. Enforcement is normally the zoning administrator's day-to-day responsibility.

The Planning Act makes it unlawful, after the adoption of a zoning ordinance, to construct, reconstruct, alter, demolish, change the use of, or occupy any land, building, or other structure without first obtaining the appropriate permit. It is likewise unlawful for any other local government official to issue any permit without the zoning administrator's approval. A zoning ordinance violation is a misdemeanor.

The Planning Act establishes the following four enforcement procedures for dealing with zoning ordinance violations. S.C. Code § 6-29-950.

Stop Orders

The zoning ordinance may authorize stop orders against any work undertaken without a proper building or zoning permit. S.C. Code § 6-29-950(A). See Appendix T for a sample order.

The zoning administrator may issue a stop order. This requires all activities violating the zoning ordinance to cease. S.C. Code § 6-29-950(B). The zoning ordinance should state that failure to comply with a stop order is unlawful. This allows violators to be punished.

The stop order should inform a violator of his right to appeal the decision of the zoning administrator to the board of zoning appeals.

The zoning ordinance should set procedures for serving stop orders, including hard-to-locate property owners and persons working on the property. The ordinance should also establish procedures for posting the order on the property.

A stop order is a useful tool when the offending party is operating under some mistake and will voluntarily comply with the order. If the violation is willful, the party may ignore a stop order. Another enforcement method such as an injunction, an ordinance summons, or a warrant may be necessary to achieve results. Neither the zoning administrator nor the board of zoning appeals has authority to hold a violator in contempt for refusing to comply with a stop order.

Injunction and Mandamus

The zoning administrator, other local government officer, a local government attorney, or a neighboring property owner specifically damaged by a zoning ordinance violation can start an action for injunction in circuit court. To successfully obtain an injunction for a zoning violation, a county must show that it has an ordinance covering the situation and that the ordinance has been violated. S.C. Code § 6-29-950(A).

An injunction prohibits property uses contrary to the zoning ordinance. In some cases, it can require the removal of unauthorized structures. The local government should consult its attorney when an injunction is deemed necessary.
Mandamus is the highest writ known to the law. It is an order issued to compel a public official to perform his ministerial duty. S.C. Code § 6-29-950(A) apparently gives a citizen the right to seek a writ of mandamus in circuit court to require a zoning official to enforce the zoning ordinance. Mandamus is not directed at the property owner violating the zoning ordinance. It is very rare for a zoning administrator to refuse to enforce the zoning ordinance and be subjected to a mandamus action.

Ordinance Summons

Under S.C. Code § 56-7-80, local governments can adopt an ordinance allowing them to use an ordinance summons for local ordinance violations. Violation of any ordinance adopted pursuant to the Planning Act is a misdemeanor. S.C. Code § 6-29-950(A).

The ordinance summons is similar in concept to the uniform traffic summons; however, the ordinance summons may not be used for traffic offenses. The uniform traffic summons may not be used for zoning ordinance violations.

The ordinance summons is a very useful enforcement tool. Any authorized code enforcement officer, including a zoning official, can issue an ordinance summons. No arrest is made, and no bond is collected by the issuing officer. The summons gives a magistrate or municipal judge jurisdiction to try the case. The summons provides a procedure for posting bonds. The court may impose a monetary fine and/or confinement in jail upon conviction, plus an assessment of state mandated costs.

For most ordinance violations, the ordinance summons offers a generally preferred alternative to an arrest warrant. The official issues the ordinance summons when a violation is found. He must personally observe the violation and cannot issue a summons based on information from another party. The official must personally serve the summons on the offender. He takes no further action unless the case goes to trial. In case of a trial, the official must appear as a prosecuting witness. The offender may post and forfeit bond, request a trial by jury, or agree to a court trial.

Warrant

An arrest warrant may be obtained for a zoning ordinance violation, just as for any other ordinance violation. A magistrate, municipal judge, or ministerial recorder can issue an arrest warrant. The person making the charge must sign an affidavit giving facts sufficient to constitute probable cause that a violation has occurred. Any person with knowledge of the facts may file an affidavit for a warrant. The judge determines from the affidavit whether probable cause exists. If so, he issues the warrant, which must be served by a law enforcement officer.

When a warrant is served, the offender is taken into custody, booked, and held until a judge conducts a bond hearing. After bond is posted or the offender is released on his own recognizance, the case is set for trial. The case is settled by bond forfeiture, court trial, or jury trial if the offender requests one. If the case goes to trial, the person signing the affidavit must testify as a prosecuting witness.

If convicted, the court may impose a fine and/or confinement on the violator, as well as assessment of costs.

An offender's conviction does not guarantee the condition or use contrary to the zoning ordinance will be corrected. The conviction may indirectly cause compliance because each day of violation is a separate offense. Few people want to run the risk of repeated prosecution. Magistrates and municipal judges do not have the authority to issue injunctions or orders requiring compliance with the zoning ordinance.

PRACTICE POINTER: The ordinance summons procedure is generally preferred over a warrant. The option to seek the arrest of a person for a zoning violation should be limited to severe violations only. The arrest and detention of a citizen triggers numerous constitutional issues and additional costs to the county. The county or municipal attorney should be consulted before a warrant is sought.

Conflict With Other Laws

There are many other statutes, ordinances, and regulations concerning structures and property for protection of public health and safety. There is the potential for those laws and the zoning ordinance to be in conflict. Standard building and fire codes may be adopted by reference. S.C. Code § 6-9-60. State environmental and fire marshal regulations may deal with the spacing and size or configuration of buildings.

If there is a conflict between standards in zoning regulations and standards in other laws or regulations, the more restrictive standards govern. S.C. Code § 6-29-960. This gives the public maximum protection.

Land Use Liability

Federal Liability Law

Constitutional Claims

Federal law § 42 U.S.C. 1983 authorizes persons to sue for damages and other relief for violation of rights secured by the federal Constitution or statute. Many land use claims are brought under this statute. The test is whether the plaintiff's constitutional rights existed, and whether a reasonable individual would have known he was violating these rights. Brickyard Holdings v. Beaufort, 586 F. Supp. 2d 409, (2007).

Takings Claim

A federal takings claim is based on a clause in the Fifth and Fourteenth Amendments to the U.S. Constitution, which prohibits the states from taking private property for public use without "just compensation." A federal takings claim is a claim for money damages that may not be subject to the monetary limits or other protections of the Tort Claims Act. Additionally, a successful claimant may be able to recover compensatory and punitive damages, as well as attorneys' fees. However, a court typically will not hear a takings claim under federal law until the property owner has first sought compensation under state procedures. See Chapter 2 for more information.

Due Process Claims

The Fifth and Fourteenth amendments to the U.S. Constitution also require that no person be deprived of property or liberty without due process of law. Due process in land use cases generally is based on an allegation that an owner was deprived of a property interest without notice or hearing. This type of claim applies to quasi-judicial and administrative actions, not legislative acts. 1To win such a claim, a plaintiff must show that he or she was deprived of the opportunity for an appropriate hearing granted at a meaningful time and conducted in a meaningful manner. For land use proceedings, these claims can usually be defeated by showing that the various requirements of a fair hearing were met. For county officials and employees who exercise quasi-judicial powers - such as hearing rezoning decisions, taking action on a development plan (site plan), granting or denying a variance, or denial of a special use permit - care must be taken to ensure proper notice and a fair hearing are given.

Equal Protection Claims

Land use regulations often have the effect of creating different classes of persons. For example, a zoning ordinance may exclude manufactured homes from certain residential zone districts, thereby creating different classes of homeowners. An equal protection claim is based on the allegation that the claimant is among a class of persons that, without reason, is being treated differently than others in violation of the Equal Protection Clause. As long as a claimant is not being discriminated against because of the exercise of a fundamental right (such as the right to vote) or membership in a protected class (such as an ethnic or racial minority), an equal protection claim against a land use regulation is likely to fail. However, the courts will overturn a regulation if the plaintiff can show that the distinctions being made are not rationally related to a legitimate government interest.

A 2007 South Carolina case held that a zoning ordinance prohibiting mobile homes in certain areas did not violate the equal protection clause because the ordinance was rationally related to the legitimate governmental purpose of "providing homogeneous and aesthetically harmonious development of single-family dwellings." Town of Iva v. Holley, 374 S.C. 537, 649 S.E.2d 108 (2007).

Federal Statutory Claims

An increasing number of federal statutes also impact local government land use regulation. These statutes typically provide for specific rights and remedies if violated. The following is not intended as an exhaustive list of federal statutes that affect local land use; rather, it is intended only to identify a few of the significant federal laws that should be of concern to local planning officials.

- **Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968**, as amended, 1prohibits discrimination in housing based on race, ethnicity, national origin, religion, gender, or disability. This Act has been used to challenge local government land use that interferes with the development of low-income housing or housing for mentally handicapped or other disabled persons. See Chapter 2.

- **The Telecommunications Act of 1996**, codified at 47 U.S.C. § 151 et seq., affects the

ability of local governments to regulate the location of wireless telecommunications facilities including towers and dishes. For example, local land use regulations for these facilities cannot discriminate between providers and cannot be based on health effects of radio frequency emissions. A denial for such a facility must be in writing and supported by substantial evidence in a written record. Providers also have an expedited right of review. Besides the risk that its decision will be reversed, local decision makers could be subject to § 1983 liability, though the law is unsettled on this issue.

- **The Sherman Antitrust Act**, 15 U.S.C. § 1 et seq., and later amendments to federal antitrust law prohibit acts to monopolize markets or restrain trade, or to conspire to do these things. While local governments enjoy several protections against antitrust liability and few successful cases against zoning officials have been reported, the potential liability should still be considered. For example, a credible case exists where a zoning board acts in concert with a major developer to "zone out" its competitors.

- **The Endangered Species Act of 1973**, 16 U.S.C. § 1531 et seq., can impose additional requirements on land use development. For example, the United States Supreme Court has upheld regulations stating that the Act's prohibition on the taking of endangered species includes private activities that result in significant habitat modification. This may have the effect of prohibiting uses that might otherwise be permitted under local zoning regulations.

State Law

The South Carolina Tort Claims Act, S.C. Code § 15-78-10 et seq., provides immunity to government officials and employees when acting in the scope of their official duties. S.C. Code § 15-78-70(a). The Act does not provide immunity if the person acts outside the scope of his duty or if the act constituted fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code § 15-78-70(b). Employees and officials covered under this act include zoning administrators, planning commission members, board of zoning appeals members, and board of architectural review members.

Chapter 5
Land Development Regulation

Land development regulations govern the conversion of raw land into subdivided lots for the construction of buildings and other structures. In the past, these types of local government requirements have been typically referred to as "subdivision regulations." Current planning practice utilizes land development regulations to control site design, street layout, provisions for water and sewer service, and other matters related to the conversion of land for development.

The Planning Act recognizes that land development takes many forms. The traditional subdivision is just one type of land development. Under the Planning Act, local governments have explicit authority to adopt site improvement regulations with standards and requirements for land developments that do not subdivide land into separate parcels.

The local governing body must adopt at least the community facilities element, the housing element, and the priority investment element of the comprehensive plan before it can adopt land development regulations. S.C. Code § 6-29-1130.

Definitions

S.C. Code § 6-29-1110 contains definitions that are applicable to all of Chapter 29.

1. **Land development** is a change in land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, or similar developments for sale, lease, or any combination of owner and rental characteristics.

2. **Subdivision** is a division of a tract or parcel of land into two or more lots, building sites, or other divisions. The land is divided for sale, lease or building development, whether immediately or in the future. The definition includes all land divisions involving a new street or change in existing streets. It includes re-subdivisions involving the further division or relocation of lot lines of any lot or lots within a previously approved or recorded subdivision. The definition covers the alteration of any streets or the establishment of any new streets within any previously approved or recorded subdivision as well as combinations of lots of record.

   The following exceptions are included within this definition only for the purpose of requiring that the local planning agency be informed and have a record of the subdivisions.

   a. Combining or recombining portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the ordinance standards.

   b. Dividing land into parcels of five acres or more where no new street is involved. The planning commission must receive plats of these exceptions as information and indicate that fact on the plats.

   c. Combining or recombining entire lots of record where no new street or change in

existing streets is involved.

3. **Affordable housing** is housing where the total cost for a dwelling unit for sale - including mortgage, amortization, taxes, insurance, and condominium or association fees - constitutes no more than 28 percent of the annual household income for a household earning no more than 80 percent of the area median income, by household size, as reported by U.S. Housing and Urban Development (HUD). In the case of rental units, the total cost for rent and utilities can constitute no more than 30 percent of the annual household income for a household earning no more than 80 percent of the area median income, by household size, as reported by HUD.

4. **Traditional neighborhood design** is development designs intended to enhance the appearance and functionality of a new development so that it functions like a traditional neighborhood or town. These designs make possible higher residential densities, a mixture of residential and commercial land uses, single- and multi-family housing types, and pedestrian- and bicycle-friendly roadways. Overall, the aim of this portion of the act is to encourage local governments to reevaluate their comprehensive plans in such a way as to slow the growth of sprawl, prioritize projects and funding, and create new stocks of affordable housing throughout the state.

Purpose of Land Development Regulations

Land development regulations, including the traditional subdivision regulations, are police power regulations. To promote the public health, safety, economy, good order, appearance, convenience, and general welfare requires harmonious, orderly, and progressive land development. S.C. Code § 6-29-1120.

With an ordinance, local governments can set land development regulations for the following purposes, among others.

1. Encourage the development of economically sound and stable counties and municipalities.
2. Assure the timely provision of required streets, utilities, and other facilities and services to new land developments.
3. Assure safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments.
4. Assure the provision of needed public open spaces and building sites in new land developments by dedicating or reserving land for recreational, educational, transportation, and other public purposes.
5. Assure, in general, the wise and timely development of new areas or redevelopment of areas in harmony with the adopted local government comprehensive plan.

Requirements That May be Included

Land development regulations may include requirements and standards for the following activities. S.C. Code § 6-29-1130.

1. Coordinating street improvements with existing or planned streets**.**
2. Installing the development water system**.**
3. Installing the development sewer system or septic tanks.
4. Ensuring population and traffic is distributed in the interest of health, safety, convenience, appearance, prosperity, or the general welfare.
5. Requiring dedication of land for streets, schools, recreation, utility easements, and public services and facilities.
6. Installing other utility mains, piping, connections, or other facilities as a condition before approving the land development plan**.**
7. Regulations for building on sites subject to flooding**.**
8. If the local government requires site improvements before issuing final approval for recording, the developer may be required to post a surety bond, certified check, or other instrument readily convertible to cash. The amount must equal at least 125% of the cost of the required improvement. S.C. Code § 6-29-1180.

Adoption and Amendment

The local governing authority may adopt and amend land development regulations by ordinance after a public hearing. It must publish at least thirty-days' notice of the time and place of the public hearing in a general circulation newspaper in the community. S.C. Code § 6-29-1130(B).

Enforcement

The following must be done to ensure approval of all new land developments or changes to existing developments.

1. **Recording.** Subdivision plats or other land development plans that have not been properly approved may not be filed or recorded in the county office where deeds are recorded. S.C. Code § 6-29-1140.

2. **Building permit.** The local government cannot issue a building permit until the plat or plan bears the stamp of approval and is properly signed by the authority designated in the adopted regulations. S.C. Code § 6-29-1140.

3. **Bond.** If the developer defaults in installing required improvements, the local governing body can use the surety posted by the developer to install the required improvements. S.C. Code § 6-29-1180.

4. **Transfer of Title.** The owner of land being developed may not transfer title to lots of the property until the land development plan or subdivision has been approved by the planning commission or designated authority, and the approved plan has been recorded by the county. S.C. Code § 6-29-1190.

Penalties for Violation

Submitting an unapproved subdivision plat or other land development plan for filing or recording is a misdemeanor. A conviction is punishable as provided by law. The land developer, register of deeds, or clerk of court could violate the law by recording an unapproved plat or land development plan.

The property owner or the owner's agent may not transfer title to any lots or plats being developed unless the local planning commission or designated authority approves the land development plan or subdivision. The approved plan or plat must be recorded in the county office responsible for recording deeds, plats, and other property records. A title transfer violating this provision is a misdemeanor. If convicted, the court decides the punishment. A description by metes and bounds in the instrument of transfer or other document used in the transfer process does not exempt the transaction from these penalties. The local government or a private party may prohibit the transfer by taking appropriate actions. S.C. Code § 6-29-1160.

Administration

Previous legislation made the planning commission the administrator of subdivision regulations adopted by the local governing body. Under the new legislation, this procedure may still be used. Many jurisdictions that have subdivision regulations rely on the professional staff to review and approve of plats. The new legislation legitimizes this approach.

Land development regulations must have a specific procedure for submitting plans to the planning commission or designated staff for approval or disapproval. S.C. Code § 6-29-1150.

Determining the Existence of Restrictive Covenants

A local planning agency must inquire from an applicant for a planning/development permit whether the tract or parcel of land is restricted by any recorded covenant that conflicts with or prohibits the proposed activity. If the agency has actual notice of the existence of a covenant that prohibits the activity, it must not issue the permit. The statute makes it clear that the agency must have actual knowledge rather than vague constructive notice of the restriction. The county can have actual notice if they receive evidence of the restriction from a permit application, other information submitted by the applicant, or from third-parties such as neighboring land owners. The statute further provides that a permit does not include permits to erect or place a structure on the parcel, and that a restrictive covenant does not include restrictions on the types of structure that may be built or placed on a parcel. S.C. Code § 6-29-1145.

PRACTICE POINTER: An agency does not have to make an individual search of the Register of Deeds or Clerk of Courts' documents to determine the existence of a restriction. They must include a notice on permit application to direct applicants to provide the information. Failure of an applicant, or third-parties to provide the information does not extend liability to the agency or its staff.

Plat and Plan Approval

Land development regulations must include time limits, not to exceed sixty days, for approving or disapproving subdivision plats or other land development plans. Unless that time limit is extended by mutual agreement, failing to act within the time limit constitutes approval of the plat or plan. The commission or staff must send the developer a letter of approval and authorization to proceed based on the plans (or plats) and any other supporting documentation presented. S.C. Code § 6-29-1150(A). If the plat or plan is not approved, a written statement detailing the deficiencies should be sent to the developer.

Surety Bond for Completion of Site Improvements

Where the local land developments require the installation and approval of site improvements prior to the approval of the development plan or subdivision plat for recording a developer may post a surety bond, certified check or other financial instrument. The surety must be made in favor of the local government to ensure that in the event of a default by the developer, funds will be available to be used to install the required improvements at the expense of the developer.

Record of Actions and Notification

A record of all actions approving or disapproving plats and plans must be kept as a public record. The record must include the grounds for approval or disapproval and any attached conditions. The commission or staff must notify the developer in writing of the approval or disapproval. S.C. Code § 6-29-1150(B).

Appeals

If the planning commission is designated as the approving authority, a party may appeal from a commission action to the circuit court. The party must appeal within thirty days after actual notice of the decision.

If the planning staff is designated as the approving authority, a party may appeal a staff action to the planning commission. The planning commission must act on the appeal within sixty days. The planning commission's action is final. A party may appeal the decision to circuit court within thirty days of actual notice of the decision.

EDITOR'S NOTE: Actual notice is not defined in the Act. S.C. Code § 6-29-1150(D)(3) provides that the notice of appeal and request for pre-litigation mediation is to be filed no later than 30-days after the order is mailed.

Dedication of Streets or Property

Land development regulations may require dedication of land for streets, schools, recreation, utility easements, and public services and facilities. S.C. Code § 6-29-1130. Approval of a land development plan or subdivision plat does not automatically mean the local government body or the public has accepted the dedication of any street, easement, or other property shown on the approved

plat. S.C. Code § 6-29-1170.

The land development ordinance or other local ordinance should establish the procedure and action required by the governing body before a street, easement, or other property is accepted as public property.

Street Names

The planning commission is traditionally responsible for approving street names in its area of jurisdiction. In many jurisdictions this responsibility has either been given to E-911/emergency management or is shared between the two agencies.

After reasonable notice in a general circulation newspaper in the community and public hearing, the local agency may change the name of an existing street or road within its jurisdiction, when one of the following occurs.

1. There is duplication of names which tends to confuse the public or persons delivering mail, orders, or messages.

2. A change may simplify markings or giving directions to persons looking for an address.

3. Any other good and just reason that may appear to the commission.

The local agency will issue its certificate designating the change. It is recorded in the office of the register of mesne conveyances or clerk of court. The changed and certified name becomes the legal name of the street. S.C. Code § 6-29-1200.

Chapter 6
Official Map

As the various elements of the comprehensive plan are developed and adopted, rights-of-way or property for public use may be needed. The official map permits local governments to reserve for public or government use any street, highway or utility right-of-way, building site, or open space for future public acquisition. The map may be used to regulate structures or land use changes in those rights-of-way, building sites, or open spaces. S.C. Code § 6-7-1220.

Use of this power reserves the government's rights before the owner changes the land use or develops it to make future acquisition for public use impractical. The locality may use it as a tool to help implement its comprehensive plan.

Definition

"Official map" means "a map or maps showing the location of existing or proposed public streets, highways, public utility rights-of-way, public building sites, and public open spaces." S.C. Code § 6-7-1210. A public building site is defined as "one on which a public building will be constructed using public funds." S.C. Code § 6-7-1210.

Official Map Prerequisites

Before adopting an official map, the governing body must adopt the comprehensive plan element corresponding to the purpose for the map. S.C. Code § 6-7-1240.

After adopting the major street portion of the comprehensive plan, the local planning commission may secure surveys for the exact location of the lines for proposed new, extended, widened, or otherwise improved streets and highways in all or any part in its jurisdiction. The planning commission certifies the map to the local governing body for adoption.

After the comprehensive plan element showing the public building sites, public open spaces, or public utilities is adopted, the local planning commission may secure surveys of the exact location of the boundary lines for proposed new and enlarged sites for public buildings, public parks, public playgrounds, public utilities, and other public open spaces in all or any part of its jurisdiction. The planning commission certifies the map to the local governing body for adoption.

The official map recommended by the planning commission may consist of several separate maps drawn to different scales. These maps must be indexed on a single map of the local jurisdiction. S.C. Code § 6-7-1230.

Official Map Adoption

A map becomes official upon adoption by the local governing body. Before adopting the map recommended by the planning commission, the governing authority must hold an advertised public hearing conducted according to procedures prescribed by law. If no established procedure exists, the governing body must publish at least fifteen days' notice of the hearing time and place in a general

circulation newspaper in the community. S.C. Code § 6-7-1250.

The governing authority may add or change the official maps. Before making any changes, it must give the local planning commission thirty days to submit a report and recommendation on the proposed changes. The governing body must hold a public hearing before adopting the maps. If the planning commission fails to submit a report within the thirty-day period, it is considered to have approved the proposed changes. S.C. Code § 6-7-1260.

Once adopted, the official map governs the designation of property, and constitutes a matter of law. Parties seeking approval to develop land should confirm the designation of such land against the official map, and not rely upon information informally provided by staff or other officials. See Quail Hill LLC v. Richland County, 387 S.C. 223, 692 S.E.2d 499 (2010).

Enforcement and Appeal Procedure

Permits cannot be issued for constructing, improving, repairing, or moving any building or structure on property reserved by the official map. Permits cannot be issued for any change in a land use for property reserved by an official map.

Denying a permit triggers the following appeal procedure for the affected property owner.

1. The owner must present the appeal to the local planning commission.

2. The planning commission must evaluate the appeal. It must make a report within thirty days to the local governing body and to any other appropriate public agency. If no report is made within thirty days, the planning commission is considered to have recommended the appeal be granted.

3. The planning commission report must recommend one of the following outcomes.

    a. The governing body take official action to exempt the affected land from the official map's restrictions.

    b. The governing body take official action to authorize the desired permits subject to specified conditions.

    c. The governing body initiate appropriate action to acquire the property.

4. After receiving the planning commission report, the governing body must do one of the following within 100 days.

    a. Take official action exempting the affected land from the official map’s restrictions.

    b. Take official action authorizing the denied permits subject to specified conditions accepted by the owner.

    c. Either enter into an agreement to acquire or institute condemnation proceedings to

acquire the affected property. The governing body or other appropriate public agency can take action to acquire the property. For example, if the affected property is a school site, the school board may acquire the site; if it is a highway right-of-way, the Department of Transportation may acquire the site.

If the governing body fails to act within 100 days of receiving the planning commission report, it is considered to have approved the proposed appeal. In such case, denied permits are issued upon demand. Any applicable zoning provision pertaining to the property must be followed. S.C. Code § 6-7-1270.

Property Exemption Procedure

Any property owner whose property is included on an official map may ask the planning commission for an exemption from the official map restrictions. In such cases, the following procedure must be followed.

1. The local planning commission must evaluate the application. It must make a report within thirty days to the local governing body and any other appropriate public agency. If no report is made within thirty days, the planning commission is considered to have recommended granting the application.

2. The planning commission report must recommend one of the following:

    a. The local governing body take official action exempting the affected property from the official map restrictions.

    b. The governing body initiate action to acquire the property.

3. After receiving the planning commission report, the governing body has seventy-five days to do one of the following:

    a. Take official action exempting the affected property from the official map restrictions.

    b. Enter into an agreement to acquire or institute condemnation proceedings to acquire the affected property. The governing body or other public agency can take the action to acquire the property.

If the governing body fails to act within seventy-five days of receiving the planning commission report, it is considered to have granted the application. Exempting property from the official map does not affect the zoning restrictions applicable to the property. S.C. Code § 6-7-1280.

Chapter 7
Development Agreements

The General Assembly adopted the South Carolina Local Government Development Agreement Act in 1993. S.C. Code § 6-31-10, et seq. The Act authorizes binding agreements for long-term development of large land tracts. The development agreement gives a developer a vested right during the term of the agreement to proceed according to land use regulations in existence on the date of the agreement.

Purpose

The economic impact stemming from the uncertainty for land developments to proceed under laws existing at the time a permit is issued demonstrated a need for development agreements, according to the legislative findings in S.C. Code § 6-31-10. The Act expresses the intent to encourage a stronger commitment to comprehensive and capital facilities planning, providing adequate public facilities, efficient resource use, and reducing development costs.

Development Permits

Development permits include a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, or any other official action permitting the property development. S.C. Code § 6-31-20.

Minimum Requirements

The local government cannot use a development agreement for every land development. There are two threshold requirements the development must meet before an agreement is authorized. S.C. Code § 6-31-40.

1. **Size of property.** A property must contain a minimum of 25 acres of highland. The Act does not define the term "highland." The local ordinance authorizing agreements could define the term (e.g., land above the 100-year flood plain).

2. **Development time.** The time frame for developing property up to 250 acres cannot exceed five years. The time is extended to not more than ten years for property more than 250, but less than 1000 acres. If the property exceeds 1,000 but less than 2,000 acres an agreement may extend to 20 years. The jurisdiction may set any time frame by agreement for property larger than 2,000 acres or property subject to redevelopment under the Military Facilities Redevelopment Act

Contents of Agreement

A development agreement must include the following. S.C. Code § 6-31-60.

1. Legal description of the property and names of legal and equitable owners. A purchaser holding a written contract of sale is an equitable owner and should be a party to the

agreement.

2. The duration of a development agreement varies depending on the size of the property, but must be at least five years to qualify as a development agreement. S.C. Code §6-31-40. An agreement may extend the termination date.

3. Uses permitted, includes population and building densities, and building heights.

4. Public facilities description of who will serve the development and when. The agreement could include requirements for easements and underground utilities. If the development agreement provides that the local government will provide certain public facilities, the development agreement must provide that the delivery date of such public facilities will be tied to defined completion percentages or other defined performance standards to be met by the developer.

5. Reservation or dedication of land for public purposes and environmental protection provisions. An environmental impact study may be appropriate.

6. A description of all local development permits needed or approved. A statement should be included that failure to list a permit does not relieve developer from complying with the law.

7. A statement that the development is consistent with the comprehensive plan and land development regulations. See S.C. Code §6-31-70.

8. Conditions, terms, restrictions, or requirements necessary for public health, safety or welfare.

9. Description of provisions for historic preservation and restoration. The agreement should cite local regulations for historic districts and structures.

10. Specific time for completion of development or any phase. The local government may extend the time upon request.

11. Responsible government. If more than one local government is a party to the agreement, specify which is responsible for overall administration of agreement.

12. Other matters. Any other matter not inconsistent with law may be included. The agreement should contain a provision for applying new laws. S.C. Code § 6-31-80(B)(3). (Maps and plans could be required at appropriate development stages.)

A development agreement may be amended or terminated with the consent of the affected parties. S.C. Code § 6-31-100.

Adoption of Agreement

The following steps are required for approving a development agreement.

1. **Hearing.** Before entering into a development agreement, the governing body must hold at least two public hearings. It may authorize the planning commission to conduct the hearing. S.C. Code § 6-31-50(A).

2. **Notice.** Notice of the hearing must be published in a general circulation newspaper in the community. S.C. Code § 6-31-50(B). The notice must specify the property location, proposed uses, and a place where a copy of the agreement may be obtained. (No time limit for publishing the notice is set by the Act. The general ordinance authorizing development agreements should set the time.) The time and place of the second hearing must be announced at the first hearing.

3. **Ordinance.** The governing body must approve each development agreement by adoption of an ordinance. S.C. Code § 6-31-30.

Applicable Laws

1. **Existing law.** Unless otherwise provided by the development agreement, the laws in force at the time the agreement is executed will apply to the property development. S.C. Code § 6-31-80. The rights of electricity and gas suppliers may not be altered or amended. S.C. Code § 6-31-140. The Act does not give the local governing body any extraterritorial authority.

2. **Subsequent law.** A local government may apply subsequently adopted laws to a development under a development agreement if it determines after a public hearing that one of the following conditions is met. S.C. Code § 6-31-80.

    a. **No conflict**. The new laws do not conflict with laws governing the development agreement and do not prevent the development.

    b. **Essential.** The new laws are essential to public health, safety, or welfare. They expressly state that they apply to the development subject to the agreement.

    c. **Anticipated.** The specific laws are anticipated and provided for in the development agreement.

    d. **Changes.** Substantial changes have occurred which would pose a serious threat to public health, safety, or welfare if not addressed.

    e. **Inaccuracy.** The development agreement is based on substantially and materially inaccurate information supplied by the developer.

Review

Ordinances establishing procedures for development agreements must include a provision for periodic review by the zoning administrator or other appropriate officer at least every twelve months. The developer must be required to demonstrate good faith compliance with the agreement terms.

S.C. Code § 6-31-90.

When a review reveals a material breach of the agreement, the following steps are taken.

1. **Notice of breach.** A notice of breach containing with particularity the nature of the breach, the evidence supporting the determination, and providing a reasonable time to cure the breach must be sent to the developer within a reasonable time after the review.

2. **Termination.** If the developer fails to cure the breach within the time given, the local governing body may unilaterally terminate or modify the agreement. The developer has the opportunity to rebut the determination or to consent to amend the agreement to meet the concerns raised by the findings and determination of breach.

Annexation or Incorporation

A development agreement remains effective in an annexed or newly incorporated area for the duration of the agreement or eight years from the annexation or incorporation's date, whichever is earlier, provided (1) the application for the agreement was submitted to the government of the unincorporated area before the first signature was affixed to the petition for incorporation or annexation and (2) a development agreement was entered into prior to the election for incorporation or ordinance for annexation. The agreement may be extended by consent of the parties and the municipality for up to fifteen years. Provisions of the agreement may be amended or suspended by the municipality when they produce a danger to public health or safety. S.C. Code § 6-31-110.

Recording Agreement

The developer must record the development agreement in the land records of the county where the property is located. It must be filed within fourteen days after the agreement is executed. The agreement is binding on successors in interest. S.C. Code § 6-31-120.

State and Federal Laws

The development agreement provisions must be modified or suspended to comply with state or federal laws enacted after the agreement is executed. S.C. Code § 6-31-130.

CHAPTER 8
Statutory & Parliamentary Procedures

The Planning Act requires the various boards and commissions to adopt their own rules of business. The majority of South Carolina counties have adopted Robert's Rules of Order Newly Revised (RONR), currently in its 11th edition. RONR is primarily written for private societies and is not well suited for use by legislative bodies, particularly smaller bodies such as county planning commissions and zoning boards. RONR generally does not take into account the type of statutory procedural mandates required of local government entities. For this reason, planning entities that adopt any edition of RONR should concurrently adopt special standing rules to address specific statutory mandates, especially those found in the S.C. Freedom of Information Act (FOIA).

Rules of Procedure

Each of the various planning and zoning boards/commissions must adopt rules of procedure. S.C. Code § 6-29-360. It is essential for boards and commissions to adopt and follow clear and adequate rules of procedure. At a minimum, the rules should cover the following:

1. Election of a chairperson and vice-chairperson and their duties.
2. Appointment of a secretary and the duties.
3. Procedures for calling meetings.
4. Place and time for meetings.
5. Posting meeting notices to comply with the Freedom of Information Act.
6. Setting the agenda.
7. Quorum and attendance requirements.
8. Rules and procedure for conducting meetings.
9. Public hearing procedure.
10. Procedure for making and keeping records of actions.
11. Procedure for plan and plat review.
12. Delegation of authority to staff.
13. Procedure for purchase of equipment and supplies.
14. Procedure for employment of staff and consultants.
15. Preparation and presentation of annual budget.
16. Procedure for authorizing members or staff to incur expenses and secure reimbursement.

See Appendices F-H for model rules of procedure for planning commissions, boards of zoning appeals and boards of architectural review.

PRACTICE POINTER: SCAC created model rules for use by local governments. These rules are based on RONR 11th ed., but address statutory mandates unique to ongoing public bodies. For a more detailed discussion of proper rules of procedure for governmental entities please consult "Models Rules of Parliamentary Procedure for South Carolina Counties."

Officers and Terms

The local planning commission and zoning board of appeals must elect one of its members as chairperson and one as vice-chairperson for one-year terms. It must also appoint a secretary. The secretary is usually the planning director, zoning administrator, or similar professional planning employee. The secretary prepares and maintains the minutes of meetings and other records. S.C. Code § 6-29-360.

S.C. Freedom of Information Act (FOIA)

The South Carolina Freedom of Information Act (FOIA), S.C. Code §§ 30-4-10, et seq., requires all public bodies to conduct their meetings in public. Public bodies may go into executive session only for certain enumerated reasons, including receipt of legal advice, employment matters, and contract negotiations. S.C. Code § 30-4-70. The body must give a written public notice of regular meetings at the beginning of each calendar year. The body must also post regular meeting agendas at the meeting place 24 hours before a meeting. Notices and agenda for called, special, or rescheduled meetings must be posted at least twenty-four hours before meetings. The board must notify persons, organizations and news media that request meeting notifications. S.C. Code § 30-4-80. For more information, consult the S.C. Association of Counties publication, the Freedom of Information Act Handbook.

Records

The local boards and commissions must keep a public record of its meetings, resolutions, findings and determinations. S.C. Code § 6-29-360(B). Public records must be made available for inspection and copying within fifteen days after receiving a written Freedom of Information Act request. S.C. Code § 30-4-30. Meeting minutes for the previous six months must be kept available upon demand during normal business hours. S.C. Code § 30-4-30(d)(1). Records must also be kept in compliance with the Public Records Act, § 30-1-10. *et seq.*, and the record retention schedules generated pursuant to that act.

Meetings to Conduct Regular Business

Local boards and commissions must conduct their business by public meeting. Unlike county or town councils, the various planning boards and commissions are not required by statute to meet monthly. Many local boards and commissions do however meet at regular intervals as established by the local jurisdiction. If the body meets regularly, they should post the dates and times at the beginning of the calendar year, and must provide notice and agendas for each meeting at least 24-hours prior to the meeting.

A public body may amend an agenda that has been posted under certain conditions only. Prior to the meeting the agenda may be amended so long as a new 24-hour public notice is provided. If the meeting is in progress, amendments adding an item not previously noticed may only be made by a 2/3 positive majority vote. If the item to be added is one that final action can be taken, then the chair must declare an emergency or exigent circumstance exists and a 2/3 positive majority vote is taken.

Electronic Participation in Meetings

South Carolina FOIA authorizes members of a public body to participate in a meeting by way of electronic means (i.e. telephone, skype etc.) It is up to the body to allow its members to participate in any way other than in person. The body's adopted rules should provide for procedures authorizing such participation and the means to participate. It is advisable that any participation other than in person should be limited to meeting to conduct the business of the body. It is not advisable to allow such participation where the session is a public hearing or quasi-judicial proceeding. Hearings and other judicial proceeding where evidence is presented should be conducted before the members in person.

Public Hearings

Public hearings are the method required by the Home Rule Act for governing bodies to gain input from the public at large. Members should refrain from making comments during the public hearing and should neither enter into debate with the public nor with other members during the public hearing.

Notice. Prior to the hearing, the entity must provide notice of the meeting and agenda for the meeting by public notice at least 24 hours prior to the meeting as required by public meeting provisions of FOIA. In addition there must be posting by and agenda for the meeting, property and by mail as outlined below:

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. See Appendices I – N for sample notices for a variety of public hearings.

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.

Conduct of the Hearing. The body's adopted rules should outline how the hearing is to be conducted. The Chair should announce the rules governing the hearing at the start of the hearing and enforce those rules as necessary. Order of speakers and time limits are left to the discretion of the body.

Quasi-Judicial Hearings

Planning boards/commissions differ from county council because members of the board/commission often sit in a judicial capacity rather than a legislative one. Quasi-judicial hearings are important because an applicant/appellant's fundamental constitutional rights are involved. The 5th and 14th amendments of the United States Constitution prohibit the taking of property without the due process of law. Due process has been described by the courts as providing a property holder adequate notice, an opportunity to be heard, and judicial review. Other rights that may come into play include the right to be represented by counsel (at the petitioner's expense), and the right to cross examine witnesses.

When conducting a quasi-judicial hearing, the board/commission members take on the role of impartial triers of fact in a dispute involving the legal rights of one or more parties. In a quasi-judicial hearing, members must be careful to provide the basic legal rights due under state and federal constitutions and statutes. Members must base their decisions solely on the evidence presented at the hearing. Members should not discuss the case beforehand or be influenced by the opinions of others who are not a part of the proceedings. Most importantly, when questioning an applicant, the Members should only ask questions or request information concerning facts that are applicable to the jurisdiction's established criteria governing the dispute. A member should never ask an applicant questions concerning personal information that could implicate a protected federal/state right (i.e. issues of race, gender, national origin, orientation, etc.).

PRACTICE POINTER: Due to the judicial nature of an applicant hearing, the body should be careful to avoid the appearance of impropriety. Members of the body must refrain from *ex parte* communications (communications without all parties interested being present) with either the applicant or professional staff of the governing entity. The body's decision must be based solely on the facts and testimony presented by the parties at the hearing. Individual members of the body should not undertake their own investigation of the facts, including making specific site visits to the subject property.

Quasi-judicial hearings are not considered part of the unified court system and strict rules, including the Rules of Evidence and the Administrative Procedures Act, need not be followed. Hearsay evidence can be admitted and considered, if corroborated (Hamilton v. Bob Bennett Ford, 339 S.C. 68, 70, 528 S.E.2d. 667, 668 (2000)), but a decision based solely on hearsay cannot stand (Richards v. City of Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955)).

PRACTICE POINTER: An applicant before a board/commission is not entitled to the full gamut of trial-type procedures and rules. For example, the triers of fact are not prohibited from considering hearsay evidence. See, Kurschner v. City of Camden, 376 S.C. 165, 656 S.E.2d 346 (2008).

CHAPTER 9
Educational Requirements For Planning Officials and Employees

Planning Education Requirement

Within one year of appointment or hire, each appointed planning official and professional employee must attend a minimum of six hours of orientation training. An appointed official or employee may also complete the orientation training before appointment or employment, but may not do so more than 180 days before initial appointment/employment. Once the official or employee has completed the orientation requirement they thereafter must attend three hours of continuing education programming. Each year the County Council or other local governing body must identify the officials and staff required to attend training and provide a list to the Clerk. S.C. Code § 6-29-1340.

PRACTICE POINTER: S.C. Code § 6-29-1340(B) exempts a person from further orientation requirements who has already completed the six hours of orientation from a previous appointment or professional employment, following a break in service. The Code does not restrict the length of time since the previous orientation. The appointee/employee is however required to attend the three hours of annual continuing education.

The Code outlines seventeen areas of training that may be included in training programs, but does not limit training to those topics alone. In order to receive credit for an educational program for orientation or annual continuing education, the program must be approved by the Advisory Committee for Planning Education. The South Carolina Association of Counties is an approved provider of educational programs. The areas of training identified in the Code include (S.C. Code § 6-29-1340(C)):

(1) land use planning;
(2) zoning;
(3) floodplains;
(4) transportation;
(5) community facilities;
(6) ethics;
(7) public utilities;
(8) wireless telecommunications facilities;
(9) parliamentary procedure;
(10) public hearing procedure;
(11) administrative law;
(12) economic development;
(13) housing;
(14) public buildings;
(15) building construction;
(16) land subdivision; and
(17) powers and duties of the planning commission, board of zoning appeals, or board of architectural review.

Officials and Employees Exempt from Education Requirements

The Planning Act provides that an appointed official or professional employee who has one or more of the following qualifications is exempt from the orientation and annual continuing educational requirements S.C. Code § 6-29-1350:

(1) certification by the American Institute of Certified Planners;
(2) a masters or doctorate degree in planning from an accredited college or university;
(3) a masters or doctorate degree or specialized training or experience in a field related to planning as determined by the advisory committee;
(4) a license to practice law in South Carolina.

An appointed official or professional employee who is exempt from the educational requirements must file a certification form and documentation of his exemption with the county Clerk to Council by no later than the first anniversary date of his appointment or employment. An exemption is established by a single filing for the tenure of the appointed official or professional employee and does not require the filing of annual certification forms and conforming documentation. S.C. Code § 6-29-1360.

Failure to Complete Training Requirements

An appointed official may be subject to removal from office and a professional employee may be subject to suspension or termination of employment by the county or other jurisdiction for failing to complete the orientation and annual education requirements within the allotted time frame, or fails to file an exemption certificate as required by S.C. Code § 6-29-1360.

A county or other local planning or zoning entity may not appoint an individual nor employ a professional employee who has been determined to have falsified an exemption certification form or other documentation required by S.C. Code § 6-29-1360.

PRACTICE POINTER: An appointed official, and to a lesser extent a professional employee, who is determined to have failed to meet the training requirements or falsified certification forms could cause significant issues for the county. The individual could potentially cloud the final decisions made by the entity, and subject the county or local jurisdiction to legal liability related to any vote the official participated in after failure/falsification occurred.

APPENDICES

The following forms and models are offered not as the solution for each and every jurisdiction. They are intended to be more of a checklist of provisions you may wish to include in an ordinance, rules of procedure, or some other land use planning process document. We have also tried to point the user to the statute or statutes, if any, which have an impact on the provision suggested so that the user can reference them when crafting a document

It is up to each jurisdiction to decide whether provisions such as term limits or attendance requirements are a positive feature. Some procedural provisions may be necessary to manage a jurisdiction with a large number of land use requests, but be unnecessary in smaller jurisdictions. Many of the features included in these forms are not appropriate for every jurisdiction. On another note, the SCAC legal staff was not comfortable suggesting some provisions which are occasionally seen in practice because of a conservative legal approach. However, this is not to suggest that a provision not seen in these forms is legally suspect.

The bottom line is that these forms are offered as a tool for policy makers, administrative staff and the county attorney to use in crafting a process which serves the needs of their community. If the SCAC staff can be of any assistance in that process, please do call upon us.

APPENDIX A

Model Ordinance:
Establishing a County Planning Commission

WHEREAS, a local planning commission is authorized by S.C. Code § 6-29-320; and

WHEREAS, the creation of a planning commission is a necessary step in implementing the provisions of Chapter 29 of Title 6 of the South Carolina Code of Laws.

NOW, THEREFORE, BE IT ORDAINED by the _____ County Council that the ____ County Code is amended by adding:

SECTION 1. Planning Commission Established.

There is established a planning commission for ____ County, which shall have the powers and duties as set forth in S.C. Code Title 6, Chapter 29, § 6-29-310, et seq.

SECTION 2. Composition of Commission.

The planning commission shall consist of __ (5 to 12 S.C. Code § 6-29-350(A)) members appointed by the County Council. For the initial appointment of planning commission members following adoption of this ordinance, one third of the members shall receive an initial term of one year, one third of the members shall receive an initial term of two years, and one third of the members shall receive an initial term of three years.

Following the expiration of the initial terms as set forth in the preceding paragraph, planning commission members shall have a term of three years so that one third of the commission members' terms expire each year. Members shall serve until their successors are appointed and qualified.

A member may be appointed to no more than __ successive three year terms, without a break in service.

No member of the planning commission shall be an official or employee of _____ County. (S.C. Code § 6-29-350(B)).

Vacancies on the planning commission shall be filled in the manner of the original appointment for the remaining term of office. (S.C. Code § 6-29-350(B)).

SECTION 3. Compensation.

Planning Commission members shall serve without compensation. Reimbursement for actual expenses incurred in the performance of their duties may be reimbursed from appropriated funds pursuant to _____ County reimbursement policies and procedures.

SECTION 4. Removal of Members.

Members of the planning commission may be removed for cause at any time by the _____ County Council. Prior to removal, the county council shall give written notice of at least seven calendar days of the time, date and place of the hearing on the matter to any Commission member being proposed for removal along with the proposed resolution stating the reasons for removal.

The proposed reasons for removal of the Commission member shall presented at the opening of the meeting in the form of the resolution previously presented to the Commission member. A county employee or designated representative shall present any witnesses offering testimony as proof supporting the allegations in the proposed resolution. The Commission member to be removed shall have the right to cross examine any witness presented or address any offering of proof as it is presented. When the county employee or designated representative has finished presenting proof to support the proposed resolution, and the commissioner proposed to be removed, the Commission member will then be given the opportunity to present any witness or other proof in opposition to the proposed resolution. The Commission member may represent himself or be represented by an attorney. All witnesses in the hearing must be sworn and any documents or other evidence must be authenticated by a witness.

The county council shall then vote on the resolution. The Commission member is removed upon a majority vote in support of the resolution for removal. Only those county council members who were present for the hearing on the removal resolution may vote upon the resolution.

SECTION 5. Organization and Rules of Procedure.

The planning commission shall organize, elect a chairman and vice chairman from among the commission members, appoint a secretary who is an employee of ____ County, and adopt rules of procedure, as required by S.C. Code § 6-29-360. The planning commission shall keep records of their resolutions, findings, determinations, and orders.

SECTION 6. Public Hearings.

The planning commission shall hold all public hearings on amendments to the zoning ordinance and map pursuant to S.C. Code § 6-29-760(A).

SECTION 7.

This ordinance is effective _____.

ADOPTED this ___ day of _____, 20__.

APPENDIX B

Model Ordinance:
Establishing a Joint City-County Planning Commission

Editor's Note: Each jurisdiction should adopt a separate ordinance.

WHEREAS, S.C. Code § 6-29-320 authorizes municipalities and counties to establish a joint planning commission; and

WHEREAS, the (City of __ / __ County) has adopted an ordinance approving the terms of the agreement for the joint exercise of the powers granted in the South Carolina Local Government Comprehensive Planning Act of 1994 ("the Planning Act"), found at Chapter 29 of Title 6 of the S.C. Code of Laws, and for the representation of (the City of ___ / ___ County) on the planning commission.

NOW, THEREFORE, BE IT ORDAINED by the (City Council / County Council) of ___, as follows:

SECTION 1. Joint Planning Commission Established.

Pursuant to S.C. Code § 6-29-320, and an ordinance of (___ County / City of ___), there is established a joint planning commission, which shall perform the planning functions in the areas under the jurisdiction of ___ County and the City of ___ . *If necessary: The (City of ___ / ___ County) planning commission is hereby abolished.*

SECTION 2. Joint Planning Commission Membership.

The ___ Joint Planning Commission shall be composed of ___ (5 to 12 S.C. Code § 6-29-350(A)) members. ___ County Council shall appoint individuals for seats one through seven; and _____ City Council shall appoint individuals for seats eight through twelve.

For the initial appointment of planning commission members following adoption of this ordinance, appointees to seats one, four, seven and ten shall receive an initial term of one year, appointees to seats two, five eight and eleven shall receive an initial term of two years, and appointees to seats three, six, nine and twelve shall receive an initial term of three years.

Following the expiration of the initial terms as set forth in the preceding paragraph, planning commission members shall have a term of three years so that one third of the commission members' terms expire each year. Members shall serve until their successors are appointed and qualified.

It is the intent that incorporated and unincorporated portions of the county area be represented on the commission proportionate to the population in each area according to the most recent decennial census. (S.C. Code § 6-29-350(A).

A member may be appointed to no more than __ successive full terms, without a break in service. A partial term shall not be counted for purposes of this term limitation provision.

No member of the planning commission shall be an official or employee of _____ County or the City of __. (S.C. Code § 6-29-350(B).

Vacancies on the planning commission shall be filled in the manner of the original appointment for the remaining term of office. (S.C. Code § 6-29-350(B).

SECTION 3. Compensation.

Planning Commission members shall serve without compensation. Reimbursement for actual expenses incurred in the performance of their duties may be reimbursed from appropriated funds pursuant to reimbursement policies and procedures applicable to the ___ Joint Planning Commission.

SECTION 4. Removal of Members.

Members of the planning commission may be removed for cause at any time by the _____ County Council. Prior to removal, the county council shall give written notice of at least seven calendar days of the time, date and place of the hearing on the matter to any Commission member being proposed for removal along with the proposed resolution stating the reasons for removal.

The proposed reasons for removal of the Commission member shall presented at the opening of the meeting in the form of the resolution previously presented to the Commission member. A county employee or designated representative shall present any witnesses offering testimony as proof supporting the allegations in the proposed resolution. The Commission member to be removed shall have the right to cross examine any witness presented or address any offering of proof as it is presented. When the county employee or designated representative has finished presenting proof to support the proposed resolution, and the commissioner proposed to be removed, the Commission member will then be given the opportunity to present any witness or other proof in opposition to the proposed resolution. The Commission member may represent himself or be represented by an attorney. All witnesses in the hearing must be sworn and any documents or other evidence must be authenticated by a witness.

The county council shall then vote on the resolution. The Commission member is removed upon a majority vote in support of the resolution for removal. Only those county council members who were present for the hearing on the removal resolution may vote upon the resolution.

SECTION 5. Organization and Rules of Procedure.

The __ Joint Planning Commission shall organize, elect a chairman and vice chairman from among the commission members, appoint a secretary who is an employee of the planning commission or an employee of a member jurisdiction of the __ Joint Planning Commission made available to the commission, and adopt rules of procedure, as required by S.C. Code § 6-29-630. The __ Joint Planning Commission shall keep records of their resolutions, findings, determinations, orders, and finances.

SECTION 6. Public Hearings.

The __ Joint Planning Commission shall hold all public hearings on amendments to the zoning ordinance and map pursuant to S.C. Code § 6-29-760(A).

SECTION 7. Finances.

Funding of the __ Joint Planning Commission shall be as follows:

Insert contents of agreement between the county and city.

The __ Joint Planning Commission may purchase equipment and supplies subject to appropriated and generated funds subject to the policies and procedures of ___.

The ___ Joint Planning Commission may cooperate with, contract with, or accept funds from federal agencies, offices and programs; state agencies, offices and programs; local governments; special purpose districts; school districts; public or private agencies; or private individuals or organizations and expend such funds as it may deem necessary.

The __ Joint Planning Commission may enter into contracts for goods and services it deems necessary.

The ___ Joint Planning Commission may employ staff, subject to the availability of funds and the employment and personnel polices ____.

SECTION 8. Effective Date and Conflicts.

This ordinance becomes effective upon adoption by all the member jurisdictions, ___ County and the City of ___.

Upon becoming effective, all ordinances or provisions in conflict with this ordinance, including _____ are hereby repealed.

ADOPTED this ___ day of _____, 20__.

APPENDIX C

Model Ordinance:

Designating County Planning Commission as Planning Commission for Municipality

WHEREAS, a municipality is authorized by S.C. Code § 6-29-330(B) to designate by ordinance the county planning commission as the planning commission of the municipality; and

WHEREAS, __ County Council has adopted an ordinance approving the terms of the agreement for the exercise of the powers granted in the South Carolina Local Government Comprehensive Planning Act of 1994 ("the Planning Act"), found at Chapter 29 of Title 6 of the S.C. Code of Laws, by the county planning commission within the territory of the Town of ___ .

NOW, THEREFORE, BE IT ORDAINED by the Town Council of ___, South Carolina as follows:

SECTION 1. Designation of County Planning Commission

Pursuant to S.C. Code § 6-29-330(B), the ___ County Planning Commission is hereby designated as the official planning commission of the Town of ___, South Carolina, which shall perform all planning functions in the jurisdiction of the Town of __, including the update of the comprehensive plan.

SECTION 2. Zoning Amendments.

(A.) Proposed amendments to the Town of __ zoning ordinance shall be forwarded by the zoning administrator to the County planning commission for review as required by S.C. Code § 6-29-760(A).

(B.)

Option 1:

The planning commission shall give notice, conduct the public hearing, and make a recommendation to the Town of ___ Council within __ days after the receipt of a proposed amendment.

Option 2:

The planning commission shall give notice, conduct the public hearing, and make a recommendation to the Town Council of __ within __ days after receipt of a proposed amendment. Town Council of ___ shall give notice and conduct the public hearing prior to acting on the amendment.

SECTION 3. Land Development Regulations.

The county planning commission shall administer the Town's land development regulations.

SECTION 4. Finances.

Funding of the administrative expense shall be as follows:

Insert contents of agreement between the county and city.

SECTION 5. Effective Date and Conflicts.

This ordinance becomes effective upon adoption by all the member jurisdictions, ___ County and the Town of ___.

Upon becoming effective, all ordinances or provisions in conflict with this ordinance, including _____ are hereby repealed.

ADOPTED this ___ day of _____, 20__.

APPENDIX D

Model Ordinance:
Designating Municipal Planning Commission as Planning Commission for a Designated Portion of the Unincorporated Area of the County

WHEREAS, a county may place an unincorporated area adjacent to an incorporated municipality under the municipal jurisdiction for the purposes of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, found at Chapter 29 of Title 6 of the South Carolina Code of Laws, pursuant to S.C. Code §§ 6-29-320 and -330; and

WHEREAS, _____ County (hereafter "County") and the City of ____ (hereafter "City") have entered into an agreement, delineating the boundaries of the unincorporated area in the county to be placed under the jurisdiction of the City, the scope of authority the City is to exercise, and the representation on the boards and commissions;

NOW THEREFORE BE IT ORDAINED BY THE _____ County Council that the _____ County Code of Ordinances is amended by adding:

SECTION 1. Designation of City Planning Commission

Pursuant to S.C. Code § 6-29-330(A), the City of _____ Planning Commission is hereby designated as the official planning commission for the unincorporated area adjacent to the City of _____, for which the boundaries are defined below:

(Precise boundaries of the area being placed under the City planning commission)

The City of ____ Planning Commission, in accordance with the agreement between _____ County and the City of _____, shall exercise the following planning functions for the designated area described above:

(Areas of planning function to be exercised by City planning commission in the designated area)

The unincorporated area designated above will be represented, in accordance with the agreement between _____ County and the City of _____, on the City of _____ Planning Commission, City of _____ Board of Zoning Appeals, and Board of Architectural Review as follows:

(Insert agreed upon representation for the designated area on the boards and commissions)

SECTION 2. Zoning Amendments.

(A) Proposed amendments to the _____ County zoning ordinance shall be forwarded by the zoning administrator to the City of _____ planning commission for review as required by S.C. Code § 6-29-760.

(B)

Option 1:

The planning commission shall give notice, conduct the public hearing, and make a recommendation to the ___ County Council within __ days after the receipt of a proposed

amendment.

Option 2:

The planning commission shall give notice, conduct the public hearing, and make a recommendation to the _____ County Council within __ days after receipt of a proposed amendment. _____ County Council shall give notice and conduct the public hearing prior to acting on the amendment.

SECTION 3. Land Development Regulations.

The _____ City planning commission shall administer the County land development regulations in the designated area.

SECTION 4. Finances.

Funding of the administrative expense shall be as follows:

(Insert contents of agreement between the county and city.)

SECTION 5. Effective Date and Conflicts.

This ordinance becomes effective upon adoption by both ___ County and the City of ___.

Upon becoming effective, all ordinances or provisions in conflict with this ordinance, including: ____ are hereby repealed.

ADOPTED this ___ day of _____, 20__.

APPENDIX E

Model Ordinance:
Establishing a County Board of Zoning Appeals

WHEREAS, a local board of zoning appeals is authorized by S.C. Code § 6-29-780; and

WHEREAS, the creation of a board of zoning appeals is a necessary step in implementing the provisions of Chapter 29 of Title 6 of the South Carolina Code of Laws.

NOW, THEREFORE, BE IT ORDAINED by the _____ County Council that the ____ County Code is amended by adding:

SECTION 1. Board of Zoning Appeals Established.

There is established a board of zoning appeals (hereafter "board") for ____ County, which shall have the powers and duties as set forth in S.C. Code Title 6, Chapter 29, § 6-29-780, et seq.

SECTION 2. Composition of Board.

The board shall consist of __ (3 to 9 S.C. Code § 6-29-780(B)) members appointed by the County Council. For the initial appointment of board members following adoption of this ordinance, one third of the members shall receive an initial term of one year, one third of the members shall receive an initial term of two years, and one third of the members shall receive an initial term of three years.

Following the expiration of the initial terms as set forth in the preceding paragraph, board members shall have a term of three years (S.C. Code § 6-29-780(B)) so that one third of the board members' terms expire each year. Members shall also serve until their successors are appointed and qualified.

A member may be appointed to no more than __ successive full terms, without a break in service. A partial term shall not be counted for purposes of this term limitation provision.

No member of the board may be an official or employee of _____ County. (S.C. Code § 6-29-780(B).

Vacancies on the board shall be filled in the manner of the original appointment for the remaining term of office. (S.C. Code § 6-29-780(B).

SECTION 3. Compensation.

Board members shall serve without compensation. Reimbursement for actual expenses incurred in the performance of their duties may be reimbursed from appropriated funds pursuant to _____ County reimbursement policies and procedures.

SECTION 4. Removal of Members.

Members of the board may be removed for cause at any time by the _____ County Council. Prior to removal, the county council shall give written notice of at least seven calendar days of the time, date and place of the hearing on the matter to any board member being proposed for removal along with the proposed resolution stating the reasons for removal.

The proposed reasons for removal of the board member shall presented at the opening of the meeting in the form of the resolution previously presented to the board member. A county employee or designated representative shall present any witnesses offering testimony as proof supporting the allegations in the proposed resolution. The board member to be removed shall have the right to cross examine any witness presented or address any offering of proof as it is presented. When the county employee or designated representative has finished presenting proof to support the proposed resolution, and the commissioner proposed to be removed, the board member will then be given the opportunity to present any witness or other proof in opposition to the proposed resolution. The board member may represent himself or be represented by an attorney. All witnesses in the hearing must be sworn and any documents or other evidence must be authenticated by a witness.

The county council shall then vote on the resolution. The board member is removed upon a majority vote in support of the resolution for removal. Only those county council members who were present for the hearing on the removal resolution may vote upon the resolution.

SECTION 5. Organization and Rules of Procedure.

The board shall organize, elect a chairman and vice chairman from among the board members, appoint a secretary who is an employee of the ____ County, and adopt rules of procedure, as required by S.C. Code § 6-29-790. The board shall keep records of their resolutions, findings, determinations, exhibits, and orders.

SECTION 6. Effective Date.

This ordinance is effective _____.

ADOPTED this ___ day of _____, 20__.

APPENDIX F

Model Ordinance:
Establishing a County Board of Architectural Review

WHEREAS, a local board of architectural review is authorized by S.C. Code § 6-29-870; and

WHEREAS, ___ County has enacted a zoning ordinance which makes special provision for preservation and protection of (historic / architecturally valuable / natural scenic area(s)); and

WHEREAS, the creation of a board of architectural review is a desirable step in implementing the provisions of Chapter 29 of Title 6 of the South Carolina Code of Laws.

NOW, THEREFORE, BE IT ORDAINED by the _____ County Council that the ____ County Code is amended by adding:

SECTION 1. Board of Architectural Review Established.

There is established a board of architectural review (hereafter "board") for ____ County, which shall have the powers and duties as set forth in S.C. Code Title 6, Chapter 29, § 6-29-870, et seq.

SECTION 2. Composition of Board.

The board shall consist of __ (not more than 10) members appointed by the County Council. (A person must have the following professional or educational qualifications to be eligible to serve as a member of the board: ____.) (S.C. Code § 6-29-870(B)).

For the initial appointment of board members following adoption of this ordinance, one third of the members shall receive an initial term of one year, one third of the members shall receive an initial term of two years, and one third of the members shall receive an initial term of three years.

Following the expiration of the initial terms as set forth in the preceding paragraph, board members shall have a term of three years so that one third of the board members' terms expire each year. Members shall also serve until their successors are appointed and qualified.

No member of the board may be an official or employee of _____ County.

Vacancies on the board shall be filled in the manner of the original appointment for the remaining term of office.

SECTION 3. Removal of Members.

Members of the planning commission may be removed for cause at any time by the _____ County Council. Prior to removal, the county council shall give written notice of at least seven calendar days of the time, date and place of the hearing on the matter to any Commission member being proposed for removal along with the proposed resolution stating the reasons for removal.

The proposed reasons for removal of the Commission member shall presented at the opening of the meeting in the form of the resolution previously presented to the Commission member. A county employee or designated representative shall present any witnesses offering testimony as proof

supporting the allegations in the proposed resolution. The Commission member to be removed shall have the right to cross examine any witness presented or address any offering of proof as it is presented. When the county employee or designated representative has finished presenting proof to support the proposed resolution, and the commissioner proposed to be removed, the Commission member will then be given the opportunity to present any witness or other proof in opposition to the proposed resolution. The Commission member may represent himself or be represented by an attorney. All witnesses in the hearing must be sworn and any documents or other evidence must be authenticated by a witness.

The county council shall then vote on the resolution. The Commission member is removed upon a majority vote in support of the resolution for removal. Only those county council members who were present for the hearing on the removal resolution may vote upon the resolution.

SECTION 4. Compensation.

Board members shall serve without compensation. Reimbursement for actual expenses incurred in the performance of their duties may be reimbursed from appropriated funds pursuant to _____ County reimbursement policies and procedures.

SECTION 5. Organization and Rules of Procedure.

The board shall organize, elect a chairman and vice chairman from among the board members, appoint a secretary who is an employee of the ____ County, and adopt rules of procedure, as required by S.C. Code § 6-29-870. The board shall keep records of their resolutions, findings, determinations, exhibits, and orders.

SECTION 6. Effective Date.

This ordinance is effective _____.

ADOPTED this ___ day of _____, 20__.

APPENDIX G

___ County Planning Commission Rules of Procedure

Article I - Organization

SECTION 1. Rules

These rules of procedure are adopted pursuant to S.C. Code § 6-29-360 for the ___ County Planning Commission (hereafter "Commission"), appointed by the __ County Council and must be subject to all applicable laws of this state and ordinances of _____ County.

SECTION 2. Officers

The officers of the Commission shall be a chairman and vice chairman elected for a term of one year at the first meeting of the Commission in each calendar year. The Commission shall appoint a member of the ___ County staff as secretary of the Commission. (S.C. Code § 6-29-360)

SECTION 3. Chairman

The chairman shall be a voting member of the Commission and shall:

a. Preside at meetings and hearings of the Commission;

b. Act as spokesman for the Commission;

c. Sign documents for the Commission; and

d. Perform any other duties as approved by the Commission.

SECTION 4. Vice Chairman

The vice chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the event of the absence, disability, or disqualification of both the chairman and vice chairman, an acting chairman shall be elected by the members present.

SECTION 5. Secretary

The secretary shall:

a. Provide notice of meetings in accordance with the requirements in Chapter 29, Title 6 of the S.C. Code of Laws, S.C. Code § 30-4-80 and Commission adopted requirements as appropriate;

b. Assist in the preparation of the agenda;

c. Keep minutes of meetings and hearings in accordance with S.C. Code § 30-4-90 and Commission adopted requirements;

d. Maintain Commission records the Public Records Act, S.C. Code § 30-1-10, et seq. and county policy;

e. Attend to Commission correspondence; and

f. Perform others duties assigned by the chairman or Commission.

h. Attend to Board correspondence; and

i. Perform others duties assigned by the chairman or Board.

Article II - Meetings

SECTION 1. Time and Place

A schedule of regular meetings for the upcoming year must be adopted prior to the first of the year and shall be published and posted on a bulletin board in the Commission meeting place (and

on the County website). The schedule of regular meetings shall also indicate the time and place of those meetings. Special meetings may be called by the chairman or a majority of the Commission members. Meetings shall be held in the place stated in the notice of the meeting and shall be open to the public, unless closed as allowed by the Freedom of Information Act, Chapter 4 of Title 30, or other provision of the S.C. Code of Laws. (S.C. Code § 30-4-80)

SECTION 2. Agenda

Any Commission member may place an item on the next Commission agenda by sending a written or electronic description of the matter to the chairman and the secretary at least six days in advance of that meeting, but not after public notification and posting of a Commission meeting. A written agenda for a meeting shall be furnished by the secretary to the members of the Commission at least five days in advance of any meeting. The final written agenda (with Review Sheets, if any,) shall be published and posted on a bulletin board in the Commission meeting place (and on the County website) at least twenty-four hours in advance of any regular or special meeting. (S.C. Code § 30-4-80).

The agenda for the meeting shall not be amended once published, except in compliance with the Freedom of Information Act, Chapter 4 of Title 30 or other provision of the S.C. Code of Laws. Once a Commission meeting has begun, the agenda may be amended upon two-thirds vote of the Commission members present and voting and in compliance with the Freedom of Information Act, Chapter 4 of Title 30, or other provision of the S.C. Code of Laws.

SECTION 3. Quorum

A majority of the members of the Commission shall constitute a quorum. A quorum is necessary to conduct any business other than rescheduling the meeting.

SECTION 4. Rules of Order

The (Model Rules of Parliamentary Procedure for South Carolina Counties / __ Edition of Robert's Rules of Order Newly Revised) shall govern the conduct of Commission meetings unless otherwise provided in these Rules of Procedure.

SECTION 5. Voting

A member must be present to vote. Each member shall vote unless disqualified by law (including, but not limited to, County ethics ordinances and S.C. Code § 8-13-700). Disqualification shall be decided by the member affected, who shall furnish a copy of the reason to the presiding officer, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

SECTION 6. Conduct

Except for public hearings, no person shall speak at a Commission meeting unless invited to do so by the Commission.

Article III - Public Hearings

SECTION 1. Notice

The secretary shall give notice required by statute, ordinance or these rules for all public

hearings conducted by the Commission.

Members of the public desiring to be heard shall give written notice to the secretary prior to commencement of the hearing which may be accomplished by a sign in sheet at the meeting. In its discretion, the Commission may, by majority vote, allow members of the public who did not give prior notice prior to the commencement of the public hearing to speak.

SECTION 2. Procedure

OPTION A

In matters brought before the Commission for public hearing by an applicant, the secretary shall present the background information from Review Sheet. The applicant, his agent or attorney, shall be heard first, members of the public next, and staff next. The applicant shall have the opportunity to reply last. No person may speak longer than five minutes without the consent of the Commission. No person speaking at a public hearing shall be subject to cross-examination. All questions must be posed by members of the Commission.

In matters not brought before the Commission by an applicant, the secretary shall present any Review Sheet and then members of the public shall speak in the order in which written notice of desire to speak was received or, upon majority vote, in a manner determined by the Commission.

OPTION B

In matters brought before the Commission for public hearing by an applicant, the applicant, his agent or attorney, shall be heard first, members of the public next, and staff next. The applicant shall have the opportunity to reply last. No person may speak longer than five minutes without the consent of the Commission. No person speaking at a public hearing shall be subject to cross-examination. All questions must be posed by members of the Commission.

In matters not brought before the Commission by an applicant, the secretary shall present background information from any Review Sheet prepared by staff and then members of the public shall speak in the order in which written notice of desire to speak was received or, upon majority vote, in a manner determined by the Commission.

Article IV - Records

SECTION 1. Minutes

The secretary shall keep written minutes of all meetings including:

(a) The date, time and place of the meeting,

(b) The members of the public body recorded as either present or absent and any reason given by an absent member,

(c) 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, and

(d) any other item required by the Freedom of Information Act, Chapter 4 of Title 30, other provision of the S.C. Code of Laws or the Commission.

The secretary shall prepare minutes of each meeting for approval by the Commission at the next regular meeting. The secretary shall keep a (digital) recording of any hearing from which there may be a appeal by an aggrieved party.

SECTION 2. Reports and Records

The secretary shall assist in the preparation and forwarding of all reports and recommendations of the Commission. Copies of all notices, correspondence, reports, forms, exhibits, and presentations shall be preserved in accordance with the Public Records Act, found at S.C. Code § 30-1-10, et seq.

Article V - Review Procedure

SECTION 1. Zoning Amendments

Proposed zoning text and district amendments shall be considered and recommendations forwarded to the county council within thirty days after receipt of the proposed amendments, unless additional time is given by the county council. When authorized, the Commission shall conduct any required public hearing prior to making a recommendation. (S.C. Code § 6-29-760).

SECTION 2. Plats

Plats submitted for review pursuant to land development regulation shall be reviewed by designated staff members who may approve for recording plats of existing lots of record, minor subdivisions of land which meet all zoning requirements, and subdivisions which are exempt from regulation pursuant to S.C. Code § 6-29-1110(4) or other provision of law. The Commission shall be informed in writing of all staff approvals at the next regular meeting and a public record of such actions shall be maintained. All other plats shall be subject to review and approval by the Commission.

SECTION 3. Comprehensive Plan

All zoning and land development regulation amendments shall be reviewed first for conformity with the comprehensive plan. Conflicts with the comprehensive plan shall be noted in any report to the county council on a proposed amendment. The elements of the comprehensive plan shall be reviewed and updated on a schedule adopted by the Commission which meets the requirements of S.C. Code § 6-29-510(E).

SECTION 4. Reconsideration

The Commission may reconsider any review when requested by county council or when an applicant brings to the attention of the Commission new facts, a mistake of fact in the original review, correction of clerical error, or matters not the fault of the applicant which affect the result of the review.

Article VI - Finances

SECTION 1. Budget

The Commission shall submit written recommendations to the county council for funding in the format and time frame set by the administration. The recommendations shall include an explanation and justification for the proposed expenditure and any revenue sources or levels.

SECTION 2. Expenditures

Budgeted funds shall be expended only for approved purposes in accordance with county financial policies and procedures, including procurement rules. Upon adoption of the county budget, the Commission may adopt an authorization for specified expenditures by designated staff members

within the limits provided. Reimbursement for actual expenses incurred in the performance of official duties approved in advance by designated staff members of the Commission and staff upon documentation in accordance with county policy.

SECTION 3. Personnel

The Commission may (employ staff as may be authorized and funded through the county budget / make recommendations for the county to employ candidates as may be authorized and funded through the county budget). All employees are subject to county personnel policies.

The Commission may engage consultants by majority vote of the Commission after notice and review in accordance with county procurement policies.

Article VII - Amendment

SECTION 1. Amendment

These rules may be amended at any regular meeting by majority vote of the Commission at least seven calendar days after a written copy of the proposed amendment is delivered to all members of the Commission.

ADOPTED, this __ day of ____, 20__.

APPENDIX H

___ County Board of Zoning Appeals Rules of Procedure

Article I - Organization

SECTION 1. Rules

These rules of procedure are adopted pursuant to S.C. Code § 6-29-790 for the ___ County Board of Zoning Appeals (hereafter "Board"), appointed by the __ County Council.

SECTION 2. Officers

The officers of the Board shall be a chairman and vice chairman elected for a term of one year at the first meeting of the Board in each calendar year. The Board shall appoint a member of the ___ County staff as secretary. (S.C. Code § 6-29-790).

SECTION 3. Chairman

The chairman shall be a voting member of the Board and shall:

a. Preside at meetings and hearings of the Board;
b. Act as spokesman for the Board;
c. Sign documents for the Board;
d. Swear in witnesses; and
e. Perform any other duties as approved by the Board.

SECTION 4. Vice Chairman

The vice chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the event of the absence, disability, or disqualification of both the chairman and vice chairman, an acting chairman shall be elected by the members present.

SECTION 5. Secretary

The secretary shall:

a. Publish notice of appeals and meetings in accordance with the requirements in Chapter 29, Title 6 of the S.C. Code of Laws, S.C. Code § 30-4-80 and Commission adopted requirements as appropriate;
b. Assist in the preparation of the agenda;
c. See that the property subject to an appeal for variance or special exception is properly posted;
d. Keep minutes of meetings and hearings in accordance with § 30-4-90 and Board adopted requirements;
e. Keep (digital) recordings of hearings;
f. Serve Board decisions on parties by certified mail, return receipt requested;
g. Maintain Board records in compliance with the Public Records Act, S.C. Code § 30-1-10, et seq. and county policy;
h. Attend to Board correspondence; and
i. Perform others duties assigned by the chairman or Board.

Article II - Meetings

SECTION 1. Time and Place

A schedule of regular meetings for the upcoming year must be adopted prior to the first of the year and that schedule shall be published and posted on a bulletin board in the Board meeting place (and on the County website). The schedule of regular meetings shall also indicate the time and place of those meetings. Special meetings may be called by the chairman or a majority of the Board members. Meetings shall be held in the place stated in the notice of the meeting and shall be open to the public, unless closed as allowed by the Freedom of Information Act, Chapter 4 of Title 30 or other provision of the S.C. Code of Laws. (S.C. Code § 30-4-70).

SECTION 2. Agenda

Any Board member may place an item on the next Board agenda by sending a written or electronic description of the matter to the chairman and the secretary at least six days in advance of that meeting, but not after public notification and posting of a Board meeting. A written agenda for a meeting shall be furnished by the secretary to the members of the Board at least five days in advance of any meeting. The final written agenda, with Review Sheets, if any, shall be published and posted on a bulletin board in the Board meeting place (and on the County website) at least twenty-four hours in advance of any regular or special meeting. (S.C. Code § 30-4-80).

The agenda for the meeting shall not be amended once published, except in compliance with the Freedom of Information Act, Chapter 4 of Title 30, or other provision of the S.C. Code of Laws. Once a Board meeting has begun, the agenda may be amended upon two-thirds vote of the Board members present and voting and in compliance with the Freedom of Information Act, Chapter 4 of Title 30, or other provision of the S.C. Code of Laws.

SECTION 3. Quorum

A majority of the members of the Board shall constitute a quorum. A quorum is necessary to conduct any business other than rescheduling the meeting.

SECTION 4. Rules of Order

The (Model Rules of Parliamentary Procedure for South Carolina Counties or __ Edition of Robert's Rules of Order Newly Revised) shall govern the conduct of Board meetings unless otherwise provided in these Rules of Procedure.

SECTION 5. Voting

A member must be present to vote. For matters pertaining to an appeal or hearing on an application, the member must have been present at the hearing where any evidence, testimony or arguments on the matter were heard by the Board. Each member present for the hearing on the matter being voted upon shall vote unless disqualified by law (including, but not limited to, County ethics ordinances and S.C. Code § 8-13-700). Disqualification shall be decided by the member affected. The member shall furnish a statement of the reason to the presiding officer. The presiding officer shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter for which a disqualification exists.

Article III - Appeal Procedure

SECTION 1. Form of Appeal

Appeals from administrative decisions, applications for variances, and applications for special exceptions shall be filed on forms approved by the Board and provided to applicants by the

secretary. The Board may require additional information it deems necessary. The failure to provide adequate information may be grounds for dismissal. An application filed by an agent of the applicant shall be accompanied by a notarized written designation of the agent signed by the applicant or party in interest.

SECTION 2. Time for Appeal

An appeal from an administrative decision must be filed within (fifteen days - § 6-29-800(B) provides that the time period is thirty days unless a specific time period is set.) after actual notice of the decision by delivery of the appeal form to the Board secretary, who shall notify the official appealed from.

SECTION 3. Calendar

Appeals and applications shall be marked with the date received and placed on the hearing calendar in the order received. Appeals shall be heard in the order on the calendar unless otherwise set by the Board for good cause shown.

SECTION 4. Withdrawal of Appeal

Any appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the Board. An appeal from an administrative decision which is withdrawn may not be refiled after the time for making an appeal has expired.

Withdrawn applications for variances and special exceptions may be refiled after six months and shall be placed on the calendar according to the date refiled, unless otherwise voted upon by the Board upon a showing of good cause prior to withdrawal.

SECTION 5. Continuances

The hearing of an appeal or application may be continued one time by majority vote of the Board for good cause shown.

SECTION 6. Notice

Public notice of a hearing on an appeal or application shall be published in a newspaper of general circulation in the county at least fifteen days prior to the hearing. Parties in interest shall also be sent notice of the hearing. In cases involving special exceptions or variances, conspicuous notice shall be posted on or adjacent to the subject property and visible to each public thoroughfare abutting the property. (S.C. Code § 6-29-790(D)).

Article IV - Hearing Procedure

SECTION 1. Appearances

The applicant or any party in interest may appear in person or by agent or attorney. (S.C. Code § 6-29-800(E)). The Board may postpone or proceed to dispose of a matter on the records before it in the absence of an appearance on behalf of an applicant.

SECTION 2. Witnesses

Parties in interest may present testimony under oath. Witnesses may be compelled to attend by subpoena signed by the chairman. Subpoenas must be requested at least ten days prior to a hearing. The Board may call witnesses of its own. (S.C. Code § 6-29-800(D)).

SECTION 3. Cross-examination

No party shall have the right to cross-examine witnesses; however, the opportunity to examine opposing witnesses may be freely granted when conducted in an orderly manner.

SECTION 4. Evidence

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

SECTION 5. Conduct of Hearing

The normal order of the hearing, subject to modification by the Board, shall be:

a. Statement of the matter from the Review Sheet, if any, to be heard by the secretary;

b. Presentation by the applicant or appellant, limited to five minutes;

c. Presentation by the official appealed, limited to five minutes;

d. Presentation by opponents, limited to five minutes;

e. Rebuttal by applicant or appellant, limited to three minutes; and

f. Unsworn public comment, when the Board deems appropriate.

Board members may ask questions of the participants at any point in the hearing. The calendar order may be varied by the Board if presentation time limits are expanded, there is significant unsworn public comment granted, or for other good cause.

SECTION 6. Disposition

The Board may deliberate and make a final disposition of a matter by majority vote at the hearing and qualified to vote; provided not less than a quorum are qualified to vote. The vote may be taken at the same or a subsequent meeting. Deliberations and voting shall be conducted in public.

SECTION 7. Form of Order

The Board has all powers of the official from whom the appeal was taken and may issue or direct the issuance of a permit. (S.C. Code § 6-29-800(E)). A written order must be issued disposing of the matter and may reverse or affirm, wholly or in part, or may modify the official's order, requirements, decision, or determination. A matter may be dismissed for lack of jurisdiction or prosecution. Findings of fact and conclusions of law shall be separately stated in the written order. (S.C. Code § 6-29-800(F)).

SECTION 8. Service of Order

The secretary shall cause delivery of a copy of an order to each party in interest by certified mail, return receipt requested, immediately upon execution of the order by the chairman.

SECTION 9. Rehearing

The Board may grant a rehearing of an application which has been dismissed or denied upon written request filed with the secretary within fifteen days after delivery of the order upon new evidence which could not have been reasonably presented at the hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome.

Article V - Records

SECTION 1. Minutes

The secretary shall keep written minutes of all meetings including:

(a) The date, time and place of the meeting,

(b) The members of the Board recorded as either present or absent and any reason given by an absent member,

(c) 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, and

(d) any other item required by the Freedom of Information Act, Chapter 4 of Title 30, other provision of the S.C. Code of Laws or by Board adopted requirements.

The secretary shall prepare minutes of each meeting for approval by the Board at the next regular meeting. The secretary shall keep a (digital) recording of any hearing from which there may be a appeal by an aggrieved party.

SECTION 2. Orders and Documents

The secretary shall assist in the preparation and service of all orders of the Board in appropriate form. Copies of all notices, correspondence, reports, forms, exhibits, and presentations shall be preserved in accordance with the Public Records Act, S.C. Code § 30-1-10, et seq.

Article VI - Finances

SECTION 1. Budget

The Board shall submit written recommendations to the county council for funding in the format and time frame set by the county administration. The recommendations shall include an explanation and justification for the proposed expenditure and any revenue sources or levels.

SECTION 2. Expenditures

Budgeted funds shall be expended only for approved purposes in accordance with county financial policies and procedures, including procurement rules. Upon adoption of the county budget, the Board may adopt an authorization for specified expenditures within the limits provided. Reimbursement for actual expenses incurred in the performance of official duties approved in advance by members of the Board and staff upon documentation in accordance with county policy.

SECTION 3. Personnel

The Board may (employ staff as may be authorized and funded through the county budget / make recommendations for the county to employ candidates as may be authorized and funded through the county budget). All employees are subject to county personnel policies.

The Board may engage professional services by majority vote of the Board after notice and review in accordance with county procurement policies, subject to appropriation.

Article VII - Amendment

SECTION 1. Amendment

These rules may be amended at any regular meeting by majority vote of the Board at least seven calendar days after a written copy of the proposed amendment is delivered to all members of

the Board.

ADOPTED, this __ day of ____, 20__.

APPENDIX I

___ County Board of Architectural Review Rules of Procedure

Article I - Organization

SECTION 1. Rules

These rules of procedure are adopted pursuant to S.C. Code § 6-29-870 for the ___ County Board of Architectural Review (hereafter "Board"), appointed by the __ County Council.

SECTION 2. Officers

The officers of the Board shall be a chairman and vice chairman elected for a term of one year at the first meeting of the Board in each calendar year. The Board shall appoint a member of the ___ County staff as secretary.

SECTION 3. Chairman

The chairman shall be a voting member of the Board and shall:

a. Preside at meetings and hearings of the Board;

b. Act as spokesman for the Board;

c. Sign documents for the Board;

d. Swear in witnesses;

e. Call meetings or hearings of the Board which are in addition to those scheduled by the Board; and

e. Perform any other duties as approved by the Board.

SECTION 4. Vice Chairman

The vice chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the event of the absence, disability, or disqualification of both the chairman and vice chairman, an acting chairman shall be elected by the members present.

SECTION 5. Secretary

The secretary shall:

a. Publish notice of appeals and meetings in accordance with the requirements in Chapter 29, Title 6 of the S.C. Code of Laws, S.C. Code § 30-4-80 and Commission adopted requirements as appropriate;

b. Assist in the preparation of the agenda;

c. Keep minutes of meetings and hearings in accordance with S.C. Code § 30-4-90 and Board adopted requirements;

d. Keep (digital) recordings of hearings;

e. Serve Board decisions on parties by certified mail, return receipt requested;

f. Maintain Board records in compliance with the Public Records Act, S.C. Code § 30-1-10, et seq. and county policy ;

g. Attend to Board correspondence; and

h. Perform others duties assigned by the chairman or Board.

Article II - Meetings

SECTION 1. Time and Place

A schedule of regular meetings for the upcoming year may be adopted prior to the first of the year and shall be published and posted on a bulletin board in the Board meeting place (and on the County website). The schedule of regular meetings shall also indicate the time and place of those meetings. Special meetings may be called by the chairman or a majority of the Board members. Meetings shall be held in the place stated in the notice of the meeting and shall be open to the public, unless closed as allowed by the Freedom of Information Act, Chapter 4 of Title 30, or other provision of the S.C. Code of Laws.

SECTION 2. Agenda

Any Board member may place an item on the next Board agenda by sending a written or electronic description of the matter to the chairman and the secretary at least six days in advance of that meeting, but not after public notification and posting of a Board meeting. A written agenda for a meeting shall be furnished by the secretary to the members of the Board at least five days in advance of any meeting. The final written agenda, with Review Sheets, if any, shall be published and posted on a bulletin board in the Board meeting place (and on the County website) at least twenty-four hours in advance of any regular or special meeting. (S.C. Code § 30-4-80).

The agenda for the meeting shall not be amended once published, except in compliance with the Freedom of Information Act, Chapter 4 of Title 30, or other provision of the S.C. Code of Laws. Once a Board meeting has begun, the agenda may be amended upon two-thirds vote of the Board members present and voting and in compliance with the Freedom of Information Act, Chapter 4 of Title 30 or other provision of the S.C. Code of Laws.

SECTION 3. Quorum

A majority of the members of the Board shall constitute a quorum. A quorum is necessary to conduct any business other than rescheduling the meeting.

SECTION 4. Rules of Order

The (Model Rules of Parliamentary Procedure for South Carolina Counties or __ Edition of Robert's Rules of Order Newly Revised) shall govern the conduct of Board meetings unless otherwise provided in these Rules of Procedure.

SECTION 5. Voting

A member must be present to vote. Matters pertaining to an appeal or hearing on an application, the member must have been present at the hearing where any evidence, testimony or arguments on the matter were heard by the Board. Each member present for the hearing on the matter being voted upon shall vote unless disqualified by law (including, but not limited to, County ethics ordinances and S.C. Code § 8-13-700). Disqualification shall be decided by the member affected, who shall furnish a copy of the reason to the presiding officer, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

Article III - Appeal Procedure

SECTION 1. Form of Appeal

Appeals from administrative decisions, applications for variances, and applications for

special exceptions shall be filed on forms approved by the Board and provided to applicants by the secretary. The Board may require additional information it deems necessary. The failure to provide adequate information may be grounds for dismissal. An application filed by an agent of the applicant shall be accompanied by a notarized written designation of the agent signed by the applicant or party in interest.

SECTION 2. Time for Appeal

An appeal from an administrative decision must be filed within fifteen days (S.C. Code § 6-29-890(A) provides that it be a reasonable time as provided by the zoning ordinance or Board rules) after actual notice of the decision by delivery of the appeal form to the Board secretary, who shall notify the official appealed from.

SECTION 3. Calendar

Appeals and applications shall be marked with the date received and placed on the hearing calendar in the order received. Appeals shall be heard in the order on the calendar unless otherwise set by the Board for good cause shown.

SECTION 4. Withdrawal of Appeal

Any appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the Board. An appeal from an administrative decision which is withdrawn may not be refiled after the fifteen day time for appeal has expired. Withdrawn applications for variances and special exceptions may be refiled after six months and shall be placed on the calendar according to the date refiled, unless otherwise voted upon by the Board upon a showing of good cause prior to withdrawal.

SECTION 5. Continuances

The hearing of an appeal or application may be continued one time by a majority vote of the Board for good cause shown.

SECTION 6. Notice

Public notice of a hearing on an appeal or application shall be published in a newspaper of general circulation in the county at least fifteen days prior to the hearing. Parties in interest and any person who has asked to be kept informed shall also be mailed a notice of the hearing.

Article IV - Hearing Procedure

SECTION 1. Appearances

The applicant or any party in interest may appear in person, by agent or attorney. (S.C. Code § 6-29-890(C) The Board may postpone or proceed to dispose of a matter on the records before it in the absence of an appearance on behalf of an applicant.

SECTION 2. Witnesses

Parties in interest may present testimony under oath. Witnesses may be compelled to attend by subpoena signed by the chairman. Subpoenas must be requested at least ten days prior to a hearing. The Board may call witnesses of its own. (S.C. Code § 6-29-890(D)).

SECTION 3. Cross-examination

No party shall have the right to cross-examine witnesses; however, the opportunity to examine opposing witnesses may be freely granted when conducted in an orderly manner.

SECTION 4. Evidence

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

SECTION 5. Conduct of Hearing

The normal order of the hearing, subject to modification by the Board, shall be:

a. Statement of the matter to be heard from the Review Sheet, if any, by the secretary;

b. Presentation by the applicant or appellant, limited to five minutes;

c. Presentation by the official appealed, limited to five minutes;

d. Presentation by opponents, limited to five minutes;

e. Rebuttal by applicant or appellant, limited to three minutes; and

f. Unsworn public comment, when the Board deems appropriate.

Board members may question participants at any point in the hearing. The calendar order may be varied by the Board if presentation time limits are expanded, there is significant unsworn public comment granted, or for other good cause.

SECTION 6. Disposition

The Board may deliberate and make a final disposition of a matter by majority vote at the hearing and qualified to vote; provided not less than a quorum are qualified to vote. The vote may be taken at the same or a subsequent meeting. Deliberations and voting shall be conducted in public.

SECTION 7. Form of Order

A written order shall be issued disposing of the matter by granting or denying the requested relief, wholly or in part, or may modify the official's order, requirements, decision, or determination. A matter may be dismissed for lack of jurisdiction or prosecution. Findings of fact and conclusions of law shall be separately stated in a written order.

SECTION 8. Service of Order

The secretary shall cause delivery of a copy of an order to each party in interest by certified mail, return receipt requested, immediately upon execution of the order by the chairman.

SECTION 9. Rehearing

The Board may grant a rehearing of an application which has been dismissed or denied upon written request filed with the secretary within fifteen days after delivery of the order upon new evidence which could not have been reasonably presented at the hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome.

Article V - Records

SECTION 1. Minutes

The secretary shall keep written minutes of all meetings including:

(a) The date, time and place of the meeting,

(b) The members of the Board recorded as either present or absent and any reason given by an absent member,

(c) 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, and

(d) any other item required by Chapter 4 of Title 30 or other provision of the S.C. Code of Laws.

The secretary shall prepare minutes of each meeting for approval by the Board at the next regular meeting. The secretary shall keep a (digital) recording of any hearing from which there may be a appeal by an aggrieved party.

SECTION 2. Orders and Documents

The secretary shall assist in the preparation and service of orders of the Board in appropriate form. Copies of all notices, correspondence, reports, forms, exhibits, and presentations shall be preserved in accordance with the Public Records Act, S.C. Code § 30-1-10, et seq.

Article VI - Finances

SECTION 1. Budget

The Board shall submit written recommendations to the county council for funding in the format and time frame set by the administration. The recommendations shall include an explanation and justification for the proposed expenditure and any revenue sources or levels.

SECTION 2. Expenditures

Budgeted funds shall be expended only for approved purposes in accordance with county financial policies and procedures, including procurement rules. Upon adoption of the county budget, the Board may adopt an authorization for specified expenditures within the limits provided. Reimbursement for actual expenses incurred in the performance of official duties approved in advance by members of the Board and staff upon documentation in accordance with county policy.

SECTION 3. Personnel

The Board may (employ staff as may be authorized and funded through the county budget / make recommendations for the county to employ candidates as may be authorized and funded through the county budget). All employees are subject to county personnel policies.

The Board may engage professional services by majority vote of the Board after notice and review in accordance with county procurement policies as may be funded through the county budget.

Article VII - Amendment

SECTION 1. Amendment

These rules may be amended at any regular meeting by majority vote of the Board at least seven calendar days after a written copy of the proposed amendment is delivered to all members of the Board.

ADOPTED, this __ day of ____, 20__.

APPENDIX J

Notice of Public Hearing on Comprehensive Plan

County Council of ____, S.C. will hold a public hearing at (time) on (date) , at (place) on the (elements) of the comprehensive plan recommended by the Planning Commission for adoption by the council pursuant to S.C. Code § 6-29-530.

Copies of the documents to be considered are available for public inspection (in the __ County office at (address) / at the ___ County Library at (address) / and at www. .gov).

If you wish to attend the public hearing and have a disability that requires any special services, materials, or assistance, please notify the Council by contacting _____ at ____@____ or (__) __-___, so that appropriate accommodations may be made.

Editor's Note: This notice must be published at least thirty days in advance of the hearing in a newspaper of general circulation in the county pursuant to S.C. Code § 6-29-530 and posted on a bulletin board at the county office and on the county website, if any, pursuant to S.C. Code § 30-4-80.

APPENDIX K

Notice of Public Hearing on Zoning Amendments

(County Council / the planning commission) of ____, S.C. will hold a public hearing at (time) on (date), at (place) on the following proposed amendment to the (zoning ordinance and / or zoning map):

Text amendment No. __, changing the Section _____ to read:

(Or summarize the effect of the text change if too long to print verbatim.)

Map amendment No. ___, changing the zoning district designation for property owned by _____ at (address), Tax Map No. ____, consisting of lot-block subdivision, acreage from (e.g., C-1 limited commercial to C-3, general commercial).

New uses permitted in the proposed district are: _____.

Copies of the documents related to these matters are available for public inspection (in the __ County office at (address) / and at www. .gov).

If you wish to attend the public hearing and have a disability that requires any special services, materials, or assistance, please notify the (Council / Commission) by contacting _____ at ____@____ or (__) __-___, so that appropriate accommodations may be made.

Editor's Note: This notice must be given in accordance with local ordinance, or, in the absence of established procedure, at least 15 days in advance in a newspaper of general circulation in the county pursuant to S.C. Code § 6-29-760 if no time is specified in the ordinance. If a list of groups desiring notice of zoning proceedings is maintained, the meeting notice must be mailed to those groups. (S.C. Code § 6-29-760) The notice must also be posted on a bulletin board at the county office and on the county website, if any, pursuant to S.C. Code § 30-4-80.
If the matter rezoning, notice must be posted on or adjacent to the subject property with at least one notice visible from any public thoroughfare which abuts the property. (S.C. Code § 6-29-760).

APPENDIX L

Notice of Board of Zoning Appeals Hearing

The Board of Zoning Appeals of ____, S.C. will hold a public hearing at (time) on (date), at (place) on the following appeals:

Appeal No. __, by ____ from the decision of the Zoning Administrator that ____, which affects property at _____.

Appeal No. ___, by _____ for a variance from Section ____ of the Zoning Ordinance to allow property at ___ to be used for _____.

Documents relating to the appeals are available for public inspection in the office of the Zoning Administrator at _____ (and at www.____.gov).

If you wish to attend the public hearing and have a disability that requires any special services, materials, or assistance, please notify the Board by contacting _____ at ____@____ or (__) __-___, so that appropriate accommodations may be made.

Editor's Note: Pursuant to S.C. Code §§ 6-29-790 and -800, this notice must be published in a newspaper of general circulation in the county at least fifteen days in advance of the hearing. Parties in interest should also be mailed a copy of the notice. In cases involving variances or special exceptions, notice must be posted on or adjacent to the affected property with at least one notice visible from each public thoroughfare which abuts the property. The notice must also be posted on a bulletin board at the county office and on the county website, if any, pursuant to S.C. Code § 30-4-80.

APPENDIX M

Notice of Board of Architectural Review Hearing

The Board of Architectural Review of ____, S.C. will hold a public hearing at (time) on (date), at (place) on the following appeals:

Appeal No. __, by ____ from the decision of the Zoning Administrator that ____, which affects property at _____.

If ordinance authorizes the Board of Architectural Review to grant relief from architectural regulations:

Appeal No. ___, by _____ for relief for property at _____ from architectural regulations in Section ___ of the zoning ordinance to allow _____.

Documents relating to the appeals are available for public inspection in the office of the Zoning Administrator at _____ (and at www.____.gov).

If you wish to attend the public hearing and have a disability that requires any special services, materials, or assistance, please notify the Board by contacting _____ at ____@____ or (__) __-___, so that appropriate accommodations may be made.

Editor's Note: Parties in interest to an appeal should also be mailed a copy of the notice. The notice must also be posted on a bulletin board at the county office and on the county website, if any, pursuant to S.C. Code § 30-4-80.

APPENDIX N

Notice of Public Hearing on Land Development Regulations

County Council of ____, S.C. will hold a public hearing at (time) on (date), at (place) on the land development regulations recommended for adoption by the __ County Planning Commission pursuant to S. C. Code § 6-29-1130.

Copies of the proposed regulations to be considered are available for public inspection in the __ County office at (address) (and and at www. .gov).

If you wish to attend the public hearing and have a disability that requires any special services, materials, or assistance, please notify the Council by contacting _____ at ____@____ or (__) __-___, so that appropriate accommodations may be made.

Editor's Note: This notice must be published in a newspaper of general circulation in the county thirty days in advance of the hearing if matter is to adopt or amend land development regulations, pursuant to S.C. Code § 6-29-1130. S.C. Code § 4-9-130 has a similar provision which requires not less than fifteen days notice published in a newspaper of general circulation in the county. The notice must also be posted on a bulletin board at the county office and on the county website, if any, pursuant to S.C. Code § 30-4-80.

APPENDIX O

Notice of Public Hearing on Development Agreement

(County Council / Planning Commission) of ____, S.C. will hold a public hearing at (time) on (date), at (place) on the land development agreement proposed by ____ for development of property located at ____, containing __ acres, Tax Map No. ____, which will allow the following uses:

Copies of the documents to be considered are available for public inspection in the __ County office at (address) (and at www. .gov).

If you wish to attend the public hearing and have a disability that requires any special services, materials, or assistance, please notify the (Council / Commission) by contacting _____ at ____@____ or (__) __-___, so that appropriate accommodations may be made.

Editor's Note: This notice must be published in a newspaper of general circulation in the county pursuant to S.C. Code § 6-31-50 and posted on a bulletin board at the county office and on the county website, if any, pursuant to S.C. Code § 30-4-80.

APPENDIX P

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

Disqualification Notice

To the presiding officer:

I have received and reviewed of the agenda, staff report(s), and meeting materials for the meeting scheduled to be held on _____, 20___.

With respect to the following matter on the agenda:

_____,

I have or may have a potential conflict of interest of the following nature:

_____

_____,

which S.C. Code § 8-13-700 requires that I disqualify myself from any discussions, comments, votes or other involvement in the matter.

Please record this statement in the minutes of all meetings in which the matter is considered.

_____

Name: _____ Date: _____, 20___

APPENDIX Q

STATE OF SOUTH CAROLINA)
COUNTY OF _____) Designation of Agent

Personally appeared before me the undersigned, who being first duly sworn, depose and say:

I/we are all of the owners of the property described above.

I/we appoint _____, named as Applicant as my/our agent to represent me/us in this matter.

I/we understand that I/we may have an opportunity to testify or may be called upon to testify at any hearing on this application and that if I/we do not appear for whatever reason, this matter will not automatically be deferred to a later hearing but may be decided based solely upon the information in this application and attachments. The Commission may deny my/our request and a denial could prevent another application for the requested action for up to __ months. I/we understand that if I/we cannot be in attendance at the hearing, I have the option to request a deferral or withdraw the request if I/we do not wish it to be acted upon in my/our absence.

Owner signature: _____
Owner signature: _____

SUBSCRIBED AND SWORN to before me
this ___ day of _____, 20____.

_____
Notary Public for South Carolina

My commission expires: _____

APPENDIX R

Zoning Map Amendment (Rezoning) Application

If this application is filed by the property owner(s), all property owners must sign.
If the applicant is not an owner, the property owner(s) must also execute and attach a Designation of Agent form.

The Applicant hereby requests that the property described below be rezoned:
from _____ to _____.

APPLICANT(S):
Name(s): _____
Address: _____
City: _____ Zip Code: _____
Telephone: Cell: _____ Work: _____ Home: _____
Fax: _____
Email: _____

PROPERTY OWNER(S):
If different than Applicant(s):
Name(s): _____
Address: _____
City: _____ Zip Code: _____
Telephone: Cell: _____ Work: _____ Home: _____
Email: _____

Additional information attached ___ Yes / ___ No

PROPERTY INFORMATION:
Address: _____
Subdivision: _____
Lot _____ Block _____
Plat recorded: Book _____ Page _____
Tax Map No.: _____
Zoning Dist.: _____ Zoning Map Page: _____
Area in acres: _____
Dimensions: _____
Current use: _____
Proposed use: _____

Is the property subject to any restrictive covenants? ___ Yes ___ No
Please attach a copy of any relevant restrictive covenants.

Has this property been the subject of any prior zoning application(s) within the past ___ months?
___ Yes - Application No.: _____ Final action: _____
___ No

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

Personally appeared before me the undersigned, who being first duly sworn, depose and say:

I/we are the owners and or applicant(s) in this matter.

I/we have read the contents of this application and all attachments.

Under penalty of perjury, I/we certify that the information contained in this application and attachments are true, correct and complete to the best of my knowledge and belief.

I understand that, in addition to the penalties for perjury, that any falsification of information may result in the denial of this request and preclude reapplication for a period of time.

Owner / Applicant signature: _____
Owner / Applicant signature: _____

SUBSCRIBED AND SWORN to before me
this ___ day of _____, 20____.

_____
Notary Public for South Carolina

My commission expires: _____

APPENDIX S

Zoning Text Amendment Application

If this application is filed by the property owner(s), all property owners must sign.
If the applicant is not an owner, the property owner(s) must also execute and attach a Designation of Agent form.

The Applicant hereby requests an amendment to _____ County Zoning Ordinance Section _____.

APPLICANT(S):
Name(s): _____
Address: _____
City: _____ Zip Code: _____
Telephone: Cell: _____ Work: _____ Home: _____
Fax: _____
Email: _____

PROPERTY OWNER(S):
If different than Applicant(s):
Name(s): _____
Address: _____
City: _____ Zip Code: _____
Telephone: Cell: _____ Work: _____ Home: _____
Email: _____

Additional information attached ___ Yes / ___ No

Current text of Section ____:
_____
_____
_____
_____

Proposed text of Section ____:
_____
_____
_____
_____

Description of the need for proposed change:
_____
_____
_____
_____

Is additional information attached? ___ Yes ___ No

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

Personally appeared before me the undersigned, who being first duly sworn, depose and say:

I/we are the owners and or applicant(s) in this matter.

I/we have read the contents of this application and all attachments.

Under penalty of perjury, I/we certify that the information contained in this application and attachments are true, correct and complete to the best of my knowledge and belief.

I understand that, in addition to the penalties for perjury, that any falsification of information may result in the denial of this request and preclude reapplication for a period of time.

Owner / Applicant signature: _____
Owner / Applicant signature: _____

SUBSCRIBED AND SWORN to before me
this ___ day of _____, 20____.

_____
Notary Public for South Carolina

My commission expires: _____

APPENDIX T

Zoning Permit Application

If this application is filed by the property owner(s), all property owners must sign.
If the applicant is not an owner, the property owner(s) must also execute and attach a Designation of Agent form.

The Applicant hereby requests a zoning permit pursuant to Section ___ of the___ County Zoning Ordinance to use the property described below in the following manner:

_____

_____

_____

APPLICANT(S):
Name(s): _____
Address: _____
City: _____ Zip Code: _____
Telephone: Cell: _____ Work: _____ Home: _____
Fax: _____
Email: _____

PROPERTY OWNER(S):
If different than Applicant(s):
Name(s): _____
Address: _____
City: _____ Zip Code: _____
Telephone: Cell: _____ Work: _____ Home: _____
Email: _____

Additional information attached ___ Yes / ___ No

PROPERTY INFORMATION:
Address: _____
Subdivision: _____
Lot _____ Block _____
Plat recorded: Book _____ Page _____
Tax Map No.: _____
Zoning Dist.: _____ Zoning Map Page: _____
Area in acres: _____
Dimensions: _____
Current use: _____
Proposed use: _____

Is the property subject to any restrictive covenants? ___ Yes ___ No
Please attach a copy of any relevant restrictive covenants.

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

Personally appeared before me the undersigned, who being first duly sworn, depose and say:

I/we are the owner(s) and or applicant(s) in this matter.

I/we have read the contents of this application and all attachments.

Under penalty of perjury, I/we certify that the information contained in this application and attachments are true, correct and complete to the best of my knowledge and belief.

I understand that, in addition to the penalties for perjury, that any falsification of information may result in the denial of this request and preclude reapplication for a period of time.

Owner / Applicant signature: _____
Owner / Applicant signature: _____

SUBSCRIBED AND SWORN to before me
this ___ day of _____, 20____.

_____
Notary Public for South Carolina
My commission expires: _____

APPENDIX U

STATE OF SOUTH CAROLINA)
) STOP ORDER
COUNTY OF _____)

TO: _____
Address: _____
_____

Pursuant to S.C. Code § 6-29-950 and §_____ of the _____ County Zoning Ordinance,

YOU ARE ORDERED TO STOP WORK

on the building and/or property located at: _____ in _____ County until such time as the following Code violation(s) are corrected:

__ No proper zoning permit

__ No proper certificate of appropriateness

__ No proper building permit

__ Violation of Code §_____ of the ____ County Code of Ordinances as follows:
_____
_____

Failure to comply with Stop Order is a misdemeanor punishable by a fine of up to $ ___ (and/or imprisonment for up to thirty days) for each day of violation, in addition to fines and penalties which may be imposed for Code violations. Issuance of this Stop Order may be appealed to the Board of Zoning Appeals.

Contact the undersigned at: Address: _____
Telephone: _____

Date: _____, 20__ .

/S/_____
Official's name & title

Personally served / posted on property: _____, 20___

APPENDIX V

Hearing Request Form

_____ County Board of Zoning Appeals

FORM 1

If this form is filed by the property owner(s), all property owners must sign.
If the applicant is not an owner, the property owner(s) must also execute and attach a Designation of Agent form.

The Applicant hereby appeals:

__ From an action of a government official as stated on the attached Form 2
__ For a variance as stated on the attached Form 3
__ For a special exception as stated on the attached Form 4

APPLICANT(S):
Name(s): _____
Address: _____
City: _____ Zip Code: _____
Telephone: Cell: _____ Work: _____ Home: _____
Fax: _____
Email: _____
Interest in the action appealed:
___ Owner(s) ___ Adjacent property owner(s) ___ other: describe_____

PROPERTY OWNER(S):
If different than Applicant(s):
Name(s): _____
Address: _____
City: _____ Zip Code: _____
Telephone: Cell: _____ Work: _____ Home: _____
Email: _____
Additional information attached ___ Yes / ___ No

PROPERTY INFORMATION:
Address: _____
Subdivision: _____
Lot _____ Block _____
The property is / is not subject to restrictive covenants. If so, please attach a copy of any relevant restrictive covenants.
Plat recorded: Book _____ Page _____
Tax Map No.: _____
Zoning Dist.: _____ Zoning Map Page: _____
Area in acres: _____
Dimensions: _____

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

Personally appeared before me the undersigned, who being first duly sworn, depose and say:

I/we are the owners and or applicant(s) in this matter.

I/we have read the contents of this application and all attachments.

Under penalty of perjury, I/we certify that the information contained in this application and attachments are true, correct and complete to the best of my knowledge and belief.

I understand that, in addition to the penalties for perjury, that any falsification of information may result in the denial of this request and preclude reapplication for a period of time.

Owner / Applicant signature: _____
Owner / Applicant signature: _____

SUBSCRIBED AND SWORN to before me
this ___ day of _____, 20____.

_____
Notary Public for South Carolina
My commission expires: _____

Administrative Appeal Form
_____ County Board of Zoning Appeals

FORM 2

1. Applicant hereby appeals to the Board of Zoning Appeals from the action of the government official affecting the property described in the Hearing Request Form (Form 1) on the grounds that:

   granting of an application for a permit to _____ was erroneous and contrary to the provisions of § ___ of the ____ County Code of Ordinances; or

   denial of an application for a permit to _____ was erroneous and contrary to the provisions of § ___ of the ____ County Code of Ordinances; or

   other action or decision of the government official was erroneous as follows:_____
   _____
   _____

2. Applicant is aggrieved by the action or decision in that:

_____

_____

3. Applicant contends that the correct interpretation of the Zoning Ordinance as applied to the subject property is:

_____

_____

4. Applicant requests the following relief:

_____

_____

Variance Application
_____ County Board of Zoning Appeals

FORM 3

1. Applicant hereby appeals to the Board of Zoning Appeals for a variance from the strict application to the property described in the Hearing Request Form (Form 1) of the following provisions of the _____County Code of Ordinances: Article ____, Section ____ so that a zoning permit may be issued to allow use of the property in a manner shown on the attached plot plan, and described as follows (use specific measurements in feet, acreage, etc...:

_____

_____

2. The application of the ordinance will result in unnecessary hardship, and the standards for a variance set by State law and the ordinance are met by the following facts:
   a. There are extraordinary and exceptional conditions pertaining to the subject property as follows:

      _____

      _____

   b. These conditions do not generally apply to other properties in the area as shown by:

      _____

      _____

   c. Because of these conditions, the application of the ordinance to this particular property would effectively prohibit or unreasonably restrict the use of the property as follows:

      _____

      _____

   d. The authorization of the 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 for the following reasons:

      _____

      _____

3. Applicant agrees to the following concession(s) or additional condition(s) that are proposed as part of any approval granted:

_____

_____

4. Applicant submits the following additional information listed below and/or attached: _____.

Special Exception Application
_____ County Board of Zoning Appeals

FORM 4

1. Applicant hereby appeals to the Board of Zoning Appeals for a special exception for use of the property described in the Hearing Request Form (Form 1) as follows: _____

_____

which is a permitted special exception under the district regulation in Section _____ of the _____ County Code of Ordinances.

2. Applicant will meet the standards in Section ____ of the _____ County Code of Ordinances which are applicable to the proposed special exception in the following manner:

_____

_____

3. Applicant suggests that the following condition(s) be imposed to meet the standards in the _____ County Code of Ordinances: _____

_____

4. The following additional information and documents are listed below and attached in support of this request:
plot line of the subject property and _____

APPENDIX W

Order on Appeal From Action of the Zoning Official
_____County Board of Zoning Appeals

The _____ County Board of Zoning Appeals (hereafter "Board") held a public hearing on Permit Application No. __, Appeal No. ___ on __(date)__ to consider the appeal of _____ (hereafter "Applicant(s)") from the action of the Zoning Official as set forth on Form 2 as submitted by the Applicant(s) affecting the property described on Form 1 filed with the Board. After consideration of the testimony, evidence and arguments presented orally and in the forms, the Board makes the following findings of fact and conclusions of law:

1. The notice of this hearing was advertised in publication on date as well as being posted on the bulletin board at _____ (and posted on the county website) .

2. A quorum of the Board was present for the hearing, including:_____. Name(s) did not participate in this matter, having filed a Disqualification Notice.

3. The decision of the Zoning Official was based on the interpretations of Section(s) of the ___ County Code of Ordinances that:_____.

4. The Board adopts by reference the facts found in the FACTUAL BACKGROUND portion of the Special Exception Review Sheet for this matter (with the exception of: _____ OR and finds additionally that: _____).

5. Option A
   The Board concludes that Section(s)is/are applicable to this matter and should be interpreted as follows: _____.

   Option B
   The Board concludes that Section(s) are not applicable to this matter.

THE BOARD, THEREFORE, ORDERS that the decision of the Zoning Official is (affirmed / reversed / modified as follows: _____).

IT IS FURTHER ORDERED that the permit be (denied, issued / issued with the following conditions: ____) and the following action be taken: _____
_____.

/S/_____ (date) , 20__
(Name)_____
Chairman, _____ County Board of Zoning Appeals

APPENDIX X

Order on Variance Application

_____County Board of Zoning Appeals

The _____ County Board of Zoning Appeals (hereafter "Board") held a public hearing on Permit Application No. __, Appeal No. ___ on __(date)__ to consider the appeal of _____ (hereafter "Applicant(s)") for a variance from the strict application of the Zoning Ordinance as set forth on Form 3 submitted by the Applicant(s) affecting the property described on Form 1 filed with the Board. After consideration of the testimony, evidence and arguments presented orally and in the forms, the Board makes the following findings of fact and conclusions of law:

1. The notice of this hearing was advertised in publication on date as well as being posted on the bulletin board at _____ (and posted on the county website) .

2. A quorum of the Board was present for the hearing, including:_____. Name(s) did not participate in this matter having filed a Disqualification Notice.

3. The Board adopts by reference the facts found in the FACTUAL BACKGROUND portion of the Variance Review Sheet for this matter (with the exception of _____ OR and finds additionally that: _____.)

3. The Board concludes that the Applicant(s) (does / does not) have an unnecessary hardship because there (are / are not) extraordinary and exceptional conditions pertaining this particular property based upon the following findings of fact:

   _____
   _____.

4. The Board concludes that these conditions (do / do not) generally apply to other property in the area based on the following findings of fact:

   _____
   _____.

5. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property (would / would not) effectively prohibit or unreasonably restrict the utilization of the property based on the following findings of fact:

   _____
   _____.

6. The Board concludes that the authorization of the variance (will / will not) be of substantial detriment to adjacent property or the public good, and the character of the district (will / will not) be harmed by the granting of the variance based upon the following findings of fact:

   _____
   _____.

THE BOARD, THEREFORE, ORDERS that the variance be (denied / granted / granted with the following conditions: _____.

/S/_____ (date) , 20__

(Name)_____

Chairman, _____ County Board of Zoning Appeals

APPENDIX Y

Order on Special Exception Application
_____County Board of Zoning Appeals

The _____ County Board of Zoning Appeals (hereafter "Board") held a public hearing on Permit Application No. __, Appeal No. ___ on (date) to consider the appeal of _____ (hereafter "Applicant(s)") for a special exception, which may be permitted by the Board pursuant to Section __ of the ____ County Code of Ordinances, as set forth on Form 4 submitted by the Applicant(s) affecting the property described on Form 1 filed with the Board, to b e used for: _____. After consideration of the testimony, evidence and arguments presented orally and in the forms, the Board makes the following findings of fact and conclusions of law:

1. The notice of this hearing was advertised in publication on date as well as being posted on the bulletin board at _____ (and posted on the county website) .

2. A quorum of the Board was present for the hearing, including:
_____.
Name(s) did not participate in this matter having filed a Disqualification Notice.

3. The Board adopts by reference the facts found in the FACTUAL BACKGROUND portion of the Special Exception Review Sheet for this matter (with the exception of: _____ OR and finds additionally that: _____.).

4. The Board concludes that the standards in Section ____ of the ____ County Code of Ordinances which are applicable to the requested special exception (have / have not) been met based on the following findings of fact:
_____
_____.

5. The Board concludes that the requested special exception (will / will not) substantially diminish the value of adjacent property or property in the district based on the following findings of fact:
_____
_____.

6. The Board concludes that the requested special exception (will / will not) be compatible with uses in the district based on the following findings of fact:
_____
_____.

THE BOARD, THEREFORE, ORDERS that the special exception is (denied / granted / granted with the following conditions: _____.)

/S/_____ (date) , 20__
(Name)_____
Chairman, _____ County Board of Zoning Appeals

APPENDIX Z

VARIANCE REVIEW SHEET

Variance Request No. _____

FACTUAL BACKGROUND:

Property Information

Applicant: _____
Owner(s): _____
Property address: _____
Tax Map No.: _____
Parcel size: _____

Zoning Information

Zoning District: _____
Proposed use: _____

Requested Variance(s)

_____

Background / Site Conditions

_____

ORDINANCE AND ANALYSIS:

Before a variance can be granted, the Board must first find that the strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing the following five findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property. (Is this request special?) _____

_____

2. These conditions do not generally apply to other property in the vicinity. (Is this request unique?)

_____

3. 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.

_____

4. The authorization of a variance will not be a 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. (Does this request serve the public good or harm neighbors?) _____

_____

5. The Board may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property

may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance.

Proposed Order / Conditions
Should the Board decide that this variance request meets all five factors noted above and grants the requested variance, staff recommends the following conditions:_____

APPENDIX AA

SPECIAL EXCEPTION REVIEW SHEET

Special Exception Request No. _____

FACTUAL BACKGROUND:

Property Information

Applicant: _____

Owner(s): _____

Property address: _____

Tax Map No.: _____

Parcel size: _____

Zoning Information

Zoning District: _____

Proposed use: _____

Distance From Nearest Residential

_____

Requested Special Exception

_____

Background / Site Conditions

_____

ORDINANCE AND ANALYSIS

Ordinance Section __ states: Owing to their potential negative impact on the community, the following uses may be approved as special exceptions by the Board of Zoning Appeals: bar, restaurant, nightclub is subject to the following conditions:

1. That the special exception complies with all applicable development standards, including off-street parking and dimensional requirements. _____

2. That the special exception will be in substantial harmony with the area in which it is to be located.

_____

3. That the special exception will not be injurious to adjoining properties. _____

4. That the special exception will contribute to the economic vitality and promote the general welfare of the community. _____

5. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right. _____

6. In granting a special exception, The Board of Zoning Appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgment, will enhance the citing or reduce any negative impact of the proposed special exception.

APPENDIX BB

This appendix contains the core of the statutes which affect land use planning in South Carolina. There are court decisions and statutes from other portions of the South Carolina Code of Laws and federal statutes and court decisions which also impact land use planning. Sometimes an Attorney General's opinion may be the only interpretational document addressing a question. It is always important to consult your county attorney when a question regarding the law comes up. These are supplied with the intent to give a land use planning official or practitioner a starting point on their search for answers.

TITLE 6, CHAPTER 29
South Carolina Local Government Comprehensive Planning Enabling Act of 1994

ARTICLE 1
Creation of Local Planning Commission

SECTION 6-29-310. "Local planning commission" defined.

For purposes of this chapter, "local planning commission" means a municipal planning commission, a county planning commission, a joint city-county planning commission, or a consolidated government planning commission.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-320. Bodies authorized to create local planning commissions.

The city council of each municipality may create a municipal planning commission. The county council of each county may create a county planning commission. The governing body of a consolidated government may create a planning commission. Any combination of municipal councils and a county council or any combination of municipal councils may create a joint planning commission.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-330. Areas of jurisdiction; agreement for county planning commission to act as municipal planning commission.

(A) A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits. A county may exercise the powers granted under the provisions of this chapter in the total unincorporated area or specific parts of the unincorporated area. Unincorporated areas of the county or counties adjacent to incorporated municipalities may be added to and included in the area under municipal jurisdiction for the purposes of this chapter provided that

the municipality and county councils involved adopt ordinances establishing the boundaries of the additional areas, the limitations of the authority to be exercised by the municipality, and representation on the boards and commissions provided under this chapter. The agreement must be formally approved and executed by the municipal council and the county councils involved.

(B) The governing body of a municipality may designate by ordinance the county planning commission as the official planning commission of the municipality. In the event of the designation, and acceptance by the county, the county planning commission may exercise the powers and duties as provided in this chapter for municipal planning commissions as are specified in the agreement reached by the governing authorities. The agreement must specify the procedures for the exercise of powers granted in the chapter and shall address the issue of equitable representation of the municipality and the county on the boards and commissions authorized by this chapter. This agreement must be formally stated in appropriate ordinances by the governing authorities involved.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-340. Functions, powers, and duties of local planning commissions.

(A) It is the function and duty of the local planning commission, when created by an ordinance passed by the municipal council or the county council, or both, to undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction. The plans and programs must be designed to promote public health, safety, morals, convenience, prosperity, or the general welfare as well as the efficiency and economy of its area of jurisdiction. Specific planning elements must be based upon careful and comprehensive surveys and studies of existing conditions and probable future development and include recommended means of implementation. The local planning commission may make, publish, and distribute maps, plans, and reports and recommendations relating to the plans and programs and the development of its area of jurisdiction to public officials and agencies, public utility companies, civic, educational, professional, and other organizations and citizens. All public officials shall, upon request, furnish to the planning commission, within a reasonable time, such available information as it may require for its work. The planning commission, its members and employees, in the performance of its functions, may enter upon any land with consent of the property owner or after ten days' written notification to the owner of record, make examinations and surveys, and place and maintain necessary monuments and marks on them, provided, however, that the planning commission shall be liable for any injury or damage to property resulting therefrom. In general, the planning commission has the powers as may be necessary to enable it to perform its functions and promote the planning of its political jurisdiction.

(B) In the discharge of its responsibilities, the local planning commission has the power and duty to:

(1) prepare and revise periodically plans and programs for the development and redevelopment of its area as provided in this chapter; and

(2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:

(a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;

(b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;

(c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth in this chapter;

(d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;

(e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and

(f) policies or procedures to facilitate implementation of planning elements.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-350. Membership; terms of office; compensation; qualifications.

(A) A local planning commission serving not more than two political jurisdictions may not have less than five nor more than twelve members. A local planning commission serving three or more political jurisdictions shall have a membership not greater than four times the number of jurisdictions it serves. In the case of a joint city-county planning commission the membership must be proportional to the population inside and outside the corporate limits of municipalities.

(B) No member of a planning commission may hold an elected public office in the municipality or county from which appointed. Members of the commission first to serve must be appointed for staggered terms as described in the agreement of organization and shall serve until their successors are appointed and qualified. The compensation of the members, if any, must be determined by the governing authority or authorities creating the commission. A vacancy in the membership of a planning commission must be filled for the unexpired term in the same manner as the original appointment. The governing authority or authorities creating the commission may remove any member of the commission for cause.

(C) In the appointment of planning commission members the appointing authority shall consider their professional expertise, knowledge of the community, and concern for the future welfare of the total community and its citizens. Members shall represent a broad cross section of the interests and concerns within the jurisdiction.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-360. Organization of commission; meetings; procedural rules; records; purchases.

(A) A local planning commission shall organize itself electing one of its members as chairman and one as vice-chairman whose terms must be for one year. It shall appoint a secretary who may be an officer or an employee of the governing authority or of the planning commission. The planning commission shall meet at the call of the chairman and at such times as the chairman or commission may determine.

(B) The commission shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings, and determinations, which record must be a public record. The planning

commission may purchase equipment and supplies and may employ or contract for such staff and such experts as it considers necessary and consistent with funds appropriated.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-370. Referral of matters to commission; reports.

The governing authority may provide for the reference of any matters or class of matters to the local planning commission, with the provision that final action on it may not be taken until the planning commission has submitted a report on it or has had a reasonable period of time, as determined by the governing authority to submit a report.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-380. Funding of commissions; expenditures; contracts.

A local planning commission may cooperate with, contract with, or accept funds from federal government agencies, state government agencies, local general purpose governments, school districts, special purpose districts, including those of other states, public or eleemosynary agencies, or private individuals or corporations; it may expend the funds; and it may carry out such cooperative undertakings and contracts as it considers necessary.

HISTORY: 1994 Act No. 355, Section 1.

ARTICLE 3
Local Planning — The Comprehensive Planning Process

SECTION 6-29-510. Planning process; elements; comprehensive plan.

(A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.

(B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

(C) The basic planning process for all planning elements must include, but not be limited to:

(1) inventory of existing conditions;

(2) a statement of needs and goals; and

(3) implementation strategies with time frames.

(D) A local comprehensive plan must include, but not be limited to, the following planning elements:

(1) a population element which considers historic trends and projections, household numbers and sizes, educational levels, and income characteristics;

(2) an economic development element which considers labor force and labor force characteristics, employment by place of work and residence, and analysis of the economic base;

(3) a natural resources element which considers coastal resources, slope characteristics, prime agricultural and forest land, plant and animal habitats, parks and recreation

areas, scenic views and sites, wetlands, and soil types. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;

(4) a cultural resources element which considers historic buildings and structures, commercial districts, residential districts, unique, natural, or scenic resources, archaeological, and other cultural resources. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;

(5) a community facilities element which considers water supply, treatment, and distribution; sewage system and wastewater treatment; solid waste collection and disposal, fire protection, emergency medical services, and general government facilities; education facilities; and libraries and other cultural facilities;

(6) a housing element which considers location, types, age, and condition of housing, owner and renter occupancy, and affordability of housing. This element includes an analysis to ascertain nonessential housing regulatory requirements, as defined in this chapter, that add to the cost of developing affordable housing but are not necessary to protect the public health, safety, or welfare and an analysis of market-based incentives that may be made available to encourage development of affordable housing, which incentives may include density bonuses, design flexibility, and streamlined permitting processes;

(7) a land use element which considers existing and future land use by categories, including residential, commercial, industrial, agricultural, forestry, mining, public and quasi-public, recreation, parks, open space, and vacant or undeveloped;

(8) a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element, to ensure transportation efficiency for existing and planned development;

(9) a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done through coordination with adjacent and relevant jurisdictions and agencies. For the purposes of this item, "adjacent and relevant jurisdictions and agencies" means those counties, municipalities, public service districts, school districts, public and private utilities, transportation agencies, and other public entities that are affected by or have planning authority over the public project. For the purposes of this item, "coordination" means written notification by the local planning commission or its staff to adjacent and relevant jurisdictions and agencies of the proposed projects and the opportunity for adjacent and relevant jurisdictions and agencies to provide comment to the planning commission or its staff concerning the proposed projects. Failure of the planning commission or its staff to identify or notify an adjacent or relevant jurisdiction or agency does not invalidate the local comprehensive plan and does not give rise to a civil cause of action.

(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all

elements of it, must be updated at least every ten years.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31.

SECTION 6-29-520. Advisory committees; notice of meetings; recommendations by resolution; transmittal of recommended plan.

(A) In the preparation or periodic updating of any or all planning elements for the jurisdiction, the planning commission may use advisory committees with membership from both the planning commission or other public involvement mechanisms and other resource people not members of the planning commission. If the local government maintains a list of groups that have registered an interest in being informed of proceedings related to planning, notice of meetings must be mailed to these groups.

(B) Recommendation of the plan or any element, amendment, extension, or addition must be by resolution of the planning commission, carried by the affirmative votes of at least a majority of the entire membership. The resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan.

(C) In satisfying the preparation and periodic updating of the required planning elements, the planning commission shall review and consider, and may recommend by reference, plans prepared by other agencies which the planning commission considers to meet the requirements of this article.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-530. Adoption of plan or elements; public hearing.

The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a plan as a whole, the governing authority shall hold a public hearing on it after not less than thirty days' notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-540. Review of proposals following adoption of plan; projects in conflict with plan; exemption for utilities.

When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park, or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities establishing the planning commission until the location, character, and extent of it have been submitted to the planning commission for review and

comment as to the compatibility of the proposal with the comprehensive plan of the community. In the event the planning commission finds the proposal to be in conflict with the comprehensive plan, the commission shall transmit its findings and the particulars of the nonconformity to the entity proposing the facility. If the entity proposing the facility determines to go forward with the project which conflicts with the comprehensive plan, the governing or policy making body of the entity shall publicly state its intention to proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission, and published as a public notice in a newspaper of general circulation in the community at least thirty days prior to awarding a contract or beginning construction. Telephone, sewer and gas utilities, or electric suppliers, utilities and providers, whether publicly or privately owned, whose plans have been approved by the local governing body or a state or federal regulatory agency, or electric suppliers, utilities and providers who are acting in accordance with a legislatively delegated right pursuant to Chapter 27 or 31 of Title 58 or Chapter 49 of Title 33 are exempt from this provision. These utilities must submit construction information to the appropriate local planning commission.

HISTORY: 1994 Act No. 355, Section 1.

ARTICLE 5
Local Planning — Zoning

SECTION 6-29-710. Zoning ordinances; purposes.

(A) Zoning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare. To these ends, zoning ordinances must be made with reasonable consideration of the following purposes, where applicable:

(1) to provide for adequate light, air, and open space;

(2) to prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets;

(3) to facilitate the creation of a convenient, attractive, and harmonious community;

(4) to protect and preserve scenic, historic, or ecologically sensitive areas;

(5) to regulate the density and distribution of populations and the uses of buildings, structures and land for trade, industry, residence, recreation, agriculture, forestry, conservation, airports and approaches thereto, water supply, sanitation, protection against floods, public activities, and other purposes;

(6) to facilitate the adequate provision or availability of transportation, police and fire protection, water, sewage, schools, parks, and other recreational facilities, affordable housing, disaster evacuation, and other public services and requirements. "Other public requirements" which the local governing body intends to address by a particular ordinance or action must be specified in the preamble or some other part of the ordinance or action;

(7) to secure safety from fire, flood, and other dangers; and

(8) to further the public welfare in any other regard specified by a local governing body.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-715. Church-related activities; zoning ordinances for single family residences.

(A) For purposes of this section, "church-related activities" does not include regularly scheduled worship services.

(B) Notwithstanding any other provision of law, no zoning ordinance of a municipality or county may prohibit church-related activities in a single-family residence.

HISTORY: 1998 Act No. 276, Section 2.

SECTION 6-29-720. Zoning districts; matters regulated; uniformity; zoning techniques.

(A) When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts of such number, shape, and size as the governing authority determines to be best suited to carry out the purposes of this chapter. Within each district the governing body may regulate:

(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 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 this chapter.

(B) The regulations must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter. Except as provided in this chapter, all of these regulations must be uniform for each class or kind of building, structure, or use throughout each district, but the regulations in one district may differ from those in other districts.

(C) The zoning ordinance may utilize the following or any other zoning and planning techniques for implementation of the goals specified above. Failure to specify a particular technique does not cause use of that technique to be viewed as beyond the power of the local government choosing to use it:

(1) "cluster development" or the grouping of residential, commercial, or industrial uses within a subdivision or development site, permitting a reduction in the otherwise applicable lot size, while preserving substantial open space on the remainder of the parcel;

(2) "floating zone" or a zone which is described in the text of a zoning ordinance but is unmapped. A property owner may petition for the zone to be applied to a particular parcel meeting the minimum zoning district area requirements of the zoning ordinance through legislative action;

(3) "performance zoning" or zoning which specifies a minimum requirement or maximum limit on the effects of a land use rather than, or in addition to, specifying the use itself,

simultaneously assuring compatibility with surrounding development and increasing a developer's flexibility;

(4) "planned development district" or a development project comprised of housing of different types and densities and of compatible commercial uses, or shopping centers, office parks, and mixed-use developments. A planned development district is established by rezoning prior to development and is characterized by a unified site design for a mixed use development;

(5) "overlay zone" or a zone which imposes a set of requirements or relaxes a set of requirements imposed by the underlying zoning district when there is a special public interest in a particular geographic area that does not coincide with the underlying zone boundaries;

(6) "conditional uses" or zoning ordinance provisions that impose conditions, restrictions, or limitations on a permitted use that are in addition to the restrictions applicable to all land in the zoning district. The conditions, restrictions, or limitations must be set forth in the text of the zoning ordinance; and

(7) "priority investment zone" in which the governing authority adopts market-based incentives or relaxes or eliminates nonessential housing regulatory requirements, as these terms are defined in this chapter, to encourage private development in the priority investment zone. The governing authority also may provide that traditional neighborhood design and affordable housing, as these terms are defined in this chapter, must be permitted within the priority investment zone.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 3.

SECTION 6-29-730. Nonconformities.

The regulations may provide that land, buildings, and structures and the uses of them which are lawful at the time of the enactment or amendment of zoning regulations may be continued although not in conformity with the regulations or amendments, which is called a nonconformity. The governing authority of a municipality or county may provide in the zoning ordinance or resolution for the continuance, restoration, reconstruction, extension, or substitution of nonconformities. The governing authority also may provide for the termination of a nonconformity by specifying the period or periods in which the nonconformity is required to cease or be brought into conformance, or by providing a formula where the compulsory termination of nonconformities may be so fixed as to allow for the recovery or amortization of the investment in the nonconformity.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-740. Planned development districts.

In order to achieve the objectives of the comprehensive plan of the locality and to allow flexibility in development that will result in improved design, character, and quality of new mixed use developments and preserve natural and scenic features of open spaces, the local governing authority may provide for the establishment of planned development districts as amendments to a locally adopted zoning ordinance and official zoning map. The adopted planned development map is the zoning district map for the property. The planned development provisions must encourage innovative site planning for residential, commercial, institutional, and industrial developments within planned development districts. Planned development districts may provide for variations from other ordinances and the regulations of other established zoning districts concerning use, setbacks, lot size, density, bulk, and other requirements to accommodate flexibility in the arrangement of uses for the

general purpose of promoting and protecting the public health, safety, and general welfare. Amendments to a planned development district may be authorized by ordinance of the governing authority after recommendation from the planning commission. These amendments constitute zoning ordinance amendments and must follow prescribed procedures for the amendments. The adopted plan may include a method for minor modifications to the site plan or development provisions.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-750. Special development district parking facility plan; dedication.

In accordance with a special development district parking facility plan and program, which includes guidelines for preferred parking locations and indicates prohibited parking areas, the planning commission may recommend and the local governing body may adopt regulations which permit the reduction or waiver of parking requirements within the district in return for cash contributions or dedications of land earmarked for provision of public parking or public transit which may not be used for any other purpose. The cash contributions or the value of the land may not exceed the approximate cost to build the required spaces or provide the public transit that would have incurred had not the reduction or waiver been granted.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-760. Procedure for enactment or amendment of zoning regulation or map; notice and rights of landowners; time limit on challenges.

(A) Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings, notice of such meetings must be mailed to these groups. No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

(C) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new

substantive right in any party.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-770. Governmental entities subject to zoning ordinances; exceptions.

(A) Agencies, departments, and subdivisions of this State that use real property, as owner or tenant, in any county or municipality in this State are subject to the zoning ordinances.

(B) A county or agency, department or subdivision of it that uses any real property, as owner or tenant, within the limits of any municipality in this State is subject to the zoning ordinances of the municipality.

(C) A municipality or agency, department or subdivision of it, that uses any real property, as owner or tenant, within the limits of any county in this State but not within the limits of the municipality is subject to the zoning ordinances of the county.

(D) The provisions of this section do not require a state agency, department, or subdivision to move from facilities occupied on June 18, 1976, regardless of whether or not their location is in violation of municipal or county zoning ordinances.

(E) The provisions of this section do not apply to a home serving nine or fewer mentally or physically handicapped persons provided the home provides care on a twenty-four hour basis and is approved or licensed by a state agency or department or under contract with the agency or department for that purpose. A home is construed to be a natural family or such similar term as may be utilized by any county or municipal zoning ordinance to refer to persons related by blood or marriage. Prior to locating the home for the handicapped persons, the appropriate state agency or department or the private entity operating the home under contract must first give prior notice to the local governing body administering the pertinent zoning laws, advising of the exact site of any proposed home. The notice must also identify the individual representing the agency, department, or private entity for site selection purposes. If the local governing body objects to the selected site, the governing body must notify the site selection representative of the entity seeking to establish the home within fifteen days of receiving notice and must appoint a representative to assist the entity in selection of a comparable alternate site or structure, or both. The site selection representative of the entity seeking to establish the home and the representative of the local governing body shall select a third mutually agreeable person. The three persons have forty-five days to make a final selection of the site by majority vote. This final selection is binding on the entity and the governing body. In the event no selection has been made by the end of the forty-five day period, the entity establishing the home shall select the site without further proceedings. An application for variance or special exception is not required. No person may intervene to prevent the establishment of a community residence without reasonable justification.

(F) Prospective residents of these homes must be screened by the licensing agency to ensure that the placement is appropriate.

(G) The licensing agency shall conduct reviews of these homes no less frequently than every six months for the purpose of promoting the rehabilitative purposes of the homes and their continued compatibility with their neighborhoods.

(H) The governing body of a county or municipality whose zoning ordinances are violated by the provisions of this section may apply to a court of competent jurisdiction for injunctive and such other relief as the court may consider proper.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-775. Use of property obtained from federal government.

Notwithstanding the provisions of Section 6-29-770 of the 1976 Code or any other provision of law, a state agency or entity that acquires real property from the federal government or from a state instrumentality or redevelopment agency that received it from the federal government shall be permitted to use the property in the same manner the federal government was permitted to use the property. Further, the property in the hands of the state agency or entity shall be subject only to the same restrictions, if any, as it was in the hands of the federal government, and no county or municipality of this State by zoning or other means may restrict this permitted use or enjoyment of the property.

HISTORY: 2002 Act No. 256, Section 3.

SECTION 6-29-780. Board of zoning appeals; membership; terms of office; vacancies; compensation.

(A) As a part of the administrative mechanism designed to enforce the zoning ordinance, the zoning ordinance may provide for the creation of a board to be known as the board of zoning appeals. Local governing bodies with a joint planning commission and adopting a common zoning ordinance may create a board to be known as the joint board of appeals. All of these boards are referred to as the board.

(B) The board consists of not less than three nor more than nine members, a majority of which constitutes a quorum, appointed by the governing authority or authorities of the area served. The members shall serve for overlapping terms of not less than three nor more than five years or after that time until their successors are appointed. A vacancy in the membership must be filled for the unexpired term in the same manner as the initial appointment. The governing authority or authorities creating the board of zoning appeals may remove any member of the board for cause. The appointing authorities shall determine the amount of compensation, if any, to be paid to the members of a board of zoning appeals. None of the members shall hold any other public office or position in the municipality or county.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-790. Board of zoning appeals; officers; rules; meetings; notice; records.

The board shall elect one of its members chairman, who shall serve for one year or until he is re-elected or his successor is elected and qualified. The board shall appoint a secretary who may be an officer of the governing authority or of the zoning board. The board shall adopt rules of procedure in accordance with the provisions of an ordinance adopted pursuant to this chapter. Meetings of the board must be held at the call of the chairman and at such other times as the board may determine. Public notice of all meetings of the board of appeals shall be provided by publication

in a newspaper of general circulation in the municipality or county. In cases involving variances or special exceptions conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. The chairman or, in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the board and must be a public record.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-800. Powers of board of appeals; variances; special exceptions; remand; stay; hearing; decisions and orders.

(A) The board of appeals has the following powers:

(1) to hear and decide 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) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship 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.

(i) The board may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance. Other requirements may be prescribed by the zoning ordinance.

A local governing body by ordinance may permit or preclude the granting of a variance for a use of land, a building, or a structure that is prohibited in a given district, and if it does permit a variance, the governing body may require the affirmative vote of two-thirds of the local adjustment board members present and voting. Notwithstanding any other provision of this section, the local governing body may overrule the decision of the local board of adjustment concerning a use variance.

(ii) In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare;

(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. A party's motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

(B) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of appeals notice of appeal specifying the grounds for the appeal. If no time limit is provided, the appeal must be taken within thirty days from the date the appealing party has received actual notice of the action from which the appeal is taken. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed other than by a restraining order which may be granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(D) The board must fix a reasonable time for the hearing of the appeal or other matter referred to the board, and give at least fifteen days' public notice of the hearing in a newspaper of general circulation in the community, as well as due notice to the parties in interest, and decide the appeal or matter within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

(E) In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

(F) All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 2.

SECTION 6-29-810. Contempt; penalty.

In case of contempt by a party, witness, or other person before the board of appeals, the board may certify this fact to the circuit court of the county in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-820. Appeal from zoning board of appeals to circuit court; pre-litigation mediation; filing requirements.

(A) 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 the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

(B) A property owner whose land is the subject of a decision of the board of appeals may appeal either:

(1) as provided in subsection (A); or

(2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825.

Any notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

(C) Any filing of an appeal from a particular board of appeals decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 3, eff June 2, 2003.

SECTION 6-29-825. Pre-litigation mediation; notice; settlement approval; effect on real property; unsuccessful mediation.

(A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted, and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of appeals.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

(1) the local legislative governing body in public session; and

(2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

(1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or

(2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

(1) in the same manner as provided by law for appeals from other judgments of the circuit court; or

(2) by filing an appeal pursuant to subsection (F).

HISTORY: 2003 Act No. 39, Section 4.

SECTION 6-29-830. Notice of appeal; transcript; supersedeas.

(A) Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 5, eff June 2, 2003.

SECTION 6-29-840. Determination of appeal; costs; trial by jury.

(A) At the next term of the circuit court or in chambers, upon ten days' notice to the parties, the presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board is charged with the costs, and the costs must be paid by the governing authority which established the board of appeals.

(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of appeals, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 6.

SECTION 6-29-850. Appeal to Supreme Court.

A party in interest who is aggrieved by the judgment rendered by the circuit court upon the appeal may appeal in the manner provided by the South Carolina Appellate Court Rules.

HISTORY: 1994 Act No. 355, Section 1; 1999 Act No. 55, Section 10.

SECTION 6-29-860. Financing of board of zoning appeals.

The governing authority may appropriate such monies, otherwise unappropriated, as it considers fit to finance the work of the board of appeals and to generally provide for the enforcement of any zoning regulations and restrictions authorized under this chapter which are adopted and may accept and expend grants of money for those purposes from either private or public sources, whether local, state, or federal.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-870. Board of architectural review; membership; officers; rules; meetings; records.

(A) A local government which enacts a zoning ordinance which makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods or significant or natural scenic areas, or protects or provides, or both, for the unique, special, or desired character of a defined district, corridor, or development area or any combination of it, by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board of architectural review or similar body.

(B) The board shall consist of not more than ten members to be appointed by the governing body of the municipality or the governing body of the county which may restrict the membership on the board to those professionally qualified persons as it may desire. The governing authority or authorities creating the board may remove any member of the board which it has appointed.

(C) The appointing authorities shall determine the amount of compensation, if any, to be paid to the members of a board of architectural review. None of the members may hold any other public office or position in the municipality or county.

(D) The board shall elect one of its members chairman, who shall serve for one year or until he is re-elected or his successor is elected and qualified. The board shall appoint a secretary who may be an officer of the governing authority or of the board of architectural review. The board shall adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to this chapter. Meetings of the board must be held at the call of the chairman and at such other times as the board may determine. The chairman or, in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which immediately must be filed in the office of the board and must be a public record.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-880. Powers of board of architectural review.

The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. Decisions of the zoning administrator or other appropriate administrative official in matters under the purview of the board of architectural review may be appealed to the board where there is an alleged error in any order, requirement, determination, or decision.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-890. Appeal to board of architectural review.

(A) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of architectural review notice of appeal specifying the grounds of it. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken. Upon a motion by a party or the board's own motion, the board may remand a matter to an administrative official if the board determines the record is insufficient for review. A party's motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

(B) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application, upon notice to the officer from whom the appeal is taken, and on due cause shown.

(C) The board must fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice of the hearing, as well as due notice to the parties in interest, and decide the appeal or other matter within a reasonable time. At the hearing, any party may appear in person, by agent, or by attorney.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 7.

SECTION 6-29-900. Appeal from board of architectural review to circuit court; pre-litigation mediation; filing requirements.

(A) A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.

(B) A property owner whose land is the subject of a decision of the board of architectural review may appeal either:

(1) as provided in subsection (A); or

(2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-915.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

(C) Any filing of an appeal from a particular board of architectural review decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 8.

SECTION 6-29-910. Contempt; penalty.

In case of contempt by a party, witness, or other person before the board of architectural review, the board may certify the fact to the circuit court of the county in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-915. Pre-litigation mediation; notice; settlement approval; effect on real property; unsuccessful mediation.

(A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of architectural review.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

(1) the local legislative governing body in public session; and

(2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth

plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

(1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or

(2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

(1) in the same manner as provided by law for appeals from other judgments of the circuit court; or

(2) by filing an appeal pursuant to subsection (F).

HISTORY: 2003 Act No. 39, Section 9.

SECTION 6-29-920. Notice of appeal; transcript; supersedeas.

(A) Upon filing of an appeal with a petition as provided in Section 6-29-900(A) or Section 6-29-915(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of architectural review, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 10.

SECTION 6-29-930. Determination of appeal; costs; trial by jury.

(A) At the next term of the circuit court or in chambers upon ten days' notice to the parties, the resident presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter must be remanded to the board of architectural review for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board must be charged with the costs which must be paid by the governing authority which established the board of architectural review.

(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of architectural review, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 11.

SECTION 6-29-940. Appeal to Supreme Court.

A party in interest who is aggrieved by the judgment rendered by the circuit court upon the appeal may appeal in the manner provided by the South Carolina Appellate Court Rules.

HISTORY: 1994 Act No. 355, Section 1; 1999 Act No. 55, Section 11.

SECTION 6-29-950. Enforcement of zoning ordinances; remedies for violations.

(A) The governing authorities of municipalities or counties may provide for the enforcement of any ordinance adopted pursuant to the provisions of this chapter by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both. It is unlawful to construct, reconstruct, alter, demolish, change the use of or occupy any land, building, or other structure without first obtaining the appropriate permit or permit approval. No permit may be issued or approved unless the requirements of this chapter or any ordinance adopted pursuant to it are complied with. It is unlawful for other officials to issue any permit for the use of any land, building, or structure, or the construction, conversion, demolition, enlargement, movement, or structural alteration of a building or structure without the approval of the zoning administrator. A violation of any ordinance adopted pursuant to the provisions of this chapter is a misdemeanor. In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use continues is considered a separate offense.

(B) In case a building, structure, or land is or is proposed to be used in violation of an ordinance adopted pursuant to this chapter, the zoning administrator or other designated administrative officer may in addition to other remedies issue and serve upon a person pursuing the activity or activities a stop order requiring that entity stop all activities in violation of the zoning ordinance.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-960. Conflict with other laws.

When the regulations made under authority of this chapter require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under another statute, or local ordinance or regulation, the regulations made under authority of this chapter govern. When the provisions of another statute require more restrictive standards than are required by the regulations made under authority of this chapter, the

provisions of that statute govern.

HISTORY: 1994 Act No. 355, Section 1.

ARTICLE 7
Local Planning — Land Development Regulation

SECTION 6-29-1110. Definitions.

As used in this chapter:

(1) "Affordable housing" means in the case of dwelling units for sale, housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than twenty-eight percent of the annual household income for a household earning no more than eighty percent of the area median income, by household size, for the metropolitan statistical area as published from time to time by the U.S. Department of Housing and Community Development (HUD) and, in the case of dwelling units for rent, housing for which the rent and utilities constitute no more than thirty percent of the annual household income for a household earning no more than eighty percent of the area median income, by household size for the metropolitan statistical area as published from time to time by HUD.

(2) "Land development" means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

(3) "Market-based incentives" mean incentives that encourage private developers to meet the governing authority's goals as developed in this chapter. Incentives may include, but are not limited to:

(a) density bonuses, allowing developers to build at a density higher than residential zones typically permit, and greater density bonuses, allowing developers to build at a density higher than residential affordable units in development, or allowing developers to purchase density by paying into a local housing trust fund;

(b) relaxed zoning regulations including, but not limited to, minimum lot area requirements, limitations of multifamily dwellings, minimum setbacks, yard requirements, variances, reduced parking requirements, and modified street standards;

(c) reduced or waived fees including those fees levied on new development projects where affordable housing is addressed, reimburse permit fees to builder upon certification that dwelling unit is affordable and waive up to one hundred percent of sewer/water tap-in fees for affordable housing units;

(d) fast-track permitting including, but not limited to, streamlining the permitting process for new development projects and expediting affordable housing developments to help reduce cost and time delays;

(e) design flexibility allowing for greater design flexibility, creating preapproved design standards to allow for quick and easy approval, and promoting infill development, mixed use and accessory dwellings.

(4) "Subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, lease, or building development, and includes all division of land involving a new street or change in existing streets, and includes re-subdivision which would involve the further division or relocation of lot lines

of any lot or lots within a subdivision previously made and approved or recorded according to law; or, the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, and includes combinations of lots of record; however, the following exceptions are included within this definition only for the purpose of requiring that the local planning agency be informed and have a record of the subdivisions:

(a) the combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of the governing authority;

(b) the division of land into parcels of five acres or more where no new street is involved and plats of these exceptions must be received as information by the planning agency which shall indicate that fact on the plats; and

(c) the combination or recombination of entire lots of record where no new street or change in existing streets is involved.

(5) "Traditional neighborhood design" means development designs intended to enhance the appearance and functionality of the new development so that it functions like a traditional neighborhood or town. These designs make possible reasonably high residential densities, a mixture of residential and commercial land uses, a range of single and multifamily housing types, and street connectivity both within the new development and to surrounding roadways, pedestrian, and bicycle features.

(6) "Nonessential housing regulatory requirements" mean those development standards and procedures that are determined by the local governing body to be not essential within a specific priority investment zone to protect the public health, safety, or welfare and that may otherwise make a proposed housing development economically infeasible. Nonessential housing regulatory requirements may include, but are not limited to:

(a) standards or requirements for minimum lot size, building size, building setbacks, spacing between buildings, impervious surfaces, open space, landscaping, buffering, reforestation, road width, pavements, parking, sidewalks, paved paths, culverts and storm water drainage, and sizing of water and sewer lines that are excessive; and

(b) application and review procedures that require or result in extensive submittals and lengthy review periods.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 4.

SECTION 6-29-1120. Legislative intent; purposes.

The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties, or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;

(3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

(4) to assure the provision of needed public open spaces and building sites in new

land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes; and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-1130. Regulations.

(A) When at least the community facilities element, the housing element, and the priority investment element of the comprehensive plan as authorized by this chapter have been adopted by the local planning commission and the local governing body or bodies, the local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may provide for the harmonious development of the municipality and the county; for coordination of streets within subdivision and other types of land developments with other existing or planned streets or official map streets; for the size of blocks and lots; for the dedication or reservation of land for streets, school sites, and recreation areas and of easements for utilities and other public services and facilities; and for the distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, appearance, prosperity, or the general welfare. In particular, the regulations shall prescribe that no land development plan, including subdivision plats, will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from other menaces to health, safety, or public welfare.

(B) These regulations may include requirements as to the extent to which and the manner in which streets must be graded, surfaced, and improved, and water, sewers, septic tanks, and other utility mains, piping, connections, or other facilities must be installed as a condition precedent to the approval of the plan. The governing authority of the municipality and the governing authority of the county are given the power to adopt and to amend the land development regulations after a public hearing on it, giving at least thirty days' notice of the time and place by publication in a newspaper of general circulation in the municipality or county.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 5.

SECTION 6-29-1140. Development plan to comply with regulations; submission of unapproved plan for recording is a misdemeanor.

After the local governing authority has adopted land development regulations, no subdivision plat or other land development plan within the jurisdiction of the regulations may be filed or recorded in the office of the county where deeds are required to be recorded, and no building permit may be issued until the plat or plan bears the stamp of approval and is properly signed by the designated authority. The submission for filing or the recording of a subdivision plat or other land development plan without proper approval as required by this chapter is declared a misdemeanor and, upon conviction, is punishable as provided by law.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-1145. Determining existence of restrictive covenant; effect.

(A) In an application for a permit, the local planning agency must inquire in the application or by written instructions to an applicant whether the tract or parcel of land is restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the permitted activity.

(B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:

(1) in the application for the permit;

(2) from materials or information submitted by the person or persons requesting the permit; or

(3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.

(C) As used in this section:

(1) "actual notice" is not constructive notice of documents filed in local offices concerning the property, and does not require the local planning agency to conduct searches in any records offices for filed restrictive covenants;

(2) "permit" does not mean an authorization to build or place a structure on a tract or parcel of land; and

(3) "restrictive covenant" does not mean a restriction concerning a type of structure that may be built or placed on a tract or parcel of land.

HISTORY: 2007 Act No. 45, Section 3, eff June 4, 2007, applicable to applications for permits filed on and after July 1, 2007; 2007 Act No. 113, Section 2, eff June 27, 2007.

SECTION 6-29-1150. Submission of plan or plat to planning commission; record; appeal.

(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans or subdivision plats with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty-day time limit may be extended by mutual agreement.

(B) A record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. In addition, the developer must be notified in writing of the actions taken.

(C) Staff action, if authorized, to approve or disapprove a land development plan may be appealed to the planning commission by any party in interest. The planning commission must act on the appeal within sixty days, and the action of the planning commission is final.

(D)(1) An appeal from the decision of the planning commission must be taken to the circuit court within thirty days after actual notice of the decision.

(2) A property owner whose land is the subject of a decision of the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1155.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is mailed.

(3) Any filing of an appeal from a particular planning commission decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).

(4) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the planning commission, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 12, eff June 2, 2003.

SECTION 6-29-1155. Pre-litigation mediation; notice; settlement approval; effect on real property; unsuccessful mediation.

(A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted, and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the planning commission.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

(1) the local legislative governing body in public session; and

(2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

(1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or

(2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

(1) in the same manner as provided by law for appeals from other judgments of the circuit court; or

(2) by filing an appeal pursuant to subsection (F).

HISTORY: 2003 Act No. 39, Section 13, eff June 2, 2003.

SECTION 6-29-1160. Recording unapproved land development plan or plat; penalty; remedies.

The county official whose duty it is to accept and record real estate deeds and plats may not accept, file, or record a land development plan or subdivision plat involving a land area subject to land development regulations adopted pursuant to this chapter unless the development plan or subdivision plat has been properly approved. If a public official violates the provisions of this section, he is, in each instance, subject to the penalty provided in this article and the affected governing body, private individual, or corporation has rights and remedies as to enforcement or collection as are provided, and may enjoin any violations of them.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-1170. Approval of plan or plat not acceptance of dedication of land.

The approval of the land development plan or subdivision plat may not be deemed to automatically constitute or effect an acceptance by the municipality or the county or the public of the dedication of any street, easement, or other ground shown upon the plat. Public acceptance of the lands must be by action of the governing body customary to these transactions.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-1180. Surety bond for completion of site improvements.

In circumstances where the land development regulations adopted pursuant to this chapter require the installation and approval of site improvements prior to approval of the land development plan or subdivision plat for recording in the office of the county official whose duty it is to accept and record the instruments, the developer may be permitted to post a surety bond, certified check, or other instrument readily convertible to cash. The surety must be in an amount equal to at least one hundred twenty-five percent of the cost of the improvement. This surety must be in favor of the local government to ensure that, in the event of default by the developer, funds will be used to install the required improvements at the expense of the developer.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-1190. Transfer of title to follow approval and recording of development plan; violation is a misdemeanor.

The owner or agent of the owner of any property being developed within the municipality or county may not transfer title to any lots or parts of the development unless the land development plan or subdivision has been approved by the local planning commission or designated authority and an approved plan or plat recorded in the office of the county charged with the responsibility of recording deeds, plats, and other property records. A transfer of title in violation of this provision is a misdemeanor and, upon conviction, must be punished in the discretion of the court. A description by metes and bounds in the instrument of transfer or other document used in the process of transfer does not exempt the transaction from these penalties. The municipality or county may enjoin the transfer by appropriate action.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-1200. Approval of street names required; violation is a misdemeanor; changing street name.

(A) A local planning commission created under the provisions of this chapter shall, by proper certificate, approve and authorize the name of a street or road laid out within the territory over which the commission has jurisdiction. It is unlawful for a person in laying out a new street or road to name the street or road on a plat, by a marking or in a deed or instrument without first getting the approval of the planning commission. Any person violating this provision is guilty of a misdemeanor and, upon conviction, must be punished in the discretion of the court.

(B) A commission may, after reasonable notice through a newspaper having general circulation in which the commission is created and exists, change the name of a street or road within the boundary of its territorial jurisdiction:

(1) when there is duplication of names or other conditions which tend to confuse the traveling public or the delivery of mail, orders, or messages;

(2) when it is found that a change may simplify marking or giving of directions to persons seeking to locate addresses; or

(3) upon any other good and just reason that may appear to the commission.

(C) On the name being changed, after reasonable opportunity for a public hearing, the planning commission shall issue its certificate designating the change, which must be recorded in the office of the register of deeds or clerk of court, and the name changed and certified is the legal name of the street or road.

HISTORY: 1994 Act No. 355, Section 1; 1997 Act No. 34, Section 1.

SECTION 6-29-1210. Land development plan not required to execute a deed.

Under this chapter, the submission of a land development plan or land use plan is not a prerequisite and must not be required before the execution of a deed transferring undeveloped real property. A local governmental entity may still require the grantee to file a plat at the time the deed is recorded.

HISTORY: 2016 Act No. 144.

ARTICLE 9
Educational Requirements for Local Government Planning or Zoning Officials or Employees

SECTION 6-29-1310. Definitions.

As used in this article:

(1) "Advisory committee" means the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees;

(2) "Appointed official" means a planning commissioner, board of zoning appeals member, or board of architectural review member;

(3) "Clerk" means the clerk of the local governing body;

(4) "Local governing body" means the legislative governing body of a county or municipality;

(5) "Planning or zoning entity" means a planning commission, board of zoning appeals, or board of architectural review;

(6) "Professional employee" means a planning professional, zoning administrator, zoning official, or a deputy or assistant of a planning professional, zoning administrator, or zoning official.

HISTORY: 2003 Act No. 39, Section 14.

SECTION 6-29-1320. Identification of persons covered by act; compliance schedule.

(A) The local governing body must:

(1) by no later than December 31st of each year, identify the appointed officials and professional employees for the jurisdiction and provide a list of those appointed officials and professional employees to the clerk and each planning or zoning entity in the jurisdiction; and

(2) annually inform each planning or zoning entity in the jurisdiction of the requirements of this article.

(B) Appointed officials and professional employees must comply with the provisions of this article according to the following dates and populations based on the population figures of the latest official United States Census:

(1) municipalities and counties with a population of 35,000 and greater: by January 1, 2006; and

(2) municipalities and counties with a population under 35,000: by January 1, 2007.

HISTORY: 2003 Act No. 39, Section 14; 2004 Act No. 287, Section 3.

SECTION 6-29-1330. State Advisory Committee; creation; members; terms; duties; compensation; meetings; fees charged.

(A) There is created the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees.

(B) The advisory committee consists of five members appointed by the Governor. The advisory committee consists of:

(1) a planner recommended by the South Carolina Chapter of the American Planning Association;

(2) a municipal official or employee recommended by the Municipal Association of South Carolina;

(3) a county official or employee recommended by the South Carolina Association of Counties;

(4) a representative recommended by the University of South Carolina's Institute for Public Service and Policy Research; and

(5) a representative recommended by Clemson University's Department of Planning and Landscape Architecture. Recommendations must be submitted to the Governor not later than the thirty-first day of December of the year preceding the year in which appointments expire. If the Governor rejects any person recommended for appointment, the group or association who recommended the person must submit additional names to the Governor for consideration.

(C) The members of the advisory committee must serve a term of four years and until their successors are appointed and qualify; except that for the members first appointed to the advisory committee, the planner must serve a term of three years; the municipal official or employee and the county official or employee must each serve a term of two years; and the university representatives must each serve a term of one year. A vacancy on the advisory committee must be filled in the manner of the original appointment for the remainder of the unexpired term. The Governor may remove a member of the advisory committee in accordance with Section 1-3-240(B).

(D) The advisory committee's duties are to:

(1) compile and distribute a list of approved orientation and continuing education programs that satisfy the educational requirements in Section 6-29-1340;

(2) determine categories of persons with advanced degrees, training, or experience, that are eligible for exemption from the educational requirements in Section 6-29-1340; and

(3) make an annual report to the President Pro Tempore of the Senate and Speaker of the House of Representatives, no later than April fifteenth of each year, providing a detailed account of the advisory committee's:

(a) activities;

(b) expenses;

(c) fees collected; and

(d) determinations concerning approved education programs and categories of exemption.

(E) A list of approved education programs and categories of exemption by the advisory committee must be available for public distribution through notice in the State Register and posting on the General Assembly's Internet website. This list must be updated by the advisory committee at least annually.

(F) The members of the advisory committee must serve without compensation and must meet at a set location to which members must travel no more frequently than quarterly, at the call of the chairman selected by majority vote of at least a quorum of the members. Nothing in this subsection prohibits the chairman from using discretionary authority to conduct additional meetings by telephone conference if necessary. These telephone conference meetings may be conducted more frequently than quarterly. Three members of the advisory committee constitute a quorum. Decisions concerning the approval of education programs and categories of exemption must be made by majority vote with at least a quorum of members participating.

(G) The advisory committee may assess by majority vote of at least a quorum of the members a nominal fee to each entity applying for approval of an orientation or continuing education program; however, any fees charged must be applied to the operating expenses of the advisory committee and must not result in a net profit to the groups or associations that recommend the members of the advisory committee. An accounting of any fees collected by the advisory committee must be made in the advisory committee's annual report to the President Pro Tempore of the Senate and Speaker of the House of Representatives.

HISTORY: 2003 Act No. 39, Section 14; 2008 Act No. 273, Section 2, 2008.

SECTION 6-29-1340. Educational requirements; time-frame for completion; subjects.

(A) Unless expressly exempted as provided in Section 6-29-1350, each appointed official and professional employee must:

(1) no earlier than one hundred and eighty days prior to and no later than three hundred and sixty-five days after the initial date of appointment or employment, attend a minimum of six hours of orientation training in one or more of the subjects listed in subsection (C); and

(2) annually, after the first year of service or employment, but no later than three hundred and sixty-five days after each anniversary of the initial date of appointment or employment, attend no fewer than three hours of continuing education in any of the subjects listed in subsection (C).

(B) An appointed official or professional employee who attended six hours of orientation training for a prior appointment or employment is not required to comply with the orientation requirement for a subsequent appointment or employment after a break in service. However, unless expressly exempted as provided in Section 6-29-1350, upon a subsequent appointment or employment, the appointed official or professional employee must comply with an annual requirement of attending no fewer than three hours of continuing education as provided in this section.

(C) The subjects for the education required by subsection (A) may include, but not be limited to, the following:

(1) land use planning;
(2) zoning;
(3) floodplains;
(4) transportation;
(5) community facilities;
(6) ethics;
(7) public utilities;
(8) wireless telecommunications facilities;
(9) parliamentary procedure;
(10) public hearing procedure;
(11) administrative law;
(12) economic development;
(13) housing;
(14) public buildings;
(15) building construction;
(16) land subdivision; and
(17) powers and duties of the planning commission, board of zoning appeals, or board of architectural review.

(D) In order to meet the educational requirements of subsection (A), an educational program must be approved by the advisory committee.

HISTORY: 2003 Act No. 39, Section 14.

SECTION 6-29-1350. Exemption from educational requirements.

(A) An appointed official or professional employee who has one or more of the following qualifications is exempt from the educational requirements of Section 6-29-1340:

(1) certification by the American Institute of Certified Planners;

(2) a masters or doctorate degree in planning from an accredited college or university;

(3) a masters or doctorate degree or specialized training or experience in a field related to planning as determined by the advisory committee;

(4) a license to practice law in South Carolina.

(B) An appointed official or professional employee who is exempt from the educational requirements of Section 6-29-1340 must file a certification form and documentation of his exemption as required in Section 6-29-1360 by no later than the first anniversary date of his appointment or employment. An exemption is established by a single filing for the tenure of the appointed official or professional employee and does not require the filing of annual certification forms and conforming documentation.

HISTORY: 2003 Act No. 39, Section 14.

SECTION 6-29-1360. Certification.

(A) An appointed official or professional employee must certify that he has satisfied the educational requirements in Section 6-29-1340 by filing a certification form and documentation with the clerk no later than the anniversary date of the appointed official's appointment or professional employee's employment each year.

(B) Each certification form must substantially conform to the following form and all applicable portions of the form must be completed:

EDUCATIONAL REQUIREMENTS

CERTIFICATION FORM

FOR LOCAL GOVERNMENT PLANNING OR ZONING

OFFICIALS OR EMPLOYEES

To report compliance with the educational requirements, please complete and file this form each year with the clerk of the local governing body no later than the anniversary date of your appointment or employment. To report an exemption from the educational requirements, please complete and file this form with the clerk of the local governing body by no later than the first anniversary of your current appointment or employment. Failure to timely file this form may subject an appointed official to removal for cause and an employee to dismissal.

Name of Appointed Official or Employee: _____

Position: _____

Initial Date of Appointment or Employment: _____

Filing Date: _____

I have attended the following orientation or continuing education program(s) within the last three hundred and sixty-five days. (Please note that a program completed more than one hundred and eighty days prior to the date of your initial appointment or employment may not be used to satisfy this requirement.):

Program Name Sponsor Location Date Held Hours of Instruction

Also attached with this form is documentation that I attended the program(s).

OR

I am exempt from the orientation and continuing education requirements because (Please initial the applicable response on the line provided):

____ I am certified by the American Institute of Certified Planners.

____ I hold a masters or doctorate degree in planning from an accredited college or university.

____ I hold a masters or doctorate degree or have specialized training or experience in a field related to planning as determined by the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees. (Please describe your advanced degree or specialty on the line provided.)

_____

____ I am licensed to practice law in South Carolina.

Also attached with this form is documentation to confirm my exemption.

I certify that I have satisfied or am exempt from the educational requirements for local planning or zoning officials or employees.

Signature: _____

(C) Each appointed official and professional employee is responsible for obtaining written documentation that either:

(1) is signed by a representative of the sponsor of any approved orientation or continuing education program for which credit is claimed and acknowledges that the filer attended the program for which credit is claimed; or

(2) establishes the filer's exemption.

The documentation must be filed with the clerk as required by this section.

HISTORY: 2003 Act No. 39, Section 14.

SECTION 6-29-1370. Sponsorship and funding of programs; compliance and exemption; certification as public records.

(A) The local governing body is responsible for:

(1) sponsoring and providing approved education programs; or

(2) funding approved education programs provided by a sponsor other than the local governing body for the appointed officials and professional employees in the jurisdiction.

(B) The clerk must keep in the official public records originals of:

(1) all filed forms and documentation that certify compliance with educational requirements for three years after the calendar year in which each form is filed; and

(2) all filed forms and documentation that certify an exemption for the tenure of the appointed official or professional employee.

HISTORY: 2003 Act No. 39, Section 14.

SECTION 6-29-1380. Failure to complete training requirements; false documentation.

(A) An appointed official is subject to removal from office for cause as provided in Section 6-29-350, 6-29-780, or 6-29-870 if he:

(1) fails to complete the requisite number of hours of orientation training and continuing education within the time allotted under Section 6-29-1340; or

(2) fails to file the certification form and documentation required by Section 6-29-1360.

(B) A professional employee is subject to suspension or dismissal from employment relating to planning or zoning by the local governing body or planning or zoning entity if he:

(1) fails to complete the requisite number of hours of orientation training and continuing education within the time allotted under Section 6-29-1340; or

(2) fails to file the certification form and documentation required by Section 6-29-1360.

(C) A local governing body must not appoint a person who has falsified the certification form or documentation required by Section 6-29-1360 to serve in the capacity of an appointed official.

(D) A local governing body or planning or zoning entity must not employ a person who has falsified the certification form or documentation required by Section 6-29-1360 to serve in the capacity of a professional employee.

HISTORY: 2003 Act No. 39, Section 14.

ARTICLE 11
Vested Rights

SECTION 6-29-1510. Citation of article.

This article may be cited as the "Vested Rights Act".

HISTORY: 2004 Act No. 287, Section 2.

SECTION 6-29-1520. Definitions.

As used in this article:

(1) "Approved" or "approval" means a final action by the local governing body or an exhaustion of all administrative remedies that results in the authorization of a site specific development plan or a phased development plan.

(2) "Building permit" means a written warrant or license issued by a local building official that authorizes the construction or renovation of a building or structure at a specified location.

(3) "Conditionally approved" or "conditional approval" means an interim action taken by a local governing body that provides authorization for a site specific development plan or a phased development plan but is subject to approval.

(4) "Landowner" means an owner of a legal or equitable interest in real property including the heirs, devisees, successors, assigns, and personal representatives of the owner. "Landowner" may include a person holding a valid option to purchase real property pursuant to a contract with the owner to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan pursuant to this article.

(5) "Local governing body" means: (a) the governing body of a county or municipality, or (b) a county or municipal body authorized by statute or by the governing body of the county or municipality to make land-use decisions.

(6) "Person" means an individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any legal entity as defined by South Carolina laws.

(7) "Phased development plan" means a development plan submitted to a local governing body by a landowner that shows the types and density or intensity of uses for a specific property or properties to be developed in phases, but which do not satisfy the requirements for a site specific development plan.

(8) "Real property" or "property" means all real property that is subject to the land use and development ordinances or regulations of a local governing body, and includes the earth, water, and air, above, below, or on the surface, and includes improvements or structures customarily regarded as a part of real property.

(9) "Site specific development plan" means a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties. The plan may be in the form of, but is not limited to, the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; conditional use or special use permit plan; conditional or special use district zoning plan; or other land-use approval designations as are used by a county or municipality.

(10) "Vested right" means the right to undertake and complete the development of property under the terms and conditions of a site specific development plan or a phased development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter.

HISTORY: 2004 Act No. 287, Section 2.

SECTION 6-29-1530. Two-year vested right established on approval of site specific development plan; conforming ordinances and regulations; renewal.

(A)(1) A vested right is established for two years upon the approval of a site specific development plan.

(2) On or before July 1, 2005, in the local land development ordinances or regulations adopted pursuant to this chapter, a local governing body must provide for:

(a) the establishment of a two-year vested right in an approved site specific development plan; and

(b) a process by which the landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval.

(B) A local governing body may provide in its local land development ordinances or regulations adopted pursuant to this chapter for the establishment of a two-year vested right in a conditionally approved site specific development plan.

(C) A local governing body may provide in its local land development ordinances or regulations adopted pursuant to this chapter for the establishment of a vested right in an approved or conditionally approved phased development plan not to exceed five years.

HISTORY: 2004 Act No. 287, Section 2.

SECTION 6-29-1540. Conditions and limitations.

A vested right established by this article and in accordance with the standards and procedures in the land development ordinances or regulations adopted pursuant to this chapter is subject to the following conditions and limitations:

(1) the form and contents of a site specific development plan must be prescribed in the land development ordinances or regulations;

(2) the factors that constitute a site specific development plan sufficient to trigger a vested right must be included in the land development ordinances or regulations;

(3) if a local governing body establishes a vested right for a phased development plan, a site specific development plan may be required for approval with respect to each phase in accordance

with regulations in effect at the time of vesting;

(4) a vested right established under a conditionally approved site specific development plan or conditionally approved phased development plan may be terminated by the local governing body upon its determination, following notice and public hearing, that the landowner has failed to meet the terms of the conditional approval;

(5) the land development ordinances or regulations amended pursuant to this article must designate a vesting point earlier than the issuance of a building permit but not later than the approval by the local governing body of the site specific development plan or phased development plan that authorizes the developer or landowner to proceed with investment in grading, installation of utilities, streets, and other infrastructure, and to undertake other significant expenditures necessary to prepare for application for a building permit;

(6) a site specific development plan or phased development plan for which a variance, regulation, or special exception is necessary does not confer a vested right until the variance, regulation, or special exception is obtained;

(7) a vested right for a site specific development plan expires two years after vesting. The land development ordinances or regulations must authorize a process by which the landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval. The land development ordinances or regulations may authorize the local governing body to:

(a) set a time of vesting for a phased development plan not to exceed five years; and

(b) extend the time for a vested site specific development plan to a total of five years upon a determination that there is just cause for extension and that the public interest is not adversely affected. Upon expiration of a vested right, a building permit may be issued for development only in accordance with applicable land development ordinances or regulations;

(8) a vested site specific development plan or vested phased development plan may be amended if approved by the local governing body pursuant to the provisions of the land development ordinances or regulations;

(9) a validly issued building permit does not expire or is not revoked upon expiration of a vested right, except for public safety reasons or as prescribed by the applicable building code;

(10) a vested right to a site specific development plan or phased development plan is subject to revocation by the local governing body upon its determination, after notice and public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval;

(11) a vested site specific development plan or vested phased development plan is subject to later enacted federal, state, or local laws adopted to protect public health, safety, and welfare including, but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. The issuance of a building permit vests the specific construction project authorized by the building permit to the building, fire, plumbing, electrical, and mechanical codes in force at the time of the issuance of the building permit;

(12) a vested site specific development plan or vested phased development plan is subject to later local governmental overlay zoning that imposes site plan-related requirements but does not affect allowable types, height as it affects density or intensity of uses, or density or intensity of uses;

(13) a change in the zoning district designation or land-use regulations made subsequent to vesting that affect real property does not operate to affect, prevent, or delay development of the real property

under a vested site specific development plan or vested phased development plan without consent of the landowner;

(14) if real property having a vested site specific development plan or vested phased development plan is annexed, the governing body of the municipality to which the real property has been annexed must determine, after notice and public hearing in which the landowner is allowed to present evidence, if the vested right is effective after the annexation;

(15) a local governing body must not require a landowner to waive his vested rights as a condition of approval or conditional approval of a site specific development plan or a phased development plan; and

(16) the land development ordinances or regulations adopted pursuant to this article may provide additional terms or phrases, consistent with the conditions and limitations of this section, that are necessary for the implementation or determination of vested rights.

HISTORY: 2004 Act No. 287, Section 2.

SECTION 6-29-1550. Vested right attaches to real property; applicability of laws relating to public health, safety and welfare.

A vested right pursuant to this section is not a personal right, but attaches to and runs with the applicable real property. The landowner and all successors to the landowner who secure a vested right pursuant to this article may rely upon and exercise the vested right for its duration subject to applicable federal, state, and local laws adopted to protect public health, safety, and welfare including, but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. This article does not preclude judicial determination that a vested right exists pursuant to other statutory provisions. This article does not affect the provisions of a development agreement executed pursuant to the South Carolina Local Government Development Agreement Act in Chapter 31 of Title 6.

HISTORY: 2004 Act No. 287, Section 2.

SECTION 6-29-1560. Establishing vested right in absence of local ordinances providing therefor; significant affirmative government acts.

(A) If a local governing body does not have land development ordinances or regulations or fails to adopt an amendment to its land development ordinances or regulations as required by this section, a landowner has a vested right to proceed in accordance with an approved site specific development plan for a period of two years from the approval. The landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval. For purposes of this section, the landowner's rights are considered vested in the types of land use and density or intensity of uses defined in the development plan and the vesting is not affected by later amendment to a zoning ordinance or land-use or development regulation if the landowner:

(1) obtains, or is the beneficiary of, a significant affirmative government act that remains in effect allowing development of a specific project;

(2) relies in good faith on the significant affirmative government act; and

(3) incurs significant obligations and expenses in diligent pursuit of the specific project in reliance on the significant affirmative government act.

(B) For the purposes of this section, the following are significant affirmative governmental acts allowing development of a specific project:

(1) the local governing body has accepted exactions or issued conditions that specify a use related to a zoning amendment;

(2) the local governing body has approved an application for a rezoning for a specific use;

(3) the local governing body has approved an application for a density or intensity of use;

(4) the local governing body or board of appeals has granted a special exception or use permit with conditions;

(5) the local governing body has approved a variance;

(6) the local governing body or its designated agent has approved a preliminary subdivision plat, site plan, or plan of phased development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or

(7) the local governing body or its designated agent has approved a final subdivision plat, site plan, or plan of phased development for the landowner's property.

HISTORY: 2004 Act No. 287, Section 2.

ARTICLE 13
Federal Defense Facilities Utilization Integrity Protection

SECTION 6-29-1610. Short title.

This article may be cited as the "Federal Defense Facilities Utilization Integrity Protection Act".

HISTORY: 2005 Act No. 1, Section 1.

SECTION 6-29-1620. Legislative purpose.

The General Assembly finds:

(1) As South Carolina continues to grow, there is significant potential for uncoordinated development in areas contiguous to federal military installations that can undermine the integrity and utility of land and airspace currently used for mission readiness and training.

(2) Despite consistent cooperation on the part of local government planners and developers, this potential remains for unplanned development in areas that could undermine federal military utility of lands and airspace in South Carolina.

(3) It is, therefore, desirous and in the best interests of the people of South Carolina to enact processes that will ensure that development in areas near federal military installations is conducted in a coordinated manner that takes into account and provides a voice for federal military interests in planning and zoning decisions by local governments.

HISTORY: 2005 Act No. 1, Section 1.

SECTION 6-29-1625. Definitions.

(A) For purposes of this article, "federal military installations" includes Fort Jackson, Shaw Air Force Base, McEntire Air Force Base, Charleston Air Force Base, Beaufort Marine Corps Air Station, Beaufort Naval Hospital, Parris Island Marine Recruit Depot, and Charleston Naval Weapons Station.

(B) For purposes of this article, a "federal military installation overlay zone" is an "overlay zone" as defined in Section 6-29-720(C)(5) in a geographic area including a federal military installation as defined in this section.

HISTORY: 2005 Act No. 1, Section 1.

SECTION 6-29-1630. Local planning department investigations, recommendations and findings; incorporation into official maps.

(A) In any local government which has established a planning department or other entity, such as a board of zoning appeals, charged with the duty of establishing, reviewing, or enforcing comprehensive land use plans or zoning ordinances, that planning department or other entity, with respect to each proposed land use or zoning decision involving land that is located within a federal military installation overlay zone or, if there is no such overlay zone, within three thousand feet of any federal military installation, or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield, shall:

(1) at least thirty days prior to any hearing conducted pursuant to Section 6-29-530 or 6-29-800, request from the commander of the federal military installation a written recommendation with supporting facts with regard to the matters specified in subsection (C) relating to the use of the property which is the subject of review; and

(2) upon receipt of the written recommendation specified in subsection (A) (1) make the written recommendations a part of the public record, and in addition to any other duties with which the planning department or other entity is charged by the local government, investigate and make recommendations of findings with respect to each of the matters enumerated in subsection (C).

(B) If the base commander does not submit a recommendation pursuant to subsection (A)(1) by the date of the public hearing, there is a presumption that the land use plan or zoning proposal does not have any adverse effect relative to the matters specified in subsection (C).

(C) The matters the planning department or other entity shall address in its investigation, recommendations, and findings must be:

(1) whether the land use plan or zoning proposal will permit a use that is suitable in view of the fact that the property under review is within the federal military installation overlay zone, or, if there is no such overlay zone located within three thousand feet of a federal military installation or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield;

(2) whether the land use plan or zoning proposal will adversely affect the existing use or usability of nearby property within the federal military installation overlay zone, or, if there is no such overlay zone, within three thousand feet of a federal military installation, or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield;

(3) whether the property to be affected by the land use plan or zoning proposal has a reasonable

economic use as currently zoned;

(4) whether the land use plan or zoning proposal results in a use which causes or may cause a safety concern with respect to excessive or burdensome use of existing streets, transportation facilities, utilities, or schools where adjacent or nearby property is used as a federal military installation;

(5) if the local government has an adopted land use plan, whether the zoning proposal is in conformity with the policy and intent of the land use plan given the proximity of a federal military installation; and

(6) whether there are other existing or changing conditions affecting the use of the nearby property such as a federal military installation which give supporting grounds for either approval or disapproval of the proposed land use plan or zoning proposal.

(D) Where practicable, local governments shall incorporate identified boundaries, easements, and restrictions for federal military installations into official maps as part of their responsibilities delineated in Section 6-29-340.

HISTORY: 2005 Act No. 1, Section 1.

SECTION 6-29-1640. Application to former or closing military installations.

Nothing in this article is to be construed to apply to former military installations, or approaches or access related thereto, that are in the process of closing or redeveloping pursuant to base realignment and closure proceedings, including the former naval base facility on the Cooper River in and near the City of North Charleston, nor to the planned uses of, or construction of facilities on or near, that property by the South Carolina State Ports Authority, nor to the construction and uses of transportation routes and facilities necessary or useful thereto.

HISTORY: 2005 Act No. 1, Section 1.

APPENDIX CC

Below are the provisions of the S.C. Local Government Development Agreement Act. These provisions, like any other, are impacted by court decisions and other provisions of the South Carolina Code of Laws. Any question involving the law should be answered in consultation with the county attorney. These are supplied with the intent to give a land use planning official or practitioner a starting point on their search for answers.

SECTION 6-31-10. Short title; legislative findings and intent; authorization for development agreements; provisions are supplemental to those extant.
SECTION 6-31-20. Definitions.
SECTION 6-31-30. Local governments authorized to enter into development agreements; approval of county or municipal governing body required.
SECTION 6-31-40. Developed property must contain certain number of acres of highland; permissible durations of agreements for differing amounts of highland content.
SECTION 6-31-50. Public hearings; notice and publication.
SECTION 6-31-60. What development agreement must provide; what it may provide; major modification requires public notice and hearing.
SECTION 6-31-70. Agreement and development must be consistent with local government comprehensive plan and land development regulations.
SECTION 6-31-80. Law in effect at time of agreement governs development; exceptions.
SECTION 6-31-90. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.
SECTION 6-31-100. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.
SECTION 6-31-110. Validity and duration of agreement entered into prior to incorporation or annexation of affected area; subsequent modification or suspension by municipality.
SECTION 6-31-120. Developer to record agreement within fourteen days; burdens and benefits inure to successors in interest.
SECTION 6-31-130. Agreement to be modified or suspended to comply with later-enacted state or federal laws or regulations.
SECTION 6-31-140. Rights, duties, and privileges of gas and electricity suppliers, and of municipalities with respect to providing same, not affected; no extraterritorial powers.
SECTION 6-31-145. Applicability to local government of constitutional and statutory procedures for approval of debt.
SECTION 6-31-150. Invalidity of all or part of Section 6-31-140 invalidates chapter.
SECTION 6-31-160. Agreement may not contravene or supersede building, housing, electrical, plumbing, or gas code; compliance with such code if subsequently enacted.

TITLE 6, CHAPTER 31
South Carolina Local Government Development Agreement Act

SECTION 6-31-10. Short title; legislative findings and intent; authorization for development agreements; provisions are supplemental to those extant.

(A) This chapter may be cited as the "South Carolina Local Government Development Agreement Act".

(B)(1) The General Assembly finds: The lack of certainty in the approval of development can result in a waste of economic and land resources, can discourage sound capital improvement planning and financing, can cause the cost of housing and development to escalate, and can discourage commitment to comprehensive planning.

(2) Assurance to a developer that upon receipt of its development permits it may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning, reduces the economic costs of development, allows for the orderly planning of public facilities and services, and allows for the equitable allocation of the cost of public services.

(3) Because the development approval process involves the expenditure of considerable sums of money, predictability encourages the maximum efficient utilization of resources at the least economic cost to the public.

(4) Public benefits derived from development agreements may include, but are not limited to, affordable housing, design standards, and on and off-site infrastructure and other improvements. These public benefits may be negotiated in return for the vesting of development rights for a specific period.

(5) Land planning and development involve review and action by multiple governmental agencies. The use of development agreements may facilitate the cooperation and coordination of the requirements and needs of the various governmental agencies having jurisdiction over land development.

(6) Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the development agreement or in any way hinder, restrict, or prevent the development of the project. Development agreements will provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State.

(C) It is the intent of the General Assembly to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

(D) This intent is effected by authorizing the appropriate local governments and agencies to enter into development agreements with developers, subject to the procedures and requirements of this chapter.

(E) This chapter must be regarded as supplemental and additional to the powers conferred upon local governments and other government agencies by other laws and must not be regarded as in derogation of any powers existing on the effective date of this chapter.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-20. Definitions.

As used in this chapter:

(1) "Comprehensive plan" means the master plan adopted pursuant to Sections 6-7-510, et seq., 5-23-490, et seq., or 4-27-600 and the official map adopted pursuant to Section 6-7-1210, et seq.

(2) "Developer" means a person, including a governmental agency or redevelopment authority created pursuant to the provisions of the Military Facilities Redevelopment Law, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(3) "Development" means the planning for or carrying out of a building activity or mining operation, the making of a material change in the use or appearance of any structure or property, or the dividing of land into three or more parcels. "Development", as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(4) "Development permit" includes a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, or any other official action of local government having the effect of permitting the development of property.

(5) "Governing body" means the county council of a county, the city council of a municipality, the governing body of a consolidated political subdivision, or any other chief governing body of a unit of local government, however designated.

(6) "Land development regulations" means ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes a local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of property.

(7) "Laws" means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies and rules adopted by a local government affecting the development of property and includes laws governing permitted uses of the property, governing density, and governing design, improvement, and construction standards and specifications, except as provided in Section 6-31-140 (A).

(8) "Property" means all real property subject to land use regulation by a local government and includes the earth, water, and air, above, below, or on the surface, and includes any improvements or structures customarily regarded as a part of real property.

(9) "Local government" means any county, municipality, special district, or governmental entity of the State, county, municipality, or region established pursuant to law which exercises regulatory authority over, and grants development permits for land development or which provides public facilities.

(10) "Local planning commission" means any planning commission established pursuant to Sections 4-27-510, 5-23-410, or 6-7-320.

(11) "Person" means an individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, state agency, or any legal entity.

(12) "Public facilities" means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

HISTORY: 1993 Act No. 150, Section 1; 1994 Act No. 462, Section 3.

SECTION 6-31-30. Local governments authorized to enter into development agreements; approval of county or municipal governing body required.

A local government may establish procedures and requirements, as provided in this chapter, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a county or municipality by the adoption of an ordinance.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-40. Developed property must contain certain number of acres of highland; permissible durations of agreements for differing amounts of highland content.

A local government may enter into a development agreement with a developer for the development of property as provided in this chapter provided the property contains twenty-five acres or more of highland. Development agreements involving property containing no more than two hundred fifty acres of highland shall be for a term not to exceed five years. Development agreements involving property containing one thousand acres or less of highland but more than two hundred fifty acres of highland shall be for a term not to exceed ten years. Development agreements involving property containing two thousand acres or less of highland but more than one thousand acres of highland shall be for a term not to exceed twenty years. Development agreements involving property containing more than two thousand acres and development agreements with a developer which is a redevelopment authority created pursuant to the provisions of the Military Facilities Redevelopment Law, regardless of the number of acres of property involved, may be for such term as the local government and the developer shall elect.

HISTORY: 1993 Act No. 150, Section 1; 1994 Act No. 462, Section 4.

SECTION 6-31-50. Public hearings; notice and publication.

(A) Before entering into a development agreement, a local government shall conduct at least two public hearings. At the option of the governing body, the public hearing may be held by the local planning commission.

(B)(1) Notice of intent to consider a development agreement must be advertised in a newspaper of general circulation in the county where the local government is located. If more than one hearing is to be held, the day, time, and place at which the second public hearing will be held must be announced at the first public hearing.

(2) The notice must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.

(C) In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to defined completion percentages or other defined performance standards to be met by the developer.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-60. What development agreement must provide; what it may provide; major modification requires public notice and hearing.

(A) A development agreement must include:

(1) a legal description of the property subject to the agreement and the names of its legal and equitable property owners;

(2) the duration of the agreement. However, the parties are not precluded from extending the termination date by mutual agreement or from entering into subsequent development agreements;

(3) the development uses permitted on the property, including population densities and building intensities and height;

(4) a description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;

(5) a description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property as may be required or permitted pursuant to laws in effect at the time of entering into the development agreement;

(6) a description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms, or restrictions;

(7) a finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;

(8) a description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and

(9) a description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(B) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule including commencement dates and interim completion dates at no greater than five year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to Section 6-31-90, but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. If the developer requests a modification in the dates as set forth in the agreement and is able to demonstrate and establish that there is good cause to modify those dates, those dates must be modified by the local government. A major modification of the agreement may occur only after public notice and a public hearing by the local government.

(C) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(D) The development agreement also may cover any other matter not inconsistent with this chapter not prohibited by law.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-70. Agreement and development must be consistent with local government comprehensive plan and land development regulations.

A development agreement and authorized development must be consistent with the local government's comprehensive plan and land development regulations.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-80. Law in effect at time of agreement governs development; exceptions.

(A) Subject to the provisions of Section 6-31-140 and unless otherwise provided by the development agreement, the laws applicable to development of the property subject to a development agreement, are those in force at the time of execution of the agreement.

(B) Subject to the provisions of Section 6-31-140, a local government may apply subsequently adopted laws to a development that is subject to a development agreement only if the local government has held a public hearing and determined:

(1) the laws are not in conflict with the laws governing the development agreement and do not prevent the development set forth in the development agreement;

(2) they are essential to the public health, safety, or welfare and the laws expressly state that they apply to a development that is subject to a development agreement;

(3) the laws are specifically anticipated and provided for in the development agreement;

(4) the local government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the development agreement which changes, if not addressed by the local government, would pose a serious threat to the public health, safety, or welfare; or

(5) the development agreement is based on substantially and materially inaccurate information supplied by the developer.

(C) This section does not abrogate any rights preserved by Section 6-31-140 herein or that may vest pursuant to common law or otherwise in the absence of a development agreement.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-90. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.

(A) Procedures established pursuant to Section 6-31-40 must include a provision for requiring periodic review by the zoning administrator, or, if the local government has no zoning administrator, by an appropriate officer of the local government, at least every twelve months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(B) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(C) If the developer fails to cure the material breach within the time given, then the local

government unilaterally may terminate or modify the development agreement; provided, that the local government has first given the developer the opportunity:

(1) to rebut the finding and determination; or

(2) to consent to amend the development agreement to meet the concerns of the local government with respect to the findings and determinations.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-100. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-110. Validity and duration of agreement entered into prior to incorporation or annexation of affected area; subsequent modification or suspension by municipality.

(A) Except as otherwise provided in Section 6-31-130 and subject to the provisions of Section 6-31-140, if a newly-incorporated municipality or newly-annexed area comprises territory that was formerly unincorporated, any development agreement entered into by a local government before the effective date of the incorporation or annexation remains valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier. The parties to the development agreement and the municipality may agree that the development agreement remains valid for more than eight years; provided, that the longer period may not exceed fifteen years from the effective date of the incorporation or annexation. The parties to the development agreement and the municipality have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the unincorporated territory of the county.

(B) After incorporation or annexation the municipality may modify or suspend the provisions of the development agreement if the municipality determines that the failure of the municipality to do so would place the residents of the territory subject to the development agreement, or the residents of the municipality, or both, in a condition dangerous to their health or safety, or both.

(C) This section applies to any development agreement which meets all of the following:

(1) the application for the development agreement is submitted to the local government operating within the unincorporated territory before the date that the first signature was affixed to the petition for incorporation or annexation or the adoption of an annexation resolution pursuant to Chapter 1 or 3 of Title 5; and

(2) the local government operating within the unincorporated territory enters into the development agreement with the developer before the date of the election on the question of incorporation or annexation, or, in the case of an annexation without an election before the date that the municipality orders the annexation.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-120. Developer to record agreement within fourteen days; burdens and benefits inure to successors in interest.

Within fourteen days after a local government enters into a development agreement, the developer shall record the agreement with the register of mesne conveyance or clerk of court in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-130. Agreement to be modified or suspended to comply with later-enacted state or federal laws or regulations.

In the event state or federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, the provisions of the agreement must be modified or suspended as may be necessary to comply with the state or federal laws or regulations.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-140. Rights, duties, and privileges of gas and electricity suppliers, and of municipalities with respect to providing same, not affected; no extraterritorial powers.

(A) The provisions of this act are not intended nor may they be construed in any way to alter or amend in any way the rights, duties, and privileges of suppliers of electricity or natural gas or of municipalities with reference to the provision of electricity or gas service, including, but not limited to, the generation, transmission, distribution, or provision of electricity at wholesale, retail or in any other capacity.

(B) This chapter is not intended to grant to local governments or agencies any authority over property lying beyond their corporate limits.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-145. Applicability to local government of constitutional and statutory procedures for approval of debt.

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply at the time of the obligation to incur such debt becomes enforceable against the local government with any applicable constitutional and statutory procedures for the approval of this debt.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-150. Invalidity of all or part of Section 6-31-140 invalidates chapter.

If Section 6-31-140 or any provision therein or the application of any provision therein is held invalid, the invalidity applies to this chapter in its entirety, to any and all provisions of the chapter,

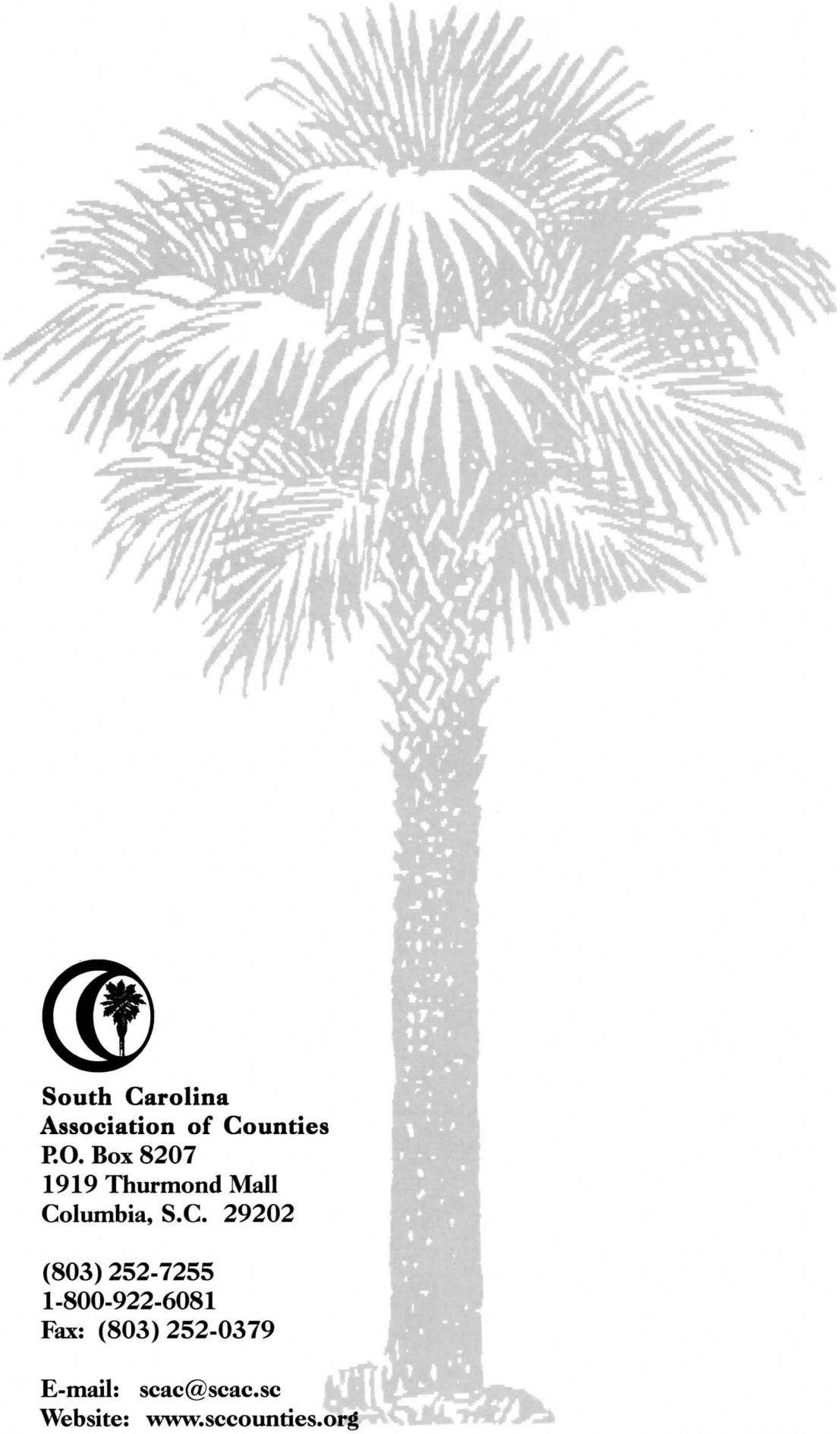
and the application of this chapter or any provision of this chapter, and to this end the provisions of Section 6-31-140 of this chapter are not severable.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-160. Agreement may not contravene or supersede building, housing, electrical, plumbing, or gas code; compliance with such code if subsequently enacted.

Notwithstanding any other provision of law, a development agreement adopted pursuant to this chapter must comply with any building, housing, electrical, plumbing, and gas codes subsequently adopted by the governing body of a municipality or county as authorized by Chapter 9 of Title 6. Such development agreement may not include provisions which supersede or contravene the requirements of any building, housing, electrical, plumbing, and gas codes adopted by the governing body of a municipality or county.

HISTORY: 1993 Act No. 150, Section 1.



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