2024
Comprehensive Planning Guide
for Local Governments

Municipal Association of South Carolina™

Foreword

This guide is intended to be a reference tool for local officials who administer planning and land use regulations. It explains in detail the Comprehensive Planning Enabling Act of 1994 as well as general legal and liability issues involved in planning and zoning.

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Unless the context clearly indicates otherwise, wherever a masculine pronoun is used in this publication, the same is intended, and shall be understood and interpreted to include all individuals of any gender, or those who do not identify with any gender.

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Chapter 1 – Planning

Planning Legislation in South Carolina

The General Assembly first authorized municipal planning and zoning in 1924 and county planning in 1942. A series of amendments followed, eventually resulting in planning laws for counties (Chapter 27 of Title 4), planning laws for municipalities (Chapter 23 of Title 5), and a general planning regime applicable to both counties and municipalities (SC Code §§ 6-7-310 through Section 6-7-1110).

The SC Local Government Comprehensive Planning Enabling Act of 1994 repealed these statutes and required all local comprehensive plans, zoning ordinances, and land development ordinances to conform to the Comprehensive Planning Act by December 31, 1994. The 1994 Act, with subsequent amendments, is codified at SC Code Title 6, Chapter 29.

Local Planning Organizational Structures

Local governments must establish a local planning commission to begin comprehensive planning. Several types of planning commissions may be created by ordinance. SC Code § 6-29-310 through § 6-29-380. See Appendix B for model ordinances.

Municipal Planning Commission

A municipal council can create a municipal planning commission of five to 12 members. The commission's authority is limited to the corporate limits of the municipality.

County Planning Commission

A county council can create a county planning commission of five to 12 members. The commission's authority is limited to the unincorporated area of the county.

Joint Municipal-County Planning Commission

A municipal council (or multiple municipal councils) and a county council can create a joint planning commission by ordinance adopted by each participating municipality and the county council. A planning commission that serves two political subdivisions can have five to 12 members. If a commission serves three or more political subdivisions (e.g., two municipalities and the unincorporated county), 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. Membership of the joint commission must be proportional to the population inside and outside municipal limits. The joint planning commission has authority only within the geographic area of the participating municipalities and the unincorporated area of the county. The ordinance must specify the number of members to be appointed by each participating municipal council and the county council.

Municipal Planning Commission with Extraterritorial Jurisdiction

If approved by the county and municipality, a municipal planning commission can exercise planning authority outside the corporate limits of a municipality in areas adjacent to the municipality. The two councils must adopt an ordinance setting forth (1) the affected geographic area; (2) the number or proportion of commission members to 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.

The ordinance may provide for appointment of members of the planning commission from the area outside the municipal limits by either the municipal council or county council. The commission must have five to 12 members.

County Planning Commission Designated as Municipal Commission

A municipal council may designate by ordinance the county planning commission as the official planning commission of the municipality. The municipal and county councils each must adopt an ordinance setting out their agreement on the specific powers and duties of the commission and 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. The size of a joint planning commission serving two municipalities is limited to five to 12 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, Act 319 of 1992 authorized consolidation of a county, municipalities, and special purpose districts into a new local government. The legislation has not been used. The Comprehensive Planning Act provides for creating a planning commission of five to 12 members to serve a consolidated local government.

Jurisdiction of Municipalities and Counties

A municipality may exercise the powers in the Comprehensive Planning Act in the entire area within its corporate limits. A county has the flexibility to exercise those powers in the total unincorporated area or in specifically designated parts. SC Code § 6-29-330(A).

Local Planning Commission Functions and Duties

A local planning commission has a duty to engage in a continuous planning program for the physical, social, and economic growth, development, and redevelopment of the area within its authority. The ten required elements of the comprehensive plan and any other elements prepared for the particular jurisdiction 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 concern. Each element must be based on careful and comprehensive surveys and studies of existing conditions and probable future development and include recommendations for implementing the plans. SC Code § 6-29-340.

Specific Planning Activities

In carrying out its responsibilities, the local planning commission has authority to do all of the following things. The local governing body or the planning commission may add activities. SC Code § 6-29-340.

1. **Comprehensive plan**. Prepare and periodically revise plans and programs for development and redevelopment of its area.
2. **Implementation**. Prepare and recommend measures for implementing the plan by the appropriate governing bodies, including the following measures.
    a. **Zoning ordinances**, including zoning district maps and necessary revisions.
    b. **Regulations for the subdivision or development of land**. The planning commission is responsible for overseeing the administration of land development regulations adopted by the local governing body. 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, with regulations and procedures for administering the official map ordinance. See Chapter 6.
    d. **A landscaping ordinance** providing required planting, tree preservation, and other aesthetic considerations.
    e. **A capital improvements program** listing projects required to implement adopted plans. The planning commission must submit an annual list of priority projects to the appropriate governmental bodies for consideration when they prepare annual capital budgets.
    f. **Policies and procedures** to implement adopted comprehensive plan elements. These policies and procedures could cover such things as expanding corporate limits, extending public water and sewer systems, dedicating streets and drainage easements, and offering economic development incentive packages.

Zoning Functions

In the past, some local governments allowed their planning commissions to perform zoning functions delegated by law to the board of zoning appeals. The Comprehensive Planning Act makes clear that the planning commission does not have authority to administer the zoning ordinance. It cannot hear appeals, grant variances or approve special exceptions. Appeals, variances and special exceptions all come within the exclusive jurisdiction of the board of zoning appeals. Conditional uses require no review because they must be described in the text of the zoning ordinance.

Planning commission functions related to zoning include the following:

1. **Comprehensive plan**. Prepare, review, recommend, and update the comprehensive plan. SC Code §§ 6-29-510, -530, and -720. The municipality may not adopt a zoning ordinance until it has approved at least the land use component of the comprehensive plan. All zoning ordinances and amendments must conform to the comprehensive plan.
2. **Zoning ordinance**. After the municipality has adopted at least the land use element of the comprehensive plan, the planning commission may prepare and recommend to the governing body a zoning ordinance and accompanying maps. SC Code §§ 6-29-340 and -720. The planning commission will also review and make recommendations concerning amendments to the ordinance, and hold public hearings on amendments when authorized by the governing body. SC Code § 6-29-760. See Chapter 2.

There are no provisions for zoning appeals to or from the planning commission. The commission makes no final decisions regarding zoning.

Land Development Functions

The planning commission administers land development regulations. See Chapter 5. The board of zoning appeals is not involved. In some jurisdictions, the zoning administrator serves as planning commission secretary and provides staff support for administering land development regulations.

Landscaping and Aesthetics

Landscaping regulations, which can be included in the zoning ordinance, are important to protect the aesthetics of the community. Landscaping regulations can apply to the entire planning jurisdiction or to particular sections, zoning districts, or entrance corridors. Regulations might limit curb cuts, require parallel frontage drives, require landscaping plans for strips of property adjacent to street rights-of-way, and require landscape improvements within off-street parking slots.

In addition, the landscaping ordinance can be used to prevent the cutting of significant trees on private property within a specified distance of the street rights-of-way. SC Code § 6-29-340(B)(2)(d). 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.

Capital Improvements Program

The comprehensive plan requirements include an element that identifies and proposes capital projects and programs requiring public funds. The commission must catalog and rank the projects. Only those proposals that are feasible should be included. SC Code § 6-29-340(B)(2)(e).

The planning commission may appoint an advisory committee with representatives from all the affected agencies to assist in developing the capital improvements program and the annual list of priority projects recommended to the governmental bodies. Limited resources will always be an issue; however, consensus between competing agencies in developing the annual list of projects may reduce competition for the limited available resources. It is also an excellent vehicle for coordinating bond issues proposed by various public entities such as the school board, library board, and other autonomous or semiautonomous groups. This coordination should help eliminate public confusion when several groups propose bond issues at the same time.

Development Impact Fees

The South Carolina Development Impact Fee Act (SC Code § 6-1-910 *et seq*.), enacted in 1999, assigns a significant role to the local planning commission in recommending to the governing body an impact fee ordinance. The Impact Fee Act, broadly stated, allows counties and municipalities to impose by ordinance a requirement for payment of development impact fees by a land developer as a condition of development approval.

The Impact Fee Act defines "development impact fees" as payment for "a proportionate share of the cost of system improvements needed to serve the people utilizing the improvements." SC Code § 6-1-920(8). "System improvements" are defined as "capital improvements to public facilities which are designed to provide service to a service area." SC Code § 6-1-920(21). "Public facilities" are defined to include such things as water, wastewater, solid waste and stormwater services, roads, public safety, street lighting, capital equipment, and parks and recreation. SC Code § 6-1-920(18). The amount of impact fees must be based on actual improvement costs or reasonable estimates of the costs, supported by sound engineering studies and generally accepted accounting principles. SC Code §§ 6-1-930, -940, -980.

The process for adopting an impact fee ordinance begins with a resolution of the council directing the local planning commission to conduct the necessary studies and to recommend an impact fee ordinance developed in accordance with the Impact Fee Act. SC Code § 6-1-950(A). Upon receipt of the resolution, the local planning commission must develop and make recommendations for a capital improvements plan (or its update) and for impact fees by the "service unit" (a defined term). In preparing and making its recommendations, the planning commission is to use the same procedures as those used in developing the comprehensive plan,

unless other procedures are specified in the Impact Fee Act. SC Code § 6-1-950. The Impact Fee Act sets out detailed descriptions of the capital improvements plan (SC Code § 6-1-960), as well as detailed descriptions of the calculation of impact fees based on service units and the calculations for maximum impact fees and the developer's proportionate share. See SC Code §§ 6-1-980 and -990. See *Charleston Trident Home Builders, Inc. v. Town Council of Town of Summerville*, 369 S.C. 498, 632 S.E.2d 864 (2006), for the first appellate court review of a development impact fee ordinance under this Impact Fee Act. The court upheld the ordinance and found "substantial compliance" with the Impact Fee Act's requirements for a capital improvement plan and for the calculation of impact fees.

Planning Commission Membership, Organization, and Operation

The Comprehensive Planning Act has specific requirements for creating a planning commission.

Membership

The various types and sizes of planning commissions are discussed in the Local Planning Organizational Structures section of this handbook. The Comprehensive Planning Act provides the following additional specific provisions. See SC Code § 6-29-350.

1. **Other office**. A planning commission member cannot hold an elected 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**. Compensation of planning commission members, if any, is determined by the local government creating the commission. Usually, members serve without pay. However, they may be reimbursed for authorized expenses incurred in the performance of their duties.
4. **Vacancy**. The local governing body making the original appointment must fill any vacancy for the unexpired term.
5. **Removal**. The governing body may remove for cause any member it appoints.
6. **Appointments**. When making appointments, the local governing body must consider professional expertise, knowledge about the community, 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 the interests and concerns within the jurisdiction.

Officers

The local planning commission must elect one of its members as chairman and one as vice chairman for one-year terms. It must also appoint a secretary. The secretary is usually the planning director if the planning commission has a staff or some other employee of the local

government. The secretary prepares and maintains meeting minutes and other records. SC Code § 6-29-360.

Rules of Procedure

A planning commission must adopt rules of procedure. SC Code § 6-29-360. At a minimum, the rules should cover the following:

1. Election of a chairperson and vice chairperson and duties.
2. Appointment of a secretary and duties.
3. Procedures for calling meetings.
4. Place and time for meetings.
5. Posting notice of meetings to comply with Freedom of Information Act.
6. Setting 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/or consultants.
15. Preparation and presentation of annual budget.
16. Procedure for authorizing members or staff to incur expenses and secure reimbursement.

It is essential for the commission to adopt and follow clear, adequate rules of procedure. Sample rules of procedure are provided in Appendix C.

SC Freedom of Information Act

The SC Freedom of Information Act, or FOIA, (SC 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 matters specified by FOIA, such as receipt of legal advice, employment matters, and contract negotiations. SC Code § 30-4-70. The commission is a public body and therefore must give written public notice of regular meetings at the beginning of each calendar year. An agenda for regularly scheduled or special meetings must be posted at the meeting place and on a public website maintained by the body, if any, at least 24 hours prior to a meeting. Notice of a called, special, or rescheduled meeting must be posted with an agenda at least 24 hours prior to the

meeting. Notice also must be given to individuals, organizations and news media requesting meeting notification. SC Code § 30-4-80.

Records

The local planning commission must keep a public record of its resolutions, findings, and determinations. SC Code § 6-29-360(B). Public records must be made available for inspection and copying as provided in FOIA. SC Code § 30-4-30.

Financing

Usually, the local planning commission will request annual appropriations from the local government creating it. 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 of other states), public or eleemosynary agencies, or private individuals and corporations. The planning commission can spend the funds and carry out cooperative undertakings and contracts it considers necessary and consistent with appropriated funds. SC Code § 6-29-360(B), § 6-29-380.

Educational Requirements for Planning Commission

Amendments in 2003 to the Comprehensive Planning Act added mandatory orientation and continuing educational requirements for local planning commission members, as well as for other appointed officials and professional employees involved with local zoning and planning entities. These requirements are set out in Article 9 of the Comprehensive Planning Act (SC Code §§ 6-29-1310 *et seq*.).

The educational requirements apply to "appointed officials" (defined as planning commissioners, board of zoning appeals members, and board of architectural review members) and "professional employees" (defined as a planning professional, zoning administrator, or zoning official, or a deputy or assistant of a planning professional, zoning administrator, or zoning official). SC Code § 6-29-1310. Exemptions from the educational requirements are allowed for individuals who have (1) a certification by the American Institute of Certified Planners; (2) a master's or doctorate degree in planning from an accredited college or university; (3) a master's or doctorate degree or 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); or (4) a license to practice law in the state. SC Code § 6-29-1350. Exempted individuals are required to file a certification form and documentation of the exemption as required by Section 6-29-1360.

The 2003 amendments created a State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees. The committee consists of five members appointed by the governor. The committee approves the education programs then compiles and distributes a list of approved education programs. SC Code § 6-29-1330.

The educational requirements consist of (1) a minimum of six hours of orientation training, and (2) a minimum of three hours of annual training after the first year of service or employment. Individuals must complete the orientation training between six months prior to or one year after the initial date of appointment or employment. SC Code § 6-29-1340(A). A person who attended six hours of orientation training for a prior appointment or employment is not required to re-take the orientation training for a subsequent appointment or employment after a break in service but is required to comply with the annual requirement. SC Code § 6-29-1340(B). The training program must be approved by the Advisory Committee.

The training program may include such subjects as land use planning, zoning, floodplains, transportation, community facilities, ethics, public utilities, wireless telecommunication facilities, parliamentary procedure, public hearing procedure, administrative law, economic development, housing, public buildings, building construction, land subdivision, and powers and duties of the planning commission, board of zoning appeals, or board of architectural review. SC Code § 6-29-1340(C).

By December 31 of each year, the local governing body must provide its clerk with a list of appointed officials and professional employees involved with a planning or zoning entity. The local governing body also must annually inform each planning or zoning entity in its jurisdiction of the requirements of Article 9. SC Code § 6-29-1320. The local governing body is responsible for providing approved education programs or funding approved education courses provided by others. SC Code § 6-29-1370.

Annual certification of compliance with the educational requirements must be filed with the clerk of the local governing body on a form prescribed by SC Code § 6-29-1360. Filing the certification is the responsibility of the appointed official or professional employee. The yearly filing is due no later than the anniversary date of appointment or employment. The form is a public record.

Failure to complete the requisite education requirements or to file the certification form and documentation may result in removal of an appointed official from office for cause. Failure of a professional employee to complete the requirements or file the certification may result in suspension or removal from employment relating to planning or zoning. Falsification of the certification or documentation bars subsequent appointment as an appointed official or employment as a professional employee. SC Code § 6-29-1380.

The Comprehensive Planning Process

This section deals with the work of the local planning commission as it prepares and periodically revises the comprehensive plan. The Comprehensive Planning Act retained the comprehensive plan as the essential first step in the planning process, but expanded the scope and substance of the comprehensive plan.

Planning Process

The planning commission must establish and maintain a planning process that will result in the systematic preparation and continual evaluation and updating of the elements of the comprehensive plan. SC Code § 6-29-510(A). Surveys and studies on which the planning elements are based must consider potential conflicts with other jurisdictions and the effect of any regional plans or issues. SC Code § 6-29-510(B).

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.
2. **A statement of needs and goals**. A vision statement establishes where the community wants to go. It should include short- and long-range goals for achieving the vision. It is important to involve the community in identifying needs and goals to create community support for the plan and minimize future objections to specific programs. When preparing or updating plan elements, the planning commission may appoint advisory committees with membership from the planning commission, neighborhoods or other groups, and individuals in the community. If the local government maintains a list of groups that have registered an interest in being informed of proceedings, it must mail meeting notices relating to the planning process to them.
3. **Implementation strategies with time frames**. Implementation strategies for each element should include specific objectives and strategies for accomplishing the objectives. The strategies should specify time frames for actions and persons or organizations who will take the actions.

Comprehensive Plan Elements

There should be broad-based resident participation for developing comprehensive plan elements. An element must address all relevant factors listed in the Comprehensive Planning Act; however, the Act does not dictate how extensively they must be covered. The extent should be based on community needs. The plan must include at least the following elements. SC Code § 6-29-510(D).

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

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 land, 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. If there is a separate community board addressing any aspects of this element, that board is responsible for preparing this element. The planning commission may incorporate the element into the local comprehensive plan by reference.
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 may 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 growth, development or redevelopment of the community. The commission should consider the following factors:
   - **a.** water supply, treatment and distribution;
   - **b.** sewage system and wastewater treatment;
   - **c.** solid waste collection and disposal;
   - **d.** fire protection;
   - **e.** emergency medical services;
   - **f.** any necessary expansion of general government facilities (e.g., administrative offices, court buildings, or other facilities);
   - **g.** educational facilities; and
   - **h.** libraries and other cultural facilities.

   Preparing of the community facilities element may require involving special purpose district boards and other governmental and quasi-governmental entities such as the library board, historic preservation society and public utilities board.

Note: *The local government must adopt at least the community facilities, housing and priority investment elements before adopting subdivision or other land development regulations. SC Code § 6-29-1130(A)*.

6. **Housing element**. This element includes an analysis of existing housing by location, type, age, condition, owner and renter occupancy, affordability and projections of housing needs to accommodate existing and future population as identified in the population and economic elements. The housing element requires an analysis of local regulations to determine if there are regulations that may hinder development of affordable housing. It includes an analysis of market-based incentives that may be made available to encourage the development of affordable housing. Incentives may include density bonuses, design flexibility and a streamlined permitting process.

   Act 57 of 2023 added a requirement that the planning commission must solicit input for the housing element from homebuilders, developers, contractors, and housing finance experts. The same act authorized local governments to use state and local accommodations taxes for development of workforce housing, which must include programs to promote home ownership. See SC Code §§ 6-1-530(A)(7) and 6-4-10(4)(b)(ix). As of 2023, SC Code § 6-4-12 requires local governments that intend to use accommodations taxes for development of workforce housing to prepare a housing impact analysis. The required elements of the housing impact analysis appear in SC Code § 6-4-12(B) – (D). A local government that uses accommodations taxes for development of workforce housing should carefully consider the relationship between the housing element of the comprehensive plan and the housing impact analysis required by SC Code § 6-4-12.
   Note: *The local government must adopt the community facilities, housing, and priority investment elements before adopting subdivision or other land development regulations. SC Code § 6-29-1130(A)*.

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. This element is influenced by all previously described plan elements. The findings, projections, and conclusions from each of the previous six elements will influence the amount of land needed for various uses.

   Note: *The local government must adopt the land use element before adopting a zoning ordinance. SC Code § 6-29-720 (A).*

   Note: *A 2007 amendment to the Comprehensive Planning Act entitled the "South Carolina Priority Investment Act" added two new elements – transportation and priority investment. SC Code §§ 6-29-510(D)(8) – (9); 6-29-720(C)(7); 6-29-1110(1), (3), (5), and (6); 6-29-1130(A).*

8. **Transportation element**. This element was originally included in the community facilities element. The transportation element considers transportation facilities including major road improvements, new road construction, and pedestrian and bicycle projects. This element must be developed in coordination with the land use element to ensure transportation efficiency for existing and planned development.
9. **Priority investment element**. This element requires an analysis of projected federal, state, and local funds available for public infrastructure and facilities during the next 10 years and recommendations of projects for those funds. These recommendations must be coordinated with adjacent and relevant jurisdictions and agencies (counties, other municipalities, school districts, public and private utilities, transportation agencies and any other public group that may be affected by the projects). Coordination means at least written notification by the local planning commission or its staff to those groups of proposed projects and opportunities to provide comment.

   Note: *The local government must adopt the community facilities, housing, and priority investment elements before adopting subdivision or other land development regulations. SC Code § 6-29-1130(A)*.

   Note: *Act 163 of 2020 amended the Comprehensive Planning Act to add a resilience analysis as a 10th element, see SC Code 6-29-510(D)(10)*.
10. **Resiliency element**. This element 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 must be coordinated with adjacent and relevant jurisdictions and agencies.

Comprehensive Plan

The required 10 planning elements, plus any other element determined to be needed in the local community, together comprise the comprehensive plan. All planning elements represent the planning commission's recommendations to the local governing body regarding wise and efficient use of public funds, future growth, development, redevelopment and the fiscal impact of the planning elements on property owners. SC Code § 6-29-510(E).

The planning commission must review and consider, and may recommend by reference, plans prepared by other agencies that in the opinion of the planning commission meet the requirements of the Comprehensive Planning Act. SC Code § 6-29-520(C).

Periodic Revision Required

The planning commission must review the comprehensive plan or particular elements of the comprehensive plan as often 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 an unanticipated loss of jobs could also trigger a need to re-evaluate 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 to conform to the most current comprehensive plan. SC Code § 6-29-510(E) requires the following plan updates:

1. The planning commission must re-evaluate the comprehensive plan elements at least every five years. There is no requirement to rezone the entire city or county at one time. The land use element could be reviewed and updated in stages or by neighborhoods. See *Momeier v. John McAlister, Inc*., 231 S.C. 526, 99 S.E.2d 177 (1957).
2. The comprehensive plan, including all the elements of the plan, must be updated at least every 10 years. The planning commission must prepare and recommend a new plan and the governing body must adopt a new comprehensive plan every 10 years.

Procedure for Adopting Plan or Amendments

When the plan or any element, amendment, extension, or addition is completed, the following steps must be taken in accord with SC Code § 6-29-520 and § 6-29-530.

1. **Notice**. If the local government maintains a list of groups that have registered an interest in being informed of proceedings related to planning, notice of all meetings related to adopting or amending the comprehensive plan must be mailed to these groups.
2. **Resolution**. By affirmative vote of at least a majority 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.
3. **Minutes**. The resolution must be recorded in the planning commission's official minutes.
4. **Recommendation**. A copy of the recommended comprehensive plan or element must be sent to the local governing body being requested to adopt the plan. In addition, a copy must be sent to all other legislative or administrative agencies affected by the plan.
5. **Hearing**. Before adopting the recommended plan, the governing body must hold a public hearing after publishing at least 30 days' notice of the time and place of the hearing in a general circulation newspaper in the community. See Notice Form in Appendix G.
6. **Ordinance**. The governing body must adopt the comprehensive plan or element by ordinance. SC Code § 6-29-530. The governing body cannot approve the plan on final reading of the ordinance until the planning commission has recommended the plan. See *McClanahan v. Richland County Council*, 350 S.C. 433, 567 S.E.2d 240 (2002).

Review of Public Project

After the comprehensive plan or an element relating to proposed development is adopted, a public agency or any entity proposing a public project must submit its proposed development to the planning commission. The planning commission must review and comment on the compatibility of the proposed development with the comprehensive plan.

No new street, structure, utility, square, park or other public way, grounds, open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the geographic area within the jurisdiction of the planning commission until the location, character and extent of such activities have been submitted to the local planning commission. SC Code § 6-29-540.

If the planning commission finds the proposal to conflict with the comprehensive plan, it sends its findings and the particulars of the nonconformity to the entity proposing the facility. The governing or policymaking body of the entity proposing the project must consider the planning commission's findings and decide whether to bring the project into conformity with the comprehensive plan or proceed in conflict with the plan. If the decision is made to proceed in conflict with the plan, the entity must publicly state its intention to proceed and the reasons for the action. A copy of these findings must be sent to the local governing body and the local planning commission. In addition, it must be published as a public notice in a general circulation newspaper in the community at least 30 days before awarding a contract or beginning construction.

Note: *Telephone, sewer utilities, gas utilities, and electric utilities, whether publicly or privately owned, are exempt from this provision if plans have been approved by the local governing body or a state or federal regulatory agency. 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 also exempt. These utilities must submit construction information to the appropriate local planning commission.*

SC Code § 6-29-540 requires that everyone involved in creating the built environment pay attention to the adopted comprehensive planning elements. The process for commission review is a major tool to help ensure investments move the community toward implementing the comprehensive plan.

To minimize potential conflicts, the planning commission should involve individuals and representatives of agencies and groups in the community on advisory committees as the various comprehensive planning elements are being developed.

Chapter 2 - Zoning

Zoning Powers

The zoning ordinance is the primary tool available to the local governing body to help implement the plans for the future growth and development of the community as set forth in the land use element of the comprehensive plan. Before a local government can adopt a zoning ordinance, it must adopt at least the land use element. SC Code § 6-29-720.

Purpose of Zoning

A zoning ordinance guides development in accordance with existing and future needs of the community and to promote public health, safety, morals, convenience, order, appearance, prosperity and general welfare. SC Code § 6-29-710. These purposes are similar to those for all local government police power regulations.

The Comprehensive Planning Act requires the zoning ordinance must give reasonable consideration of the following purposes:

1. to provide for adequate light, air and open space;
2. to prevent the overcrowding of land, avoid undue concentration of population and 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;
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.

Legislative Function

The authority to zone 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 power to adopt zoning regulations cannot be delegated to a board or commission.

“Zoning is a legislative act which will not be interfered with by the courts unless there is a clear violation of citizen’s constitutional rights.” *Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991). It is important to distinguish the roles of the planning commission and the governing body, which involve legislative functions, from the roles of the board of zoning

appeals and the board of architectural review, which involve quasi-judicial functions. Courts afford more deference to legislative acts than to quasi-judicial acts. For example, in *Two Parks, LLC v. Kershaw Cnty.*, No. CV 3:18-2576-MGL, 2021 WL 492439 (D.S.C. Feb. 10, 2021), the court rejected a suit in which the plaintiffs claimed that Kershaw County had denied a rezoning request based solely on public opposition to the development. The plaintiff cited two prior cases in which South Carolina courts had said that public opposition, standing alone, is insufficient to deny a land use application. See *Wyndham Enterprises, LLC v. City of N. Augusta*, 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012); *Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 516 S.E.2d 439 (1999). The court distinguished those two cases, noting that both involved quasi-judicial functions by boards of zoning appeals. *Two Parks*, by contrast, involved a legislative act of the governing body. Based on the additional deference given to legislative decisions, the court granted summary judgment to the county.

A court has no power to zone property and will not invalidate a zoning action unless it is arbitrary, unreasonable or unjust. *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965). Moreover, the court should not prohibit the adoption of any particular zoning action; instead, the court's powers should be directed against enforcement of an invalid action rather than against the passage of an ordinance. *Patton v. Richland County Council*, 303 S.C. 47, 398 S.E.2d 497 (1990).

Zoning powers must not be exercised 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).

Rights obtained under zoning regulations follow the land. Usually, the right to use property in a certain way is not lost when the property changes ownership. *Baker v. Town of Sullivan's Island*, 279 S.C. 581, 310 S.E.2d 433 (Ct. App. 1983).

Zoning provisions may not be enacted by use of the initiative and referendum process applicable to municipalities under SC Code § 5-17-10 *et seq*. and counties under SC Code § 4-9-1210 *et seq*. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

An ordinance impacting land use can be enacted in the exercise of the police power outside of the zoning ordinance. "[W]hile the Comprehensive Planning Act governs zoning, it simply does not evince a legislative intent to completely prohibit any other local enactments from touching upon zoning or land use." *Greenville County v. Kenwood Enterprises, Inc*., 353 S.C. 157, 165, 577 S.E.2d 428, 432 (2003).

Zoning Tools

Zoning Ordinance Elements

A zoning ordinance consists of two parts: the text and a map. The text sets forth the zoning districts, the uses permitted in each district, general and specific standards, and procedures for

administration and enforcement. The zoning map sets forth the location and boundaries of the zoning districts.

Zoning regulations must be in accordance with the comprehensive plan. SC Code § 6-29-720(B). The courts will not overturn a "fairly debatable" determination by the governing body that a 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, see *Mikell v. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326 (2009), in which the state supreme court construed a planned development district ordinance as contrary to the county council's legislative intent in adopting the comprehensive land use plan and general zoning regulations.

The regulations must be uniform for each class or kind of building, structure, or use throughout each zoning district. However, the requirements for a use in one zoning district may differ from the requirements for the same use in a different district. SC Code § 6-29-720(B). The term "district" means the zoning district in which a use is located. It does not mean the neighborhood or surrounding areas. *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. use of buildings, structures, and land;
2. 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. density of development, use or occupancy of buildings, structures or land;
4. 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. 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 Comprehensive Planning Act.

Zoning Techniques

The Comprehensive Planning Act specifically authorizes several techniques which were not explicitly allowed in previous legislation. The law does not limit local government to the listed zoning techniques.

The following seven techniques are listed and defined in SC Code § 6-29-720(C):

1. **Cluster development** is a grouping of residential, commercial or industrial uses within a subdivision or development site. It allows a reduction in the otherwise applicable lot size, while preserving substantial open space on the remainder of the parcel. This technique could be useful in developing a site which is subject to flooding or classified as "wetland." Cluster zoning gives flexibility to design a variety of neighborhoods with consideration of aesthetics, economy in construction of streets and utilities, parks, and recreational uses, and a pattern that does not comply with lot area, setback or yard restrictions in traditional zoning regulations. Town houses are often allowed through this technique. Cluster zoning may be allowed either by zoning ordinance provisions for a permit process or by use of a floating zone.
2. **Floating zone** is described in the text of a zoning ordinance, but it is unmapped. A property owner may petition for the zone to be applied to 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 an area where development has not proceeded to 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. A floating zone is established by zoning map amendment for a particular piece of property. Standards for a floating zone must be set either in the zoning ordinance or in the development plan approved when the map amendment ordinance is adopted.
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 compatibility with surrounding development and increases a developer's flexibility. Detailed standards for the various land uses should be set forth in the text of the zoning ordinance. Performance zoning usually applies to commercial, industrial or manufacturing uses; however, some jurisdictions have used performance standards for residential districts. Performance standards can prescribe permitted levels of smoke, dust, odor, noise, glare, radiation, vibration, fire, heat, explosive hazard, toxic effect, etc. The limits should be stated in measurable quantities and qualities.
4. **Planned development district** mixes different types of compatible residential use and commercial uses, or shopping centers, office parks, and other mixed-use developments. A planned development district is established by rezoning prior to development. It is characterized by a unified site design for a mixed-use development. Historically, these districts have been called "planned unit developments." The planned development district technique is discussed further in the next section.
5. **Overlay zone** places a set of requirements or relaxes a set of requirements imposed by the underlying zoning district. An overlay zone is useful when there is a special public interest in an area that 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 to identify an area which is subject to supplemental regulations. This technique is used to further regulate areas needing special consideration (e.g., flood plains, design preservation or conservation areas, and airport height restriction areas). Sign regulation is sometimes accomplished through an overlay designation.

6. **Conditional uses** must meet stated conditions, restrictions, or limitations in addition to the restrictions applicable to all land in the zoning district. This technique is used to give some flexibility in allowing uses compatible with the district but which may have an adverse impact on an adjacent district unless conditions are imposed for protection of the adjacent district. The term "conditional use" has been applied to a variety of techniques in existing ordinances. However, the term as defined in the Comprehensive Planning Act applies to uses specified in the text of the zoning ordinance which may be permitted only when those specified conditions or standards are met. SC Code § 6-29-720(C)(6). If the ordinance conditions or standards are met, the zoning administrator may issue a permit for the use without review by the board of zoning appeals. If review by the board is desired so that additional conditions may be imposed, the use should be listed as a permitted special exception, not a conditional use. Only the board of zoning appeals is authorized to grant special exceptions after a public hearing. District regulations must contain a list of permitted uses and may contain a list of uses permitted by special exception and conditional uses.
7. **Priority investment zone** is defined as a zone in which the governing authority adopts market-based incentives or relaxes or eliminates nonessential housing regulatory requirements, as defined in the Comprehensive Planning Act, to encourage private development. The governing authority also may provide that traditional neighborhood design and affordable housing, as defined in the Comprehensive Planning Act, must be permitted within a priority investment zone.

Planned Development District

The Comprehensive Planning Act provides specific procedures and explanations for using the "planned development district" technique. SC Code § 6-29-740. Traditionally, this technique was called "PUD" or Planned Unit Development. Planned development districts allow flexibility to improve the design, character, and quality of new mixed-use developments and preserve natural and scenic features of open spaces. The SC courts have approved the planned unit development concept. See *Smith v. Georgetown County Council*, 292 S.C. 235, 355 S.E.2d 864 (Ct. App. 1987), and *Petersen v. City of Clemson*, 312 S.C. 162, 439 S.E.2d 317 (Ct. App. 1993).

In 2010, two court rulings, *Sinkler v. County of Charleston*, 387 S.C. 67, 690 S.E.2d 777 (2010), and *Mikell v. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326 (2010), addressed the use of planned development districts. In both cases, the court ruled that planned development districts must comply with the definition and description of such districts in state law. By implication, the same analysis would apply to the alternative zoning and planning techniques

contained in SC Code 6-29-720(C); in order to use an alternative technique, the local government must identify the technique and comply with its statutory conditions. Neither *Sinkler* nor *Mikell* precludes locally developed planning techniques not enumerated in state law, but the local technique must be consistent with the local government's comprehensive plan and zoning ordinance. To avoid confusion, local governments should ensure that the name used to describe a local technique is not the same or similar to the name of a technique specifically mentioned in state law.

The following specific requirements and features of planned development districts appear in the 1994 Act.

1. **Required amendments**. The governing body must amend both the text and the map of the zoning ordinance to establish a planned development district. The text amendment will set forth the specific terms of the planned development district, while the map will show its location.
2. **Map**. The approved map for the planned development district, showing the location of uses within the property and specific development features, will serve as the zoning district map for the property.
3. **Uses**. The approved text of the planned development will provide the specific uses, setbacks, lot sizes, density, bulk and other requirements for the planned development. This text is effectively part of the zoning ordinance that describes the permitted uses and other details of the planned development. These provisions are tailored to the specific development and may vary from the regulations for other zoning districts concerning use, setbacks, lot size, density, bulk and other requirements. This allows flexibility in arranging different uses.
4. **Plan amendment**. The local government may amend the original planned development district by making further zoning ordinance amendments. Subject to the minor modification procedure described below, amendments to the planned development must follow the prescribed procedures for amending the zoning ordinance itself. As such, only the governing body may approve amendments and must receive a recommendation from the planning commission before doing so.
5. **Minor modification**. The zoning ordinance may include a method for making minor modifications to the site plan or development provisions that do not require an amendment to the zoning ordinance. The zoning administrator makes the initial determination of whether a proposed modification is major or minor. The zoning ordinance may authorize the zoning administrator to approve minor changes. The zoning ordinance should contain standards on which the zoning administrator can base decisions. For example, driveway relocation, revision of floor plans, or design modifications for amenities such as parks, gardens, or open spaces could be specifically defined as minor changes. Changes that materially affect the plan's basic concept or the

designated general use of parcels of land within the development should be considered major changes.

Cash or Dedication in Lieu of Parking

The Comprehensive Planning Act allows the local government to waive or reduce parking requirements in exchange for cash payments or dedication of land earmarked for public parking or public transit. SC Code § 6-29-750. Payments or dedications made to reduce parking requirements may not be used for any other purpose. To waive or reduce parking requirements under this provision, the local government 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. The cash contributions or the dedicated land value may not exceed the approximate cost to build the required spaces or provide the public transit service that would have been incurred had the reduction or waiver not been granted.

Zoning Ordinance

Procedure for Adopting Zoning Ordinances

Adopting and amending a zoning ordinance are considered to be legislative acts. SC Code § 6-29-760 provides the procedure to adopt or amend a zoning ordinance. The procedure may vary slightly, depending on ordinance notice provisions and whether council or the planning commission is designated to hold public hearings. It is important to note, however, that the same procedural requirements apply to amendments as to the original adoption of the zoning ordinance.

The following procedural steps are required.

1. **Public hearing**. A public hearing is required before enacting or amending any zoning regulation or zoning map. The governing body may conduct public hearings, or it may by ordinance authorize the planning commission to hold hearings. The law does not prohibit a joint public hearing. If the planning commission holds the hearing, the planning commission's recommendation to the governing body should contain a summary of any significant issues or concerns presented at the hearing. Even if a planning commission does not hold the public hearing, it may allow the owner of land that is the subject of a proposed amendment to present oral or written comments. If the landowner's oral or written comments are to be allowed, the commission must give other interested members of the public 10 days' notice and an opportunity to comment in the same manner. SC Code § 6-29-760(B).
2. **Notice**.
    1. **Newspaper notice**. Notice provisions may be set by ordinance. If not, the Comprehensive Planning Act requires public notice of the time and place of the

hearing in a general circulation newspaper at least 15 days prior to the hearing. Some ordinances require a 30-day notice. See Notice Form in Appendix G.

2. **Posting property**. In rezoning cases, conspicuous notice must be posted on or adjacent to the affected property, with one notice visible from each public street bordering the property.

3. **Mail notice**. If the local government maintains a list of groups requesting notice of zoning proceedings, it must mail meeting notices to those groups. Some ordinances also require notice by mail to adjacent property owners. This is not required by the Comprehensive Planning Act.

3. **Planning commission review**. Any change in original text and any amendment to the ordinance or maps must be submitted first 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. Municipalities may adopt ordinances on two readings with at least six days between each reading. SC Code § 5-7-270. Counties may adopt ordinances on three readings on separate days with at least seven days between second and third readings. SC Code § 4-9-120.

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

If Council Holds Hearing	**If Commission Holds Hearing**
Amendment initiated;	Amendment initiated;
Refer to commission for review;	Refer to commission for hearing and review;
Notices of public hearing;	Notices of public hearing;
Commission reviews;	Commission holds hearing;
Commission makes recommendation;	Commission reviews;
Council holds hearing;	Commission makes recommendation;
Council adopts or rejects ordinance.	Council adopts or rejects ordinance.

The 2004 Vested Rights Act Amendments

The 2004 Vested Rights Act amendments to the Comprehensive Planning Act implemented significant changes to vested rights for planning and zoning. These changes are set out in current Article 11 of the Comprehensive Planning Act (sections 6-29-1510 through -1560).

A “vested right” means a right or entitlement of a property owner to use property in a certain way or to undertake and complete a development of property despite a zoning change that otherwise would prohibit such a use or development. A nonconforming use, preexisting the

adoption or change of a zoning ordinance that would prohibit the use, is an example of a limited vested right; the owner can continue the use until the right is terminated by the zoning ordinance, such as by time amortization or in the event of abandonment or discontinuance.

Under our state's developing case law prior to the Vested Rights Act, a vested right to build on or develop property usually arose only when the property owner, prior to the zoning change, had obtained a validly issued building permit and, in reliance on the permit, had in good faith made a substantial change of position in relation to the land, made substantial expenditures, or incurred substantial obligations (such as financing). See, for example, *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 349 S.E.2d 891 (Ct. App. 1986); *Lake Frances Properties v. City of Charleston*, 349 S.C. 118, 561 S.E.2d 627 (Ct. App. 2002). A mere contemplated use of the land with no permit and no change in position in reliance on the permit was not considered by the courts to create a vested right to a use contrary to the zoning then in effect. See, for example, *F. B. R. Investors v. County of Charleston*, 303 S.C. 524, 402 S.E.2d 189 (Ct. App. 1991); *Daniels v. City of Goose Creek*, 314 S.C. 494, 431 S.E.2d 256 (Ct. App. 1993).

The Vested Rights Act amendments to the Comprehensive Planning Act mooted these case law principles. The amendments require a local government to establish a point in time in the zoning or land development plan approval process, before issuing the building permit, at which the owner's right to use or develop vests. SC Code § 6-29-1540(5). If the government does not establish such an earlier vesting point, the new provisions deem vesting to occur when the landowner obtains, relies in good faith upon, and incurs significant obligations and expenses in pursuit of a "significant affirmative government act." SC Code § 6-29-1560(A). The Comprehensive Planning Act then defines significant affirmative governmental acts to mean, among other things, that the government has approved any rezoning, variance, or special exception needed for the project; has approved a final plat or plan; or has approved a preliminary plat or plan and the owner "diligently pursues" approval of the final plat or plan within a reasonable time period. SC Code § 6-29-1560(B).

The vested right to develop an approved "site specific development plan" is established for two years after the approval with the further right, upon application, to five annual extensions "unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval." SC Code § 6-29-1530(A); § 6-29-1540(7); § 6-29-1560(A). A "site specific development plan" is defined as a submitted development plan describing with reasonable certainty the types and density or intensity of uses for a specific property or properties. SC Code § 6-29-1520(9). Such a 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 used by a county or municipality.

These amendments also allow local governments the option to provide for a vested rights period of up to five years for a "phased development plan" (defined in SC Code § 6-29-1520(7))

that is approved or "conditionally approved" (defined in SC Code § 6-29-1520(3)). SC Code § 6-29-1530(C); § 6-29-1540(7)(a). The new provisions also provide limited circumstances under which a vested right can be revoked or made subject to subsequently enacted public health, safety, and welfare or other laws. See SC Code § 6-29-1540(4), (10), (11) and (12). A vested right attaches to and runs with the applicable real property. SC Code § 6-29-1550.

Statutory Role of Federal Military Facilities in Zoning and Planning

The Federal Defense Facilities Utilization Integrity Protection Act, a 2004 amendment to the Comprehensive Planning Act, gives the federal military a formal voice in local planning and zoning decisions. SC Code §§ 6-29-1610 *et seq*. The 2004 Act provides a specified process by which the commanders of federal military installations are given the opportunity to make written recommendations to the local government on proposed land use or zoning decisions involving land on a federal military installation, within any federal military installation overlay zone, or (if there is no such established overlay zone) within 3,000 feet of a federal military installation or within the 3,000-foot Clear Zone or Accident Potential Zone of a federal military airfield.

The 2004 Act requires the local government (through its planning department, planning commission, or board of zoning appeals) to request a written recommendation from the commander of the federal military installation. This request must be communicated at least 30 days prior to any hearing under Section 6-29-530 (adoption of a comprehensive plan or its elements) or Section 6-29-800 (actions by the board of zoning appeals) involving land on (or near, as described in the Act) a federal military installation. The base commander has the option to submit a written recommendation by the date of the public hearing. If the base commander does not submit a written recommendation, it is presumed the land use plan or zoning proposal does not have an adverse impact on the military facility.

Any written recommendation submitted by the base commander concerning a land use plan or zoning proposal must address certain specified factors, including suitability of the proposed use with the military installation, any adverse effect on existing military use or future usability, reasonable economic use of the affected property, safety concerns, conformity with an adopted land use plan, and other existing or changing conditions affecting the proposed use. Upon receipt by the local government, the base commander's written recommendation becomes part of the public record. Additionally, the local government planning or zoning entity must investigate and make its own recommendations of findings on each of the statutorily specified factors.

Legal Issues in Zoning

Challenge to Ordinance Validity

To challenge a zoning ordinance, the plaintiff must have standing. An owner of adjoining land or his representative has statutory standing to bring a legal action contesting the zoning ordinance or an amendment. SC Code § 6-29-760(C). In addition, other parties may have standing if they

have suffered a concrete, particularized injury-in-fact; there is a causal connection between the zoning action and the injury; and a favorable decision would be likely to redress the injury. *See Carnival Corporation v. Historic Ansonborough Neighborhood Association*, 407 S.C. 67, 753 S.E.2d 846 (2014). Finally, a court also may consider whether standing can be established based on the principles of associational standing or public importance standing. *Id*.

If there has been substantial compliance with the notice requirements of the ordinance or the Comprehensive Planning Act, as applicable, no challenge to the adequacy of notice or validity of a zoning ordinance or amendment may be made 60 days after the decision of the governing body. SC Code § 6-29-760(D). Before invoking the 60-day limitation period, the local government will need to establish that it substantially complied with the statutory notice provisions. Due process principles apply to notice procedure. Notices must fairly and reasonably inform those whose rights may be affected. An amendment passed after defective notice is void. *Brown v. County of Charleston*, 303 S.C. 245, 399 S.E.2d 784 (Ct. App. 1990).

Spot Zoning

Zoning a small parcel as an island surrounded by a district with different zoning may be spot zoning. The Supreme Court stated that invalid "spot zoning" is the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area to benefit the owners of such property 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 applicable test is whether the zoning is part of a comprehensive plan of land use for the good of the common welfare, or is for mere private gain. *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 283, 890 S.E.2d 748, 756 (2023), *quoting Talbot v. Myrtle Beach Bd. of Adjustment*, 222 S.C. 165, 175, 72 S.E.2d 66, 71 (1952).

It is not unlawful spot zoning if there is already a considerable amount of property adjoining the property to be reclassified that falls within the proposed classification. *Historic Charleston Foundation v. City of Charleston*, 400 S.C. 181, 734 S.E.2d 306 (2012) (change in height classification for a single building). The mere fact that business property adjoins residential property does not mean that 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. 219, 407 S.E.2d 639 (1991).

Small areas may be rezoned as long as the action is not arbitrary or unreasonable. To help avoid the problem of spot zoning, many zoning ordinances include a provision prohibiting some types of free-standing zoning districts of less than two acres.

Nonconforming Uses

When a local government first adopts a zoning ordinance, and then amends the zoning ordinance text and map over time, it is almost certain that some zoning districts will come to contain uses that would not be permitted if they did not already exist. Those uses are called "nonconforming uses." The general rule is that "a landowner acquires a vested right to

continue a nonconforming use already in existence at the time his property is zoned in the absence of a showing that the continuance of the use would constitute a detriment to the public health, safety, or welfare" *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 SC 169, 186, 813 S.E.2d 874, 882 (Ct. App. 2018).

Continuation or Termination. Uses that are lawful at the time of adoption or amendment of zoning regulations may continue although they are nonconforming. SC Code § 6-29-730. The zoning ordinance may contain regulations for continuing, restoring, reconstructing, extending or substituting nonconformities.

Existence. The burden of proving a prior nonconforming use is on the party claiming a prior nonconforming use. *Whaley v. Dorchester Cnty. Zoning Bd. of Appeals*, 337 S.C. 568, 524 S.E.2d 404 (1999); *Lake Frances Props. v. City of Charleston*, 349 S.C. 118, 561 S.E.2d 627 (Ct. App. 2002). A use cannot be a "nonconforming use" if it was unlawful at the time of the amendment of the ordinance prohibiting the use. *Whaley v. Dorchester Cnty. Zoning Bd. of Appeals*, 337 S.C. 568, 524 S.E.2d 404 (1999).

Discouraged. As a rule, nonconforming uses and structures should be discouraged and eliminated whenever possible. "The intention of all zoning laws, as regarding a nonconforming use of property, is to restrict and gradually eliminate the nonconforming use." *Christy v. Harleston*, 266 S.C. 439, 443, 223 S.E.2d 861, 863 (1976). Most zoning ordinances provide strict standards for continuing or reconstructing nonconformities.

Damage or destruction. 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 go as high as 75%) destroyed. Provisions terminating the nonconforming use upon destruction of a specified portion of the premises are proper if the maximum amount of destruction permitted is reasonable. *Gurganious v. City of Beaufort*, 317 S.C. 481, 490, 454 S.E.2d 912, 918 (Ct. App. 1995); *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 602 S.E.2d 76 (Ct. App. 2004).

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 or physical destruction). A decision of the zoning administrator or board of zoning appeals which is not based upon evidence related to the standard in the ordinance will not be upheld. *National Advertising Co., Inc. v. Mount Pleasant*, 312 S.C. 397, 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, is lower in density or has less objectionable features.

Amortization. Terminating a nonconformity may be required within a specified time. Usually the time is based upon a formula for recovery or amortization of the investment in the nonconformity.

An amortization provision is valid if reasonable. Reasonableness is determined by balancing the public gain against the private loss. The burden is upon the party challenging the amortization period. The period is presumed valid unless the party challenging the amortization demonstrates its loss outweighs the public gain. *Centaur v. Richland County*, 301 S.C. 374, 392 S.E.2d 165 (1990); *Bugsy's Inc. v. City of Myrtle Beach*, 340 S.C. 87, 530 S.E.2d 890 (2000).

Courts have upheld amortization schedules where the period for removal was not so unreasonable as to constitute a taking of property. *Major Media of the Southeast v. City of Raleigh*, 792 F.2d 1269 (4th Cir. 1986); *Bugsy's Inc. v. City of Myrtle Beach*, 340 S.C. 87, 530 S.E.2d 890 (2000) (two years). However, when the time period is so short that it denies the owner of 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). The zoning ordinance may provide for termination of nonconforming uses within a specified time without regard to lack of intentional abandonment of the use by the landowner. *Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995).

Abandonment. Abandonment of a nonconforming use for a time specified in the zoning ordinance can terminate the right to continue the use. *Maguire v. City of Charleston*, 271 S.C. 451, 247 S.E.2d 817 (1978). In the absence of an objective time frame for abandonment, the common law definition of abandonment applies and requires an intent to relinquish the right to use the property. *City of Myrtle Beach v. Juel P. Corporation*, 344 S.C. 43, 543 S.E.2d 538 (2001), citing *Conway v. City of Greenville*, 254 S.C. 96, 173 S.E.2d 648 (1970).

Pending Ordinance Doctrine/Moratorium

The "pending ordinance doctrine," which is recognized by state case law, gives local governments the authority to refuse a permit for a land use when the use is not allowed under a then-pending and later-enacted zoning ordinance. A zoning administrator has the 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 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); *Continental Southeastern Group v. City of Folly Beach*, 290 SC 206, 348 S.E.2d 837 (1986); *Stratos v. Town of Ravenel*, 297 S.C. 309, 376 S.E.2d 783 (Ct. App. 1989); *Covenant Media of South Carolina, LLC v. City of North Charleston*, 493 F.3d 421 (4th Cir. 2007) (also distinguishing the "time of application" rule in the absence of evidence of reliance by the applicant). In *Scott v. Greenville County*, 716 F. 2d 1409, 1419 n. 10 (4th Cir. 1983), the court panel suggested that, under South Carolina law, an ordinance would not be considered as "pending" under the pending ordinance doctrine at the time when a governing body merely first announced an intention to consider rezoning and simply referred the matter to the planning commission. Actual knowledge by the applicant of the pending ordinance is not

required. *Covenant Media of SC, L.L.C. v. City of N. Charleston*, 514 F. Supp. 2d 807, 815 (D.S.C. 2006), *aff'd sub nom. Covenant Media Of SC, LLC v. City of N. Charleston*, 493 F.3d 421 (4th Cir. 2007).

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

A request for a permit should be denied when a pending ordinance would allow a use then prohibited by the existing ordinance. The pending ordinance doctrine protects the public interest by preventing a change in use. Allowing a use under a pending ordinance that may not be adopted is contrary to the public interest.

A related legal concept is the "moratorium." A local government can enact an ordinance suspending further permitting under a zoning or land development ordinance while it considers whether to amend or repeal the suspended ordinance. A local government cannot adopt an ordinance imposing a moratorium "on a construction project" for which a permit has been granted unless it gives two weeks' notice by newspaper publication in the county in which the project is located. SC Code § 6-1-110. No moratorium may be imposed without at least two readings, which are a week apart. Section 6-1-110 provides express statutory authorization for a moratorium on construction projects by ordinance.

However, the moratorium should be uniformly applied, and the moratorium period must be of a reasonable duration. A temporary moratorium is not a *per se* taking of property requiring compensation under the Takings Clause of the Fifth Amendment of the U. S. Constitution. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U. S. 302, 122 S. Ct. 1465, 152 L. Ed. 2d 517 (2002).

Accessory Uses

Zoning ordinances typically list the uses that are permitted by right, as a conditional use, or as a special exception within each zoning district. The described uses often do not describe every potential activity that may be associated with the primary use. As a result, courts recognize the concept of "accessory uses," which "are those [uses] which are customarily incident to the principal use [and which] must be clearly incidental to, and customarily found in connection with, the principal use to which it is allegedly related." *Whaley v. Dorchester Cnty. Zoning Bd. of Appeals*, 337 S.C. 568, 579, 524 S.E.2d 404, 410 (1999) (quotations omitted).

Disputes may arise about whether a particular activity is accessory to or separate from the primary use. For example, in *Venture Eng'g for DT LLC v. Horry Cnty. Zoning Bd. of Appeals*, 433 S.C. 419, 858 S.E.2d 638 (Ct. App. 2021), the principal use of the landowner's property was operation of heavy equipment for construction and demolition projects. The court observed that this primary use would include an accessory use of crushing, processing, and recycling materials from the landowner's own construction and demolition projects. On the other hand,

accepting materials from other construction and demolition contractors was not an accessory use. “We are convinced that [landowner’s] recycling of materials from other contractors is not ‘customarily incidental and subordinate to’ the maintenance of his heavy construction equipment on the Property.” *Venture Eng'g*, 433 S.C. at 428, 858 S.E.2d at 643.

Public Property Subject to Zoning

Public agencies using real property as owner or tenant are subject to local zoning ordinance provisions. SC Code § 6-29-770. Those affected include the following:

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

However, a 2017 Court of Appeals case drew a distinction between a state agency’s use of real property as an owner or tenant and its use for other purposes or in other capacities. In *County of Charleston v. SCDOT*, 420 S.C. 405, 803 S.E.2d 316 (Ct. App. 2017), the court held that, in removing trees from right-of-way as part of its statutory duty to maintain the state highway system, DOT was not acting as an owner or tenant but was engaging in a governmental service or function and had exclusive authority over the state highway system.

In an unpublished decision, the Court of Common Pleas for the Ninth Judicial Circuit reached a similar conclusion. See *SC Pub. Serv. Auth. V. Charleston Cnty. Bd. of Zoning Appeals*, Civil Action No. 2022-CP-1000197, Order of May 5, 2022. In that case, the South Carolina Public Service Authority (Santee Cooper) proposed a power line project. The Charleston County Board of Zoning Appeals argued that the County’s zoning ordinance applied to the project. The court disagreed, citing South Carolina Constitution Article VIII, Section 14, which provides that local governments cannot set aside “the structure and administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.” Because Santee Cooper was carrying out a service or function requiring statewide uniformity, rather than acting as a property owner or tenant, the Court ruled that the project was exempt from the zoning ordinance.

Takings/Eminent Domain/Inverse Condemnation/Regulatory Takings

Property owners often challenge governmental zoning actions, zoning ordinances and other land use regulations with the claim of “taking,” “inverse condemnation” or “regulatory taking” of their property without just compensation.

The Takings Clause of the Fifth Amendment to the U.S. Constitution and Article I § 13 of the South Carolina Constitution both provide that private property shall not be taken for public use without just compensation. These constitutional provisions do not prohibit the government from the taking of private property. Instead, it places a condition of just compensation on the

exercise of that power. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987).

Under the analysis applied by the courts, takings may be direct or indirect, total or partial, physical or regulatory, and permanent or temporary. The takings analysis under South Carolina law is the same as the analysis under federal law. *Westside Quik Shop, Inc. v. Stewart*, 341 S.C. 297, 534 S.E.2d 270 (2000).

Eminent Domain. The federal and state constitutional takings provisions clearly require governments to pay landowners just compensation when the government undertakes a "classic" (direct, physical and permanent) taking such as the direct physical appropriation, physical occupation, or physical invasion of private property. "Condemnation" of private property for a public use (e.g., streets, utilities, recreation or public buildings) under the eminent domain power delegated to local governments by the General Assembly is a taking for which the landowner must be paid just compensation under the South Carolina Eminent Domain Procedure Act. SC Code § 28-2-10, *et seq*. Such a taking may be total or partial.

Inverse Condemnation. An inverse condemnation (or indirect taking) is affirmative conduct of the government that has the effect of a taking or damaging private property without the formal exercise of the eminent domain power. See *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987). An inverse condemnation may result from the government's physical appropriation of private property or from government-imposed limitations on the use of private property. *Byrd v. City of Hartsville*, 365 S.C. 650, 656, 620 S.E.2d 76, 79 (2005). This means that it may be either a physical or a regulatory taking. An inverse condemnation also may be total or partial and permanent or temporary.

Regulatory Takings. A regulatory taking is a type of inverse condemnation. Government regulation of private property that goes too far with an effect tantamount to a direct appropriation of property is a compensable regulatory taking. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922).

If a government regulation requires a permanent physical invasion or permanent physical occupation of private property, a compensable taking results. See, for example*, Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419 (1982) (state law requiring landlords to permit cable companies to install cable facilities in apartment buildings effected a taking); *Dolan v. City of Tigard*, 512 U. S. 374 (1994) (city's requirements, as a condition or "exaction" for granting a building permit, that owner dedicate portions of her land for a public greenway and public bike path were not reasonably related to the impact of the proposed development and constituted an uncompensated taking of her property).

In *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 210 L. Ed. 2d 369 (2021), the Supreme Court held that a regulation authorizing even a temporary invasion or occupation of private property may be a taking. In that case, a California regulation granted union organizers the right to access agricultural property to meet with and solicit the support of employees on that property.

The Court held that this regulation granted a right to physically invade the property and was thus a *per se* taking, even though the access was only temporary and intermittent.

The government also must pay just compensation for a total regulatory taking that deprives an owner of "all economically beneficial use" of the property, except to the extent that "background principles of nuisance and property law" independently restrict the owner's intended use of the property. *Lucas v. South Carolina Coastal Council*, 505 U. S. 1003 (1992); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U. S. 302 (2002). However, a temporary total loss of all economically viable use (as opposed to a permanent total loss) due to a temporary regulatory limitation is not necessarily a compensable *per se* taking under Lucas because it actually is a partial loss with a returning value once the temporary restriction is lifted. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U. S. 302 (2002).

Even if the regulatory limitation does not deny all economically beneficial use of the property, a partial regulatory taking may have occurred. The current prevailing court analysis is that compensation as a partial regulatory taking depends on a balancing consideration of (1) the economic impact of the regulation on the owner, (2) the extent to which the regulation has interfered with the owner's distinct and reasonable investment-backed expectations, and (3) the character of the government action. See, for example*, Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978); *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 596 S.E.2d 917 (2004); *Lingle v. Chevron U.S.A. Inc*., 544 U. S. 528 (2005).

In *Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005), the state Supreme Court expressly overruled its prior case rulings that a property owner could establish a compensable regulatory taking only if the owner had been denied all economically viable use of his property. Instead, the court stated that cases involving a partial loss of value (or a temporary loss of value due to an unreasonable regulatory delay) should be evaluated using the Penn Central factors discussed above.

For examples of recent judicial analysis in South Carolina rejecting claims of regulatory taking, see *Carolina Chloride, Inc. v. Richland County*, 394 S.C. 154, 714 S.E.2d 869 (2011) (loss of sale of property after county's mistaken representation of zoning designation); *Dunes West Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 737 S.E.2d 601 (2013) (denial of request for rezoning portion of golf course for residential development); *Columbia Venture, LLC v. Richland County*, 413 S.C. 423, 776 S.E.2d 900 (2013) (adoption of flood maps designating most of property as regulatory floodway).

In *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 890 S.E.2d 748 (2023), the court held that an ordinance imposing an overlay zone in which smoke shops, tobacco stores, and other uses were prohibited was not a taking of the property of existing businesses. Applying the *Penn Central* test described above, the court found that the plaintiffs had not produced the evidence required to support their argument. For example, "they do not quantify the economic impact of the ordinance on their properties – the first *Penn Central*

factor." *Ani Creation, Inc.*, 440 S.C. at 289, 890 S.E.2d at 760. The case underlines the fact that regulatory takings are "essentially ad hoc, factual inquiries." *Id*.

South Carolina courts have traditionally held that a takings claim is premature when there has been no exhaustion of administrative remedies under the zoning ordinance. *Moore v. Sumter County Council*, 300 S.C. 270, 387 S.E.2d 455 (1990); *Anton v. South Carolina Coastal Council*, 321 S.C. 481, 469 S.E.2d 604 (1996). A claim that government regulations effect a taking is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding application of the regulations to the property at issue. *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed 2d 126 (1985).

But in a recent case, the United States Supreme Court partially overruled this view, holding that "administrative 'exhaustion of state remedies' is not a prerequisite for a takings claim when the government has reached a conclusive position." *Pakdel v. City & Cnty. of San Francisco*, 141 S. Ct. 2226, 2231, 210 L. Ed. 2d 617 (2021). In other words, a government act may be "final" under *Williamson County* even if the property owner has not formally exhausted administrative remedies. The question appears to be whether the government has reached a definitive position.

A takings claim may be brought under the Civil Rights Act, 42 U.S.C. §1983, as a tort action for damages. The owner has a right to a jury trial on the factual questions of whether there was a denial of all economically viable use of the property and whether denial of a permit advanced a legitimate public interest. *City of Monterey v. Del Monte Dunes at Monterey*, Ltd., 526 U.S. 687 (1999).

Although there is no state constitutional right to a jury trial in an inverse condemnation case (or in an eminent domain case), the statutory right of either the property owner or the government to a jury trial on the issue of compensation in an eminent domain case (SC Code § 28-2-310) also applies in an inverse condemnation case. The trial judge first determines whether a claim has been established. If so, either party may request the issue of compensation be submitted to a jury. *Cobb v. South Carolina Department of Transportation*, 365 S.C. 360, 618 S.E.2d 299 (2005).

Sign Regulation

Many zoning ordinances regulate signs, flags or other physical displays. The First Amendment restricts the government's ability to regulate such displays based on their expressive content. In *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), the United States Supreme Court struck down a local ordinance that distinguished between different types of signs based on their purpose. For example, the ordinance applied different size and durational limitations to "ideological signs," "political signs" and "temporary directional signs." The Court concluded that distinguishing signs in this manner was a content-based regulation of speech, subject to the highest degree of scrutiny. Under so-called strict scrutiny, the Court found that the sign ordinance violated the

First Amendment. As a result of this decision, local governments must ensure that their sign regulations are content-neutral and apply reasonable and consistent standards to all types of signs.

After *Reed*, many commentators argued that a distinction between on-premises and off-premises signs, a common way to regulate billboards, was a content-based regulation requiring strict scrutiny under the First Amendment. In *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61 (2022), the Court upheld local sign regulations that distinguished between on-premises and off-premises signs. "The message on the sign matters only to the extent that it informs the sign's relative location. The on-/off-premises distinction is therefore similar to ordinary time, place, or manner restrictions." *City of Austin*, 596 U.S. at 71. Therefore, although *Reed* upended local sign regulation by requiring uniform rules regardless of the contents of the sign, local governments can still apply different rules for off-site billboards.

Sexually Oriented Businesses

Businesses providing non-obscene sexually explicit material are entitled to First Amendment protection. See *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991) (nude dancing also receives First Amendment protection); *City of Columbia v. Pic-A-Flick Video, Inc*., 340 S.C. 278, 531 S.E.2d 518 (2000). However, zoning ordinances can regulate the location of sexually oriented businesses. "[A] constitutional zoning system seeks to determine *where*, not *whether*, protected adult material can be sold." *City of Littleton, Colo. v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774, 783 (2004).

Zoning ordinances merely restricting the location of adult businesses without banning them altogether are considered content-neutral as long as they are based on prevention of harmful secondary effects, such as an increase in crime. *Harkins v. Greenville County*, 340 S.C. 606, 533 S.E.2d 886 (2000). "Content-neutral time, place and manner regulations are acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication." *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47 (1986).

Richland County Ordinance; Local Variations. Many municipalities and counties have adopted zoning regulations for sexually oriented businesses patterned after the Richland County ordinance upheld by the Supreme Court in *Centaur, Inc. v. Richland County*, 301 S.C. 374, 392 S.E.2d 165 (1990), and *Rothschild v. Richland County Bd. of Adjustment*, 309 S.C. 194, 420 S.E.2d 853 (1992). The Richland County ordinance contained a provision requiring the business to obtain a permit from the zoning administrator, which permit will not be issued unless the administrator finds that specified secondary conditions do not exist. Following these decisions, Greenville County adopted an ordinance based on the Richland County ordinance. The South Carolina Supreme Court found the permit provision in the Greenville County ordinance unconstitutional because it did not provide for "prompt judicial review" of the zoning administrator's denial of a permit and because mere access to the state court system on a non-expedited basis was not sufficient. *Harkins v. Greenville County*, supra. The court warned that

local governments with zoning situations different from Richland County cannot merely copy the Richland County ordinance and automatically meet constitutional requirements. Each governing body must look at its own situation and ensure its ordinance protects constitutional rights.

Note: The State Supreme Court's reasoning in *Harkins* that ordinary access to the state court system on a non-expedited basis is not sufficient "prompt judicial review" appears to have been undercut by the subsequent decision of the U.S. Supreme Court in *City of Littleton v. Z. J. Gifts D-4, L L.C.*, 541 U.S. 774 (2004). In *City of Littleton*, a majority of the court held, among other things, that Colorado's ordinary judicial review procedures in state court met the First Amendment requirements for "prompt judicial review."

Requirement of a Local Secondary Effects Study. In *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999), the court held that local governments had the power to zone the location of adult businesses without any individualized showing that the businesses produce negative secondary effects. Although the evidence relied on by the local government must fairly support its reasoning, the local government, in enacting place or location restrictions, may rely on other cities' secondary effects studies as well as the *Renton* decision itself. *Greenville County v. Kenwood Enterprises*, 353 S.C. 157, 577 S.E.2d 428 (2003).

Separation Requirements. In *Restaurant Row Associates*, supra, the Court upheld an Horry County adult business zoning regulation that prohibited locating an adult establishment within 500 feet of a residential district. The ordinance was not aimed at the content of speech but, rather, at the secondary effects of such businesses on the surrounding community. Likewise, in *Kenwood Enterprises*, supra, the Court upheld a 1500-feet separation requirement from other sexually oriented businesses and from nine other enumerated types of property (including churches, schools and residential properties).

"Zoning Out." Regulations of adult uses are frequently challenged as unconstitutional for effectively "zoning out" sexually oriented businesses. In *Renton*, supra, the U.S. Supreme Court specifically addressed this issue.

> That respondents must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees, does not give rise to a First Amendment violation. And although we have cautioned against the enactment of zoning regulations that have "the effect of suppressing, or greatly restricting access to, lawful speech," we have never suggested that the First Amendment compels the Government to ensure that adult theatres, or any other kinds of speech-related businesses for that matter, will be able to obtain sites at bargain prices. In our view, the First Amendment requires only that Renton refrain from effectively denying respondents a reasonable opportunity to open and operate an adult theater within the city...

475 U.S. at 54. See also *Harkins v. Greenville County*, 340 S.C. 606, 621, 533 S.E.2d 886, 893 (2000), in which the court noted that nine available sites for six adult businesses were "more than enough."

Definitional Clarity. Ordinances that seek to regulate the location of sexually oriented businesses should provide a reasonably tailored definition or description of the businesses covered. See *City of Columbia v. Pic-A-Flick Video, Inc.*, supra, in which the court discussed the enforcement difficulties caused by the city's lack of definition of "principal business purpose." The court suggested a possible definition.

Recent Cases. The Fourth Circuit Court of Appeals upheld a City of Columbia zoning ordinance governing the location of sexually oriented businesses as content-neutral, as appropriately based on evidence of negative secondary effects, and as leaving available for the business sufficient alternative sites. *Cricket Store 17, LLC v. City of Columbia*, 676 Fed. Appx. 162 (4th Cir. 2017). Following that decision, the property owner applied to the Columbia Board of Zoning Appeals for a special exception. The Columbia ordinance provided: "No variance from any of the provisions of this section may be granted by the [Board]. No special exception regarding any of the requirements of this section may be granted by the [Board]." *Cricket Store 17, LLC v. City of Columbia Bd. of Zoning Appeals*, 428 S.C. 270, 275, 834 S.E.2d 209, 211 (Ct. App. 2019). The Court of Appeals held that the ordinance did not allow the Board of Zoning Appeals to grant a special exception, and that the Comprehensive Planning Act allows local governments to preclude the granting of variances and special exceptions for certain uses. *Id*. (citing SC Code § 6-29-800(A)(2)(d)(i) and 6-29-800(A)(3)). And in *Greenville Bistro, LLC v. Greenville Cnty.*, 435 S.C. 146, 164, 866 S.E.2d 562, 165 (2021), the South Carolina Supreme Court held that the Greenville County adult use ordinance was "a valid 'time, place, and manner' regulation because it serves the substantial governmental interest of preventing harmful secondary effects and provides reasonable alternative avenues of communication for adult businesses."

Religious Uses of Land

The Comprehensive Planning Act references religious use of land in only one section. "No zoning ordinance of a municipality or county may prohibit church-related activities in a single-family residence." SC Code § 6-29-715. The section does not define "church-related activities" except to provide that "church-related activities" do not include regularly scheduled worship services. There are no reported court cases involving this section.

In 2000, the United States Congress adopted the Religious Land Use and Institutionalized Persons Act, which is codified at 42 U. SC Chapter 21C. RLUIPA's potential reach into land use law is broad. One commentator has observed that, by this Act, "zoning gets religion."

RLUIPA states a general rule that a state or local government may not "impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution," unless the government demonstrates that the burden furthers a compelling governmental interest and is the "least restrictive means" of furthering that interest. 42 U.S.C. §2000cc(a)(1). This general rule applies, among other things,

to "the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved." 42 U.S.C. §2000cc(a)(2)(C).

RLUIPA also provides that a state or local government may not "impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. §2000cc(b)(1). RLUIPA forbids land use discrimination against any assembly or institution on the basis of religion or religious denomination. 42 U.S.C. §2000cc(b)(2). It specifically provides that the government shall not totally exclude religious assemblies from a jurisdiction or unreasonably limit religious assemblies, institutions or structures within a jurisdiction. 42 U.S.C. §2000cc(b)(3).

RLUIPA broadly defines "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §2000cc-5(7). It is not limited to mainstream or orthodox religions or to core practices of an organized religion. The use, building, or conversion of real property for the purpose of religious exercise is considered, for purposes of RLUIPA, to be religious exercise of the person or entity that uses or intends to use the property for that purpose. 42 U.S.C. §2000cc(7)(B).

A person or religious institution may assert a violation of RLUIPA as a claim or defense in a judicial proceeding "and obtain appropriate relief against a government." The U.S. also may bring an action for injunctive or declaratory relief to enforce compliance with RLUIPA. The burden of proof shifts to the state or local government to defend the regulation or practice once the person asserting a violation presents persuasive evidence of a substantial burden on religious exercise. 42 U.S.C. §2000cc-2(a), (b), and (f).

Because of RLUIPA's scope, local government councils, as well as planning and zoning officials, should consider its implications when drafting ordinances and implementing zoning and permitting requirements. The reach of RLUIPA's language includes such things as zoning ordinances, site plan approvals, rezonings, PDD applications, variances, special exceptions, and historical preservation ordinances. See, for example, *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F. 3d 895 (7th Cir. 2005) (RLUIPA "substantial burden" violation in denial of church's PUD application); *Dilaura v. Township of Ann Arbor*, 112 Fed. Appx. 445 (6th Cir. 2004) (RLUIPA "substantial burden" violation in denial of variance to operate religious retreat); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004) (RLUIPA "equal terms" violation when zoning ordinance provisions excluded religious assemblies from zoning districts in which secular assemblies, such as private clubs and lodges, were permitted); *Christian Methodist Episcopal Church v. Montgomery*, 2007 WL 172496 (D.S.C. 2007) (no RLUIPA "substantial burden" violation shown when church had not yet applied for conditional use permit required for religious institutions in the town's mixed use zoning district); and *Andon v. City of Newport News*, 813 F.3d 510 (4th Cir. 2016) (no "substantial burden" violation by denial of setback variance to permit property to be used as church facility

when church had knowledge of need for variance prior to lease; absence of affordable and available property will not in itself support a RLUIPA "substantial burden " claim).

Similar to the federal RLUIPA, the "South Carolina Religious Freedom Act" was enacted in South Carolina in 1999. SC Code §§ 1-32-10 through 60.

Although the South Carolina Religious Freedom Act does not specifically mention zoning or land use, its language is intended to have a broad reach to include all state and local laws and ordinances and their implementation. The state or local government "may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless [the government] demonstrates that application of the burden to the person is: (1) in furtherance of a compelling state interest; and (2) the least restrictive means of furthering that compelling state interest." SC Code § 1-32-40. A violation of this Act may be asserted as a claim or defense in a judicial proceeding. If the person asserting the violation prevails in the proceeding, the court shall award attorney's fees and costs. SC Code § 1-32-50. No reported court cases yet have interpreted the South Carolina Religious Freedom Act.

Homes for Handicapped Exempt

A home serving nine or fewer mentally or physically handicapped persons, providing care on a 24-hour basis, and approved or licensed by a state agency or department or under contract with the agency or department for that purpose, is exempt from local zoning ordinance requirements. The local government must classify the residence under its zoning ordinance as if the inhabitants were a natural family, related by blood or marriage. SC Code § 6-29-770(E).

The specific procedures to be utilized to locate such a home are as follows:

1. Prior to locating the home, the state agency or the home's owner or operator must give 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 15 days of receiving the notice and must appoint a representative to assist in selecting a comparable alternate site. This triggers the following process:
    a. The site selection representative of the entity proposing the project and the representative of the local governing body select a third, mutually agreeable person.
    b. The three people have 45 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 has been made by the end of the 45-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 to ensure the placement is appropriate.
7. The licensing agency conducts reviews of these homes no less frequently than every six months for the purpose of promoting the rehabilitative purposes of the homes and their confirmed compatibility with their neighborhoods.
8. A local governing body whose zoning ordinance is violated may apply to a court of competent jurisdiction for injunctive or such other relief as the court may consider proper.

The statute does not contain standards or procedures for a legal action contesting the location of a group home. Invoking the procedure, however, could trigger a claim for violation of the federal Fair Housing Act. See *County of Charleston v. Sleepy Hollow Youth, Inc.*, 340 S.C. 174, 530 S.E.2d 636 (Ct. App. 2000).

Fair Housing Act

The Fair Housing Act, or FHA, included in Titles VIII and IX of the Civil Rights Act of 1968, initially prohibited discrimination in housing based on race, color, religion or national origin. 42 U.S.C. §§ 3601-3619. In 1974, Congress amended the FHA to prohibit sex discrimination, and again amended it in 1988 to prohibit discrimination based on physical and mental disabilities (the FHA uses the word "handicapped") or familial status. Congress intended to prohibit land use regulations, restrictive covenants, and conditional or special use permits that have the effect of denying housing or making housing unavailable to otherwise qualified individuals to live in the residence and community of their choice.

Under the 1988 amendments, housing practices that discriminate against persons because of their handicap or familial status are illegal. A “handicap” is defined in 42 U.S.C. § 3602 to mean a physical or mental impairment that substantially limits one or more of a person’s major life activities. The definition specifically excludes current, illegal use of or addiction to a controlled substance. “Familial status” is defined as one or more individuals under the age of 18 domiciled with a parent, with a person with legal custody, or with the written designee of a parent or person with legal custody.

Zoning laws or official zoning actions, such as rezoning denials, that are motivated by discriminatory intent or that have a disparate impact on protected persons may be illegal under the Fair Housing Act, even if the laws or procedures are facially non-discriminatory. *Metropolitan Housing Dev. Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977) (denial of a rezoning from single family to multifamily had a disparate racial impact); *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015) (finding that the FHA applied to disparate racial impact in allocation of low-income housing tax credits). Some courts, however, have found that reasonable spacing requirements and safety and sanitation restrictions do not violate the Fair Housing Act. See *Familystyle of St.*

Paul v. City of St. Paul, 923 F.2d 91 (8th Cir. 1991); *Baxter v. City of Bellville*, 720 F. Supp 720 (S.D. Ill. 1989).

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 these items to strict scrutiny. Delay in acting on a permit request may be considered tantamount to a denial. The refusal to rezone property to permit its use for handicapped housing may violate the FHA if it fails the disparate impact test. See *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988). The local government should not take into consideration any community sentiment that reflects illegal discrimination toward the residents.

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." In addition to the civil penalties allowed under the Fair Housing Act, courts have issued injunctions compelling local zoning officials to issue special use permits, pointing out that the equitable relief available under the Fair Housing Act includes prohibitory injunctions and orders for such affirmative action as may be appropriate. See *Baxter v. City of Bellville*, 720 F. Supp 720 (S.D. Ill. 1989).

Modular, Manufactured and Mobile Homes

A "modular building unit" is defined as any building of closed construction, regardless of type of construction or occupancy classification, other than a mobile or manufactured home, constructed off-site in accordance with the applicable codes, and transported to the point of use for installation or erection. SC Code § 23-43-20(2).

A modular building unit must have a certification label permanently affixed to the transportable section of the structure showing that it has been approved by the South Carolina Building Codes Council and meets construction standards prescribed by regulations of the Building Codes Council. Local building permits must be issued for modular units certified by the Building Codes Council. SC Code § 23-43-80. Local land use and zoning requirements are applicable to modular units; however, those requirements "must be reasonable and uniformly applied and enforced without any distinction as to whether a building is a modular or constructed on site in a conventional manner." SC Code § 23-43-130. In other words, a modular home must be given the same treatment under zoning as a site-built home.

"Mobile home" or "manufactured home" is defined as any residential dwelling unit constructed to standards and codes as promulgated by the U.S. Department of Housing and Urban Development. SC Code § 23-43-20(5).

"Manufactured home" is defined in SC Code § 40-29-20(9) as a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent

foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained in it.

A manufactured home built after June 15, 1976, must meet Department of Housing and Urban Development standards pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 for single-family manufactured homes. SC Code § 40-29-340. Manufactured homes or mobile homes have no statutory protection for treatment under land use and zoning regulations.

A certification that HUD manufactured housing standards have been met is not the same as the certification by the South Carolina Building Codes Council that modular construction standards are met. Certified modular homes must be allowed in any zone in which site constructed homes are permitted. However, manufactured or mobile homes may be subject to different zoning regulations.

Courts have upheld zoning ordinances that allow manufactured or mobile homes only in approved mobile home parks. See *Town of Scranton v. Willoughby*, 306 S.C. 421, 412 S.E.2d 424 (1991); and *Texas Manufactured Housing Association v. Nederland*, 101 F.3d 1095 (5th Cir. 1996). It is permissible to restrict a zoned area to conventionally built residences while excluding mobile homes altogether. See *Scurlock v. City of Lynn Haven*, 858 F.2d 1521 (11th Cir. 1988). Restrictions prohibiting "trailers" include "mobile homes." *Heape v. Broxton*, 293 S.C. 343, 360 S.E.2d 157 (Ct. App. 1987). In *Town of Iva v. Holley*, 374 SC 537, 649 S.E.2d 108 (Ct. App. 2007), the court held that enforcement of a zoning ordinance prohibiting mobile homes in a certain residential zone was not a denial of equal protection.

Some ordinances make a distinction between mobile homes built before June 15, 1976, not meeting HUD standards, and those built after that date meeting HUD standards. HUD safety and construction standards for mobile or manufactured homes do not preempt local zoning regulations (as opposed to local safety and construction standards), which can be enforced without impairing federal regulation of the manufactured home industry. 42 U.S.C. § 5403(d); 24 C.F.R. § 3282.11(d); *Lauderbaugh v. Hopewell Township*, 319 F. 3d 568 (3rd Cir. 2003). See *Bibco Corporation v. City of Sumter*, 332 S.C. 45, 504 S.E.2d 112 (1998), citing supporting cases from other states.

In *Bibco*, the court ruled that Sumter's zoning ordinance excluding mobile homes from R-9 districts was valid because it did not impose any construction or safety standards on mobile homes. The ordinance did not conflict with the National Manufactured Housing Construction and Safety Standards Act (42 U.S.C. § 5401, *et seq*.) and was not a violation of equal protection because it was rationally related to legitimate government purposes. The court noted the legitimate purposes included "preserving land for low density, single family dwellings, … protection of surrounding property values, guarding against increased crime, guarding against increased traffic flow and congestion, and maintaining aesthetics."

A zoning ordinance may require a specified roof pitch (e.g., 4:12) for manufactured homes permitted in a residential district. A roof pitch requirement is not a construction or safety standard under HUD regulations. It is a valid aesthetic condition under local zoning powers. *Georgia Manufactured Housing Association, Inc. v. Spalding County*, 148 F.3d 1304 (11th Cir. 1998). See also *CMH Manufacturing, Inc. v. Catawba County*, 994 F. Supp. 697 (W.D.N.C. 1998) (no preemption of roofing and siding requirements that address aesthetic concerns only).

References. The federal and state laws applicable to modular and manufactured homes may be found here:

- South Carolina Modular Buildings Construction Act, SC Code § 23-43-10, *et seq*.
- Uniform Standards Code for Manufactured Housing Act, SC Code § 40-29-5, *et seq*.
- South Carolina Manufactured Housing Board Regulations, SC Code Regulations R. 79-1, *et seq*.
- National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401, *et seq*.
- HUD Regulations, 24 C.F.R. § 3282. 1, *et seq*.

Zoning Administration

Zoning Official

The zoning ordinance must designate some administrative official to administer and enforce the zoning ordinance. The official is usually called the zoning administrator. SC Code § 6-29-950, § 6-29-1310(6). It is not unusual for the building official in a small jurisdiction to be designated as the 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. Issuing **permits** and certificates, including fee collection. (Sample form provided in Appendix H.)
3. Processing **applications** for variances and special exceptions. (Sample forms provided in Appendix F.)
4. Processing **appeals** to the board of zoning appeals and preparing the record for appeal to circuit court.
5. Maintaining 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.

Estoppel

Administering the zoning ordinance requires interpreting terms and provisions not always clearly defined. Once an authorized official makes an interpretation, the local governing body may be estopped from changing the interpretation administratively or from enforcing the ordinance in a manner different from past enforcement when an owner has relied upon the interpretation. See, for example, *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 SC 416, 357 S.E.2d 9 (1987).

The legal doctrine of equitable estoppel means that a party, because of its prior conduct or asserted position, may be stopped, barred, prevented or precluded from subsequently undertaking different conduct or asserting a different position. A general rule of law in this state is that estoppel cannot be used against the government to prevent the due exercise of its police power (zoning is one type of police power) or to thwart the application of public policy. See, for example, *South Carolina Department of Social Services v. Parker*, 275 S.C. 176, 268 S.E.2d 282 (1980); *South Carolina Coastal Council v. Vogel*, 292 S.C. 449, 357 S.E.2d 187 (Ct. App. 1987).

Despite this general rule, state courts have held that the actions of government agents or officials, acting within the proper scope of their authority, can give rise to estoppel against the government. See, for example, *Abbeville Arms v. City of Abbeville*, 273 S.C. 491, 257 S.E.2d 716 (1979). However, estoppel is not created against a governmental body by unauthorized acts of its officers and agents or by the actions of officials who act outside the scope of their authority. *Abbeville Arms*, supra; *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 government agent or official.

An error or mistake by an official may constitute an action beyond the official's authority and therefore not create a situation of estoppel. *DeStephano*, supra. (no estoppel when deputy city engineer and zoning administrator acted beyond their authority in erroneously allowing recording of an unapproved subdivision plat). Generally, as well, administrative officials cannot estop the government through mistaken statements of law. *Greenville County v. Kenwood Enterprises*, Inc., 353 S.C. 157, 577 S.E.2d 428 (2003).

In *McCrowey v. Zoning Board of Adjustment of the City of Rock Hill*, 360 S.C. 301, 599 S.E.2d 617 (Ct. App. 2004), the zoning administrator, who originally approved a nightclub's parking plan and issued a certificate of zoning compliance, later took the position that the parking was not in compliance with the zoning ordinance. In the appeal from the BZA order affirming the zoning administrator's determination of non-compliance, the property owner argued that the city was estopped to contest the parking plan because the issuance of the certificate was within the zoning official's authority to determine zoning compliance. The court of appeals held that,

because it was undisputed that the property did in fact violate the zoning ordinance, the zoning administrator exceeded his authority when he erroneously approved the parking plan. Although the city zoning code gave the zoning administrator the authority to administer and enforce the zoning code, it did not grant power to an administrator to alter, modify or waive provisions contained in the zoning code or grant a variance from such provisions. Equitable estoppel could not be applied to frustrate the city's attempts to enforce its zoning code as written.

A party, such as a landowner, claiming estoppel must show the following elements to establish estoppel against the government: (1) lack of knowledge and the means of knowledge about the truth of the matter (or facts) in question; (2) justifiable reliance on the government's conduct; and (3) a prejudicial change of position by the party claiming estoppel. *Daniels v. City of Goose Creek*, 314 S.C. 494, 431 S.E.2d 256 (Ct. App. 1993) A building owner, who easily could have ascertained information on residential use limitations under the zoning/flood ordinance by reviewing the ordinance, had the means of obtaining knowledge about the truth of the matter, and, therefore, failed to establish the first element for estoppel. *Grant v. City of Folly Beach*, 346 S.C. 74, 551 S.E.2d 229 (2001). Mistakes by government employees in advising of a property's zoning designation were held not to give rise to claims for estoppel or negligence in *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 692 S.E.2d 499 (2010), or for negligence in *Richland County v. Carolina Chloride, Inc*., 394 S.C. 154, 714 S.E.2d 869 (2011). In both cases, the court noted that the zoning classification of property is a matter of law, that the representations were erroneous statements of law, and that reliance on administrative representations was not justified since the inquiring party could have reviewed the official zoning map.

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 appropriate changes to the ordinance by amendment will avoid estoppel claims for future applications.

Board of Zoning Appeals

The 1994 Comprehensive Act specifically authorizes the zoning ordinance to provide for a board of zoning appeals as a part of the administrative mechanism designed to enforce the zoning ordinance. The governing body may create a board of zoning appeals by provisions in the zoning ordinance. SC Code § 6-29-780. The board of zoning appeals has the authority to make final administrative decisions for the local government concerning the zoning ordinance, subject to appeal to circuit court.

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

Creation of Board

A zoning ordinance creating a board of zoning appeals should include the following points:

1. **Size** of the board is limited to three to nine members.
2. A **quorum** consists of a majority of the membership.
3. The governing authority **appoints** members.
4. Members are appointed for **overlapping terms** of three to five years.
5. The **number of terms** a member may serve may be limited.
6. Members continue to serve until their **successors** are appointed.
7. **Vacancies** are filled for unexpired terms in the same manner as initial appointments.
8. The appointing governing body can **remove** a member for cause.
9. **Compensation**, if any, for board members may be set by ordinance.
10. Members cannot hold any **other public office or position** in the appointing local government.

Organization and Operation

It is important for the board of zoning appeals to organize itself and operate in accordance with the Comprehensive Planning Act and the zoning ordinance creating the board. SC Code § 6-29-790. The essential elements of the organizational structure of the board include the following.

1. **Chairperson**. The board must elect one of its members as chairperson. The chairperson serves for one year or until a successor is elected and qualified. The chairperson may be reelected.
2. **Secretary**. The board must appoint a secretary. The secretary may be an officer of the governing authority or of the zoning board. It is customary for the zoning administrator to be appointed as secretary.
3. **Rules of Procedure**. The board must adopt rules of procedure complying with the Comprehensive Planning Act and the zoning ordinance. Although there is no express requirement for due process in a board hearing, it is appropriate to provide for some rules of evidence and for a method of examining witnesses that avoids intimidation. Sample rules of procedure are provided in Appendix D. The rules of procedure should address the following elements as a minimum:
   - **a.** Election of a chairman and duties.
   - **b.** Procedure for electing acting chairman.
   - **c.** Appointment of a secretary and duties.
   - **d.** Procedures for calling meetings.

e. Time and place for meetings.

f. Public notice of meetings to comply with the SC Freedom of Information Act and with SC Code § 6-29-790. These include public notice of all meetings of the BZA by publication in a newspaper of general circulation in the municipality or county. For cases involving variances and special exceptions, posting of conspicuous notice on or adjacent to the property affected, with at least one such notice visible from each public thoroughfare that abuts the property.

g. Setting agenda.

h. Quorum and attendance requirements.

i. Rules of procedure for conducting meetings.

j. Time for appeal from decision of zoning official.

k. Time and procedure for hearing appeals, variances and special exceptions.

l. Time and procedure for rendering and serving decisions.

m. Procedure for making and keeping records of actions (including minutes of all meetings).

n. Procedure for ordering remands to the zoning administrator and otherwise granting rehearings by the board.

o. Oath administered to witnesses.

4. **Meetings**. The board meets at the call of the chairperson and at other times determined by the board.
5. **Notice**. The board must give public notice of all meetings in a general circulation newspaper in the municipality or county.
6. **Posting property**. In cases involving variances or special exceptions, the board must post conspicuous notice on or adjacent to the property affected. At least one posted notice must be visible from each street that abuts the property.
7. **Witnesses**. The chairperson may administer oaths and subpoena witnesses.
8. **Minutes**. The board must provide for taking minutes of its proceedings. They must be kept as public records on file in the office of the board. Minutes must record the vote of each member on each question.

SC Freedom of Information Act

The SC Freedom of Information Act, or FOIA, (SC Code §§ 30-4-10, *et seq*.) requires all public bodies (including committees of public bodies) to conduct their meetings in public, except when an executive session is authorized. An executive session is authorized only for the reasons specified in the FOIA, such as receipt of legal advice, employment matters, and contract

negotiations. SC Code § 30-4-70. Written public notice of regular meetings (including dates, times, and places) must be given at the beginning of each calendar year. Notice and an agenda for regularly scheduled, special, or rescheduled meetings must be posted at the meeting place and on a public website maintained by the body, if any, at least 24 hours prior to a meeting. The board also must notify persons, organizations and news media that request meeting notifications. SC Code § 30-4-80.

Educational Requirements for Board of Zoning Appeals

Members of the board of zoning appeals are subject to the mandatory orientation and continuing educational requirements mandated by the Comprehensive Planning Act. SC Code § 6-29-1310 through § 6-29-1380. See the discussion of these requirements in Chapter 1.

Powers of the Board of Zoning Appeals

The Comprehensive Planning Act lists the powers of the board of appeals. SC Code § 6-29-800. The powers of the board, and the required findings to exercise those powers, are explicit in many instances. It may be useful to include these sections of the law in the board's rules of procedure. The powers of the board are limited to three specific subject matter areas: determining appeals from administrative decisions in enforcement of the zoning ordinance, granting or denying applications for variances, and granting or denying applications for special exceptions.

A 2003 amendment to the Comprehensive Planning listed as a fourth "power" for the BZA, the power to remand a matter to the zoning administrator if the record is insufficient for the board's review. SC Code § 6-29-800(A)(4). This does not broaden the board's areas of subject matter authority but does allow the board, either upon the motion of a party or on its own motion, to obtain additional information to assist the board in its determinations. The new provisions on remand specify that the board must schedule a rehearing of the remanded matter for a time certain without further public notice within 60 days unless otherwise agreed to by the parties; however, those persons who expressed an interest in being informed of the rehearing date must be mailed a notice of the rehearing in advance.

Sample forms for appeals and applications to the board are provided in Appendix F.

Administrative Review

The board has the exclusive power to hear and decide appeals where it is alleged the zoning administrator, in the enforcement of the zoning ordinance, erred in an order, requirement, decision or determination. In such cases, the board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination of the zoning administrator. The board has all the powers of the zoning administrator in such cases and may issue or direct the issuance of a permit. SC Code § 6-29-800(A)(1) and (E).

When deciding an administrative appeal from a decision of the zoning administrator, the board is not bound by the conclusion or reasoning of the zoning administrator and may consider and

apply the appropriate provisions of the zoning ordinance as dictated by the facts before it. *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 465, 602 S.E.2d 76, 79 (Ct. App. 2004) (holding that the board is not bound by the reasoning or conclusions of the administrative official, but instead may "apply the appropriate provisions of the zoning ordinance as dictated by the facts before it").

Variances

The board has the power to hear and decide appeals (requests) for variances when strict application of the zoning ordinance would result in unnecessary hardship. SC Code § 6-29-800(A)(2).

A variance allows the board to modify an otherwise legitimate zoning restriction when strict application of the ordinance would result in unnecessary hardship. To obtain a variance on the ground of unnecessary hardship, there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation. *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953); *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999). An owner is not entitled to relief from a self-created or self-inflicted hardship. A claim of unnecessary hardship cannot be based on conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that the nonconforming use would work a hardship upon him. *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965); *Georgetown County Building Official v. Lewis*, 290 S.C. 513, 351 S.E.2d 584 (Ct. App. 1986); *Restaurant Row Associates v. Horry County*, supra.

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

Standards for Granting Variances

The board may grant a variance in an individual case of unnecessary hardship if the board makes and explains in writing all of the following findings. SC Code § 6-29-800(A)(2).

1. **Extraordinary conditions**. There are extraordinary and exceptional conditions pertaining to the particular piece of property. Extraordinary conditions could exist due to size, shape, topography, drainage, 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*, 313 S.C. 455, 438 S.E.2d 273 (Ct. App. 1993).

3. **Utilization**. 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. **Detriment**. 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.

Other factors relevant to the consideration of a variance are described in SC Code § 6-29-800(A)(2)(d)(i) and (d)(ii).

1. **Profitability**. The fact that the property may be used more profitably, if a variance is granted, may not be considered as grounds for a variance. See *Groves v. Board of Adjustment of City of 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 affect 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. **Use variance**. Generally, the board may not grant a variance that would allow the establishment of a use not otherwise permitted in a zoning district, physically extend a nonconforming use of land, or change the zoning district boundaries shown on the official zoning map. However, the Comprehensive Planning Act does allow use variances to be authorized by a local zoning ordinance. SC Code § 6-29-800 (A)(2)(d)(i). Nevertheless, granting use variances is not a 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. Uses permitted in a zoning district are listed in zoning ordinance district regulations. In effect, granting a use variance amends the ordinance administratively for the benefit of one landowner.

The zoning ordinance also may provide other requirements for a variance. SC Code § 6-29-800(A)(2)(d)(i).

Special Exceptions

The board of appeals has the exclusive power to permit uses by special exception subject to standards and conditions in the zoning ordinance. SC Code § 6-29-800(A)(3). The zoning ordinance must include the standards and conditions the board must follow when considering such appeals. Standards and conditions for special exceptions could relate to access, noise, screening, lighting, compatibility with adjoining uses and traffic generation. In some zoning ordinances, conditional uses granted after review should be designated as special exceptions.

As with considerations of variance requests, the board, in granting or denying a request for a special exception, must apply the standards and conditions imposed by the zoning ordinance.

Generally, reviewing courts will not disturb the findings of the BZA unless such findings or decision resulted from action of the board which is arbitrary, capricious, an abuse of discretion, illegal or in excess of lawfully delegated authority. *Wyndham v. City of North Augusta*, 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012); *Bannum v. City of Columbia*, 335 S.C. 202, 516 S.E.2d 439 (1999).

In *Bannum*, the court reversed the board's denial of a special exception to a residential halfway house facility for released federal prisoners. The court determined that the board's decision arbitrarily discounted or disregarded all evidence offered by the applicant to show satisfaction of the ordinance requirements. The court concluded that the board's decision was based on the fears of neighboring residents rather than on the requirements for a special exception set out in the ordinance.

Appeals to Board

Appeals to a board of zoning appeals and appeals from decisions of the board must follow the prescribed procedures. Appeals from administrative actions and decisions of the zoning administrator are taken to the board of zoning appeals, then to circuit court, and finally to the state appellate courts. An appeal from an administrative decision of the zoning administrator is never taken to the governing body. Except for board decisions on use variances (see SC Code § 6-29-800 (A)(2)(d)(i), which provides that the local governing body may overrule a BZA use variance decision), appeals from decisions of the board on variances or special exceptions also are taken to circuit court and finally to the state appellate courts. A checklist of times and steps in an appeal and sample forms are provided in Appendix F.

Time Limits for Appeals

1. **Appeal to Board**. The time for an appeal to the board of zoning appeals from an administrative action or decision of the zoning administrator may be set by ordinance or rules of the board. If no time is set, SC Code § 6-29-800(B) provides that an appeal must be filed within 30 days from the date the appealing party received actual notice of the action appealed. The "actual notice" provision can cause confusion. It is recommended that the zoning ordinance or rules of the board start the time for appeal from the date the decision becomes a matter of public record by denial or issuance of a permit, or the filing of a written decision in the office of the zoning administrator. See sample rules in Appendix D.
2. **Appeal to Circuit Court**. Any person who has a substantial interest in a decision of the board may file an appeal petition with the clerk of the relevant circuit court within 30 days after the decision of the board is mailed. SC Code § 6-29-820(A). Failure to file an appeal petition within the prescribed time deprives the court of jurisdiction to hear the matter. *Sadisco of Greenville, Inc. v. Greenville County Board of Zoning Appeals*, 340 S.C. 57, 530 S.E.2d 383 (2000); *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 SC 480, 536 S.E.2d 892 (Ct. App. 2000).

A 2003 amendment to the Comprehensive Planning Act allows an alternative appeal procedure for a property owner whose land is the subject of a board decision. Such a property owner can file either an appeal petition or a notice of appeal accompanied by a request for prelitigation mediation (SC Code § 6-29-820(B)). Any notice of appeal and request for prelitigation mediation must be filed within 30 days after the decision of the board is postmarked. This mediation procedure is discussed further below.

The South Carolina Court of Appeals has clarified that any person with a substantial interest in the decision remains entitled to file an appeal to the circuit court, but only the property owner may file an appeal with a request for prelitigation mediation. See *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019).

3. **Appeal to State Appellate Courts**. A decision of the circuit court may be appealed to the state appellate courts in the manner provided by the South Carolina Appellate Court Rules. SC Code § 6-29-850. Rule 203, South Carolina Appellate Court Rules, requires service of a notice of appeal on all respondents within 30 days after receipt of written notice of entry of the circuit court order or judgment. The notice of appeal is filed with the clerk of the circuit court and with the clerk of the state Court of Appeals unless the order or judgment involves, as the principal issue, a challenge to the constitutionality of a county or municipal ordinance. In that event, the notice of appeal is filed with the clerk of the circuit court and with the clerk of the state Supreme Court. Rule 204 of the Appellate Court Rules allows either appellate court to transfer an appeal filed in the wrong court and allows the state Supreme Court, in its discretion and on motion of any party to the case, to obtain jurisdiction by certification of an appealed case involving an issue of significant public interest or a legal principle of major importance. The state Supreme Court also has the discretion, on motion of any party or on its own motion, to issue a writ of certiorari to review a final decision of the state Court of Appeals. Rule 226, South Carolina Appellate Court Rules.

Procedure for Appeals to Board

1. **Notice of appeal**. Any person aggrieved by a zoning officer's action (or any officer, department, board or bureau of the local government) may appeal to the board of zoning appeals by filing with the zoning officer and with the board a notice of appeal specifying the grounds for the appeal. 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), *overruled in part on other grounds by Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995); *Spanish Wells v. Board of Adjustment of Town of Hilton Head Island*, 295 S.C. 67, 367 S.E.2d 160 (1988). The zoning administrator should provide a form for the appeal notice that requires all of the necessary information for the appeal. A sample form is

provided in Appendix F. The officer from whose action the appeal is taken must immediately send the board all papers constituting the record upon which the action was taken. SC Code § 6-29-800(B).

2. **Stay of proceedings**. Filing an appeal to the board stays all legal proceedings to enforce the appealed action unless the officer appealed certifies to the board that a stay would cause imminent peril to life and property. In such cases, the appealed action is not stayed unless the board or a court of record, on notice to the officer and for due cause shown, grants a restraining order to stay the enforcement of the appealed action. SC Code § 6-29-800(C).

3. **Time and notice of hearing**. The board must set a reasonable time for hearing an appeal or other matters referred to the board. It must give at least 15 days' public notice of the hearing by publication in a general circulation newspaper and must give due notice to parties in interest. SC Code § 6-29-800(D). Notice to parties should be given by mail. See Notice Form in Appendix G. The zoning ordinance may require other forms of notice to persons whose property interests might be affected by the granting or a variance or other action. In cases involving variances or special exceptions, conspicuous notice must be posted on or adjacent to the property affected, with at least one such notice visible from each public street that abuts the property. SC Code § 6-29-790.

4. **Conduct of hearing**. Any party may appear at the hearing in person, by agent, or by attorney. SC Code § 6-29-800(D). The board may subpoena witnesses. SC Code § 6-29-800(E) and § 6-29-790. The chairperson (or, in his or her absence, the acting chairperson) may administer oaths. SC Code § 6-29-790. The board may certify contempt to the circuit court. SC Code § 6-29-800(E). Board hearings must comply with the Freedom of Information Act and with the further procedural requirements of SC Code § 6-29-790. The rules of the board should set out the hearing procedure. Sample rules are provided in Appendix D. At the start of the hearing, the chairperson should explain the procedure to be followed in presenting and examining witnesses, receiving evidence, the role of attorneys, and how the board will make and serve a decision. The concept of procedural due process is "flexible" and does not require a trial-type hearing in every case. *Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 656 S.E.2d 346 (2008).

5. **Rehearing**. The board may provide in its rules of procedure for a rehearing when there is justification 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). The board also must schedule a rehearing if it orders a remand to the zoning administrator for the purpose of obtaining a record sufficient for its review. See SC Code § 6-29-800(A)(4).

6. **Board decisions**. The board must decide the appeal or matter "within a reasonable time." Section 6-29-800(D). The board has the same powers as the zoning official and

may affirm or reverse (wholly or in part) or modify his actions and may issue or direct issuance of a permit. Absentee ballots are not authorized. A member must be present to vote. *Bennett v. City of Clemson*, supra.

All final decisions of the board must be in writing, delivered to parties in interest by certified mail, and permanently filed in the office of the board as public records. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board. SC Code § 6-29-800(F). This is a critical requirement because the board's findings of fact are binding on the circuit court on appeal. A form should be used for the decision which contains a checklist or reminder regarding the necessity for written findings and conclusions. A sample form is provided in Appendix F.

The Court of Appeals held that a letter sent by the zoning administrator, findings of fact and conclusions prepared by the zoning administrator, and a virtually indecipherable transcript of board hearings were insufficient to constitute the final decision of the board in *Massey v. City of Greenville Bd. of Zoning Adj.*, 341 S.C. 193, 532 S.E.2d 885 (Ct. App. 2000). In *Massey*, the court stated that "[w]ritten findings of fact and conclusions of law should be promulgated and either signed by the Board or ratified on the record by the Board before written notice of the Board's decision is given to the applicant." 341 S.C. at 201, 532 S.E.2d at 889. See also *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000), in which the Court of Appeals held that a document signed by the chairman and secretary with no evidence of assent by the other board members was not a final decision. However, the transcript was sufficient to be treated as the board's final decision because it contained findings of fact and conclusions of law separately stated.

In *Austin v. Bd. of Zoning Appeals, Town of Hilton Head Island*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004), the appeals court held that a letter from the zoning officer and a hearing transcript which clearly laid out the evidence were sufficient for the court's review given the case's narrow factual issue. The court cautioned local governments: "Our decision today, however, should not be interpreted as an indication that state and municipal agencies need not follow the mandate of section 6-29-800 and other statutory provisions requiring fully formed written decisions…. While an exhaustive written decision may not be required when a narrow issue may be addressed succinctly by the Board, further detail will surely be required in more complicated cases. Indeed, thorough written findings and determinations eliminate potential confusion and ensure the will of the Board is accurately transmitted to the affected parties and reviewing courts." 362 S.C. at 35, 606 S.E.2d at 212.

Appeal to Circuit Court

1. **Petition/ Notice of Appeal and Request for Prelitigation Mediation**. A person with a "substantial interest" in any decision of the BZA (or an officer or agent of the appropriate governing authority) may appeal a board decision to the circuit court in the county by filing with the clerk of court a written petition setting forth "plainly, fully, and distinctly" why the decision is contrary to law. SC Code § 6-29-820(A). Because a "person

who may have a substantial interest in any decision" has standing under this section, failure to join in the appeal to the BZA does not preclude participation in or the filing of an appeal to circuit court. *Bevivino v. Town of Mount Pleasant Bd. of Zoning Appeals*, 402 S.C. 57, 737 S.E.2d 863 (Ct. App. 2013). The appeal petition must be filed within 30 days after the decision of the board is mailed. SC Code § 6-29-820. Although the statutes do not require service of the petition on the board, it is advisable to do so. The clerk of court is required to give immediate notice of the appeal to the board secretary. Filing an appeal does not automatically stay or supersede the board decision, but the circuit judge may grant an order of supersedeas upon such terms and conditions as may seem reasonable and proper. SC Code § 6-29-830.

A 2003 amendment to the Comprehensive Planning Act allows an alternative appeal procedure for a property owner whose land is the subject of a BZA decision. Pursuant to SC Code § 6-29-820(B), such a property owner can file either an appeal petition or a notice of appeal accompanied by a request for prelitigation mediation. Any notice of appeal and request for prelitigation mediation must be filed within 30 days after the decision of the board is postmarked.

The South Carolina Court of Appeals has clarified that any person with a substantial interest in the decision remains entitled to file an appeal to the circuit court, but only the property owner may file an appeal with a request for prelitigation mediation. See *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019).

2. **Prelitigation Mediation**. Mediation is a negotiation session, facilitated by a neutral third-party mediator, in which the parties can arrive at a voluntary, mutually agreeable resolution of their dispute. SC Code § 6-29-825 provides for mediation of a property owner's appeal prior to court hearing. The mediation is mandatory if the property owner properly and timely files a request for mediation under SC Code § 6-29-820(B). The mediation is to be conducted in accord with the South Carolina Circuit Court Alternative Dispute Resolution Rules and SC Code § 6-29-825. A person who is not the owner of the property at issue may petition to intervene as a party in the mediation. This motion must be granted if the person has a "substantial interest" in the board's decision. SC Code § 6-29-825(A).

   All property owners or representatives and intervenors must be notified and have the opportunity to attend the mediation. The governmental entity must be represented at the mediation by at least one person. SC Code § 6-29-825(B).

   The mediation may result either in an impasse (as determined by the mediator) or a mediation settlement agreement (reduced to writing by the mediator within five working days of a successful mediation). The settlement agreement does not become effective until approved by the local legislative governing body (the municipal or county council) in public session and by the circuit court judge. SC Code § 6-29-825(C) and (D).

Any land use or other change agreed to in mediation which affects existing law is effective only as to the subject real property and sets no precedent as to other property. SC Code § 6-29-825(E).

If the mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, the property owner has the option to pursue an appeal of the BZA decision by filing a petition for appeal as provided in SC Code § 6-29-820(A). The petition must be filed with the circuit court within 30 days of the report of impasse filed by the mediator or the council's failure to approve. SC Code § 6-29-825(F).

The circuit court judge must approve the mediated settlement if it has a rational basis in accord with the standards of the Comprehensive Planning Act. If the court does not approve the settlement, it must schedule an evidentiary hearing and must issue a written opinion containing findings of law and fact. A party may appeal from that decision to the appellate courts or may pursue a petition for appeal. SC Code § 6-29-825(F). SC Code § 6-29-825(G).

Note: Identical mediation procedures are prescribed for an appeal from a decision of a board of architectural review, SC Code §§ 6-29-900 and 6-29-915, and for an appeal from a decision of the planning commission involving compliance of plans under land development regulations, SC Code §§ 6-29-1150 and 6-29-1155.

3. **Transcript**. Within 30 days after notice from the clerk of court of the filing of an appeal with a petition, the board must file with the clerk of court a certified copy of the board proceedings, including a transcript (if any) of the evidence heard by the board, and the board decision including its findings of fact and conclusions of law. SC Code § 6-29-830(A). Although there is no requirement that the certified record be served on parties in interest, it is common practice for the attorney for the board to file a return to the petition and serve it with a copy of the certified record on counsel for the appealing party.

4. **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. The court can determine only whether the board's decision is correct as a matter of law. SC Code § 6-29-840(A); *Austin v. Bd. of Zoning Appeals, Town of Hilton Head Island*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). The decision of the board must be allowed to stand unless there is "no evidence" which reasonably supports the findings. *Austin v. Bd. of Zoning Appeals*, supra. However, a decision of a zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board abused its discretion. *Restaurant Row Assoc. v. Horry Cnty.*, 335 S.C. 209, 516 S.E.2d 442 (1999); *Black v. Lexington Cnty. Bd. of Zoning Appeals*, 396 S.C. 453, 722 S.E.2d 22 (Ct. App. 2012); *Wyndham v. City of N. Augusta*, 401 S.C. 144, 735 S.E.2d 659 (2012).

If the record is insufficient for review, the circuit judge may remand to the board for rehearing. SC Code § 6-29-840(A). Lack of a good record is a frequent problem in zoning appeals. See *Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 418 S.E.2d 319 (Ct. App. 1992), in which the court allowed the applicant to supply missing portions of the transcript by affidavit.

5. **Mode of Trial**. SC Code § 6-29-840(B) deals with the mode of trial for an appeal from a board decision. The judge determines the appeal without a jury when the appeal involves no issues for which there is an established right to a jury or when the parties consent. However, the subsection also provides that a property owner is not precluded from asserting a pre-existing right to a jury trial for any issue beyond the subject matter jurisdiction of the BZA, such as a determination of the amount of damages due for an unconstitutional taking. In *Cobb v. South Carolina Dep't of Transp.*, 365 S.C. 360, 618 S.E.2d 299 (2005), the court determined that, in an inverse condemnation case, a property owner and the government have a right to elect a jury trial on the issue of compensation.

Exhaustion of Administrative Remedies

The courts ordinarily dismiss suits challenging zoning actions as premature when the party has failed to exhaust available administrative remedies by appeal to the board of zoning appeals. 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 (1954). A claim that the zoning ordinance was unconstitutional was dismissed for failure to exhaust administrative remedies in *Stanton v. Town of Pawleys Island*, 309 S.C. 126, 420 S.E.2d 502 (1992).

Constitutional "taking" claims frequently arise when application of zoning regulations results in denial of use of property. Until recently, the courts held 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 Cnty. Council*, 300 S.C. 270, 387 S.E.2d 455 (1990); *Williamson Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985). The United States Supreme Court has partially overruled this view, holding that "administrative 'exhaustion of state remedies' is not a prerequisite for a takings claim when the government has reached a conclusive position." *Pakdel v. City & Cnty. of San Francisco*, 141 S. Ct. 2226, 2231, 210 L. Ed. 2d 617 (2021). In other words, a government act may be "final" under *Williamson County* even if the property owner has not formally exhausted administrative remedies. The question appears to be whether the government has reached a definitive position.

Chapter 3 - Board of Architectural Review

Overview

The Comprehensive Planning Act allows a local government to create a board of architectural review or similar body by specific provisions in the local zoning ordinance. SC Code § 6-29-870. The title of the board is left to the discretion of the local governing body. In some communities, this board is called the historic district board, the landmarks commission, the design review board, or similar other title. For purposes of this manual, the term "board of architectural review" is used.

A board of architectural review is a part of the administrative mechanism designed to implement the zoning ordinance for specific areas. The board has no legislative authority.

Purpose

To create a board of architectural review, the zoning ordinance must make specific provision 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; or
3. protection and/or provision for the unique, special or desired character of a defined district, corridor or development area.

Architectural review provisions of the zoning ordinance may 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. SC Code § 6-29-870(A). Separate architectural review ordinances may be incorporated into the zoning ordinance by reference.

The powers of the board of architectural review involving structures and the designated areas are to be set out in the zoning ordinance. One specific power of the board provided for by the Comprehensive Planning Act is the power to hear and decide appeals from decisions of the zoning administrator (or other appropriate administrative official) in matters within the board's purview when an error is alleged in the order, requirement, determination or decision of the administrative official. SC Code § 6-29-880.

Composition and Qualifications

The local governing body appoints the members of the board. The board cannot have more than 10 members; however, the Comprehensive Planning Act does not set a minimum number of members. SC Code § 6-29-870(B). Board members cannot hold any other public office or position in the local government. SC Code § 6-29-870(C).

The qualifications of the board members can be set in the zoning ordinance. Specific professional qualifications can be required. SC Code § 6-29-870(B). The governing body sets the amount of compensation, if any, for board members. SC Code § 6-29-870(C).

The Act does not specify the length of the terms of members. The governing body making the appointment may remove board members. A finding of cause is not required. SC Code § 6-29-870(B).

Organization and Operation

Organizational requirements for the board of architectural review are virtually identical to those for the board of zoning appeals. SC Code § 6-29-870(D).

1. **Chairperson**. The board must elect one of its members as chairperson. The chairperson serves for one year or until a successor is elected and qualified. The chairperson may be reelected.
2. **Secretary**. The board must appoint a secretary. The secretary may be an officer of the local government or of the board of architectural review. It is customary to appoint as secretary the staff member who works with the board.
3. **Minutes**. The board must keep minutes of its meetings and proceedings. The minutes must show the vote of each member on each question, or show the member's absence or failure to vote. The board must file minutes (and other records of the board's official actions) in the board's office and keep them as public records.
4. **Rules of Procedure**. The board must adopt rules of procedure complying with the zoning ordinance. The rules should address the following elements as a minimum:
    - **a.** Election of a chairperson and duties,
    - **b.** Procedure for electing an acting chairperson,
    - **c.** Appointment of a secretary and duties,
    - **d.** Procedures for calling meetings,
    - **e.** Time and place for meetings,
    - **f.** Posting of meeting notices to comply with the SC Freedom of Information Act,
    - **g.** Setting agenda,
    - **h.** Quorum and attendance requirements,
    - **i.** Rules of procedure for conduct of meetings,
    - **j.** Time for appeal from decisions of the administrative official,
    - **k.** Time and procedure for hearing appeals,
    - **l.** Time and procedure for rendering and serving decisions,

m. Procedure for making and keeping records of actions (including minutes of all meetings),

n. Procedure for ordering remands to the administrative official and otherwise granting rehearings by the board, and

o. Oath administered to witnesses.

The board should adopt rules of evidence that provide due process. The board also should adopt a method of examining witnesses that avoids intimidation. See the sample rules of procedure in Appendix E.

SC Freedom of Information Act

The SC Freedom of Information Act, or FOIA, (SC Code §§ 30-4-10 *et seq*.) requires all public bodies (including committees of public bodies) to conduct their meetings in public, except when an executive session is authorized. An executive session is authorized only for the reasons specified in the FOIA, such as receipt of legal advice, employment matters, and contract negotiations. SC Code § 30-4-70. Written public notice of regular meetings (including dates, times, and places) must be given at the beginning of each calendar year. Notice and an agenda for regularly scheduled, special, or rescheduled meetings must be posted at the meeting place and on a public website maintained by the body, if any, at least 24 hours prior to a meeting. The board also must notify persons, organizations and news media that request meeting notifications. SC Code § 30-4-80.

Educational Requirements for Board of Architectural Review

Members of the board of architectural review are subject to the mandatory orientation and continuing educational requirements required by the Comprehensive Planning Act. SC Code § 6-29-1310 through § 6-29-1380. See the discussion of these requirements in Chapter 1.

Powers

Powers of the board of architectural review should be clearly set out in the local zoning ordinance. SC Code § 6-29-880. These powers will differ from locality to locality depending upon the purposes the local governing body is trying to achieve. Limits on matters the board may consider should be explicit. Broad general language in the zoning ordinance can lead to unnecessary conflict and dissension.

Appeals

1. **Appeal to board**. Any person aggrieved (or any officer, department, board, or bureau of the local government) may appeal to the board of architectural review from actions of the zoning administrator or other administrative official in matters within the jurisdiction of the board. SC Code § 6-29-880, § 6-29-890(A). The requirements of the Comprehensive Planning Act concerning appeals to the board of architectural review are essentially the same as those for an appeal to the board of zoning appeals. The

following procedures are required by the Comprehensive Planning Act (SC Code § 6-29-890):

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

b. The administrative officer from whom the appeal is taken immediately must transmit to the board all documents constituting the record for the appealed action.

c. An appeal to the board stays all legal proceedings to enforce the appealed action, unless the officer certifies to the board that a stay would cause imminent peril to life and property. In that case, proceedings to enforce the appealed action may be stayed only by a restraining order granted by the board or a court of record, on notice to the officer and for due cause shown.

d. The board sets a reasonable time for hearing the appeal or matter, gives public notice of the hearing, and gives due notice of the hearing to the parties in interest. The time for giving notice is not prescribed by the Comprehensive Planning Act. It should be set in the zoning ordinance.

e. At the hearing, a party may appear in person or be represented by an agent or attorney.

f. The board, either in response to a party's motion or on its own motion, may remand a matter to an administrative official if the board determines the record is insufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within 60 days unless otherwise agreed to by the parties. However, those persons who expressed an interest in being informed of the rehearing date must be mailed a notice of the rehearing in advance.

g. The board must decide the appeal (or any other matter referred to it) "within a reasonable time."

The Comprehensive Planning Act does not expressly require (as it does for the BZA) that the board issue a final decision in writing with findings of fact and conclusions of law separately stated. However, a written decision with separately stated findings of fact and conclusions of law clearly is the best practice. The sample form for board of zoning appeals decisions could be modified for this purpose. See Appendix F, Form 5.

A written decision with separately stated findings of fact and conclusions of law makes the positions of the board clear both to the appealing party and to the reviewing courts. It also serves to increase the likelihood that the courts will affirm the board's decision. SC Code § 6-29-920 refers to the certified record from the board as including "the decision of the board including its findings of fact and conclusions." In the consideration of any appeal to the court, the circuit judge is required by SC Code § 6-29-930 to treat the board's findings of fact as "final and conclusive."

Additionally, to comply with the due process rights of the appealing party, the board should conduct the hearing by following its adopted procedural rules. Another recommended procedure for the board is to serve a copy of its decision on the parties in interest by certified mail and retain a copy as a permanent public record.

2. **Appeal to Council**. There is no provision for an appeal to the local governing body from any action of an administrative officer or from a decision of the board of architectural review. Appeals from actions of an administrative official must go to the board and appeals from the board's decision must go to circuit court.

3. **Appeal to Circuit Court**. The requirements concerning appeals to the circuit court are, with some exceptions, the same as those for an appeal from the board of zoning appeals to the circuit court.

   a. **Petition/Notice of Appeal and Request for Prelitigation Mediation**. A person with a "substantial interest" in any decision of the board of architectural review (or any officer or agent of the appropriate governing authority) may appeal a board decision to the circuit court in the county by filing with the clerk of court a written petition setting forth "plainly, fully, and distinctly" why the decision is contrary to law. The appeal petition must be filed within 30 days after the affected party "receives actual notice" of the board's decision (not within 30 days of mailing of the decision as with appeals from the BZA). SC Code § 6-29-900(A).

      In *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 621 S.E.2d 361 (Ct. App. 2005), the court held that the triggering event for filing an appeal from a decision of an architectural review board, under the plain meaning of SC Code § 6-29-900, was actual notice of the adverse decision, not receipt of the written notice. Because the appealing party was present at the board hearing when its decision was rendered, it had actual notice of the decision on the day of the hearing. The court ruled that the appeal to circuit court, filed 82 days after the hearing (but within 30 days of receipt of the written notice of the decision), was untimely and was properly dismissed by the trial court.

      Although the Comprehensive Planning Act does not require service of the appeal petition on the board, it is advisable to do so. The clerk of court is required to give immediate notice of the appeal to the board secretary. Filing an appeal does not automatically stay or supersede the board's decision, but the circuit judge may grant an order of supersedeas upon such terms and conditions as may seem reasonable and proper. SC Code § 6-29-920(B).

      A 2003 amendment to the Comprehensive Planning Act allows an alternative appeal procedure for a property owner whose land is the subject of a decision of the board of architectural review. Pursuant to SC Code § 6-29-900(B), such a property owner can file either an appeal petition or a notice of appeal accompanied by a request for

prelitigation mediation. Any notice of appeal accompanied by a request for prelitigation mediation must be filed within 30 days after the decision of the board is postmarked.

The South Carolina Court of Appeals has clarified that any person with a substantial interest in the decision remains entitled to file an appeal to the circuit court, but only the property owner may file an appeal with a request for prelitigation mediation. See *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019).

b. Prelitigation Mediation. Mediation is a negotiation session, facilitated by a neutral third-party mediator, in which the parties can arrive at a voluntary, mutually agreeable resolution of their dispute. SC Code § 6-29-915 provides for mediation of a property owner's appeal prior to court hearing. The mediation is mandatory if the property owner properly and timely files a request for mediation under SC Code § 6-29-900(B). The mediation is to be conducted in accord with the South Carolina Circuit Court Alternative Dispute Resolution Rules and SC Code § 6-29-915. A person who is not the owner of the property at issue may petition to intervene as a party in the mediation. This motion must be granted if the person has a "substantial interest" in the board's decision. SC Code § 6-29-915(A).

All property owners or representatives and intervenors must be notified and have the opportunity to attend the mediation. The governmental entity must be represented at the mediation by at least one person. SC Code § 6-29-915(B).

The mediation may result either in an impasse (as determined by the mediator) or a mediation settlement agreement (reduced to writing by the mediator within five working days of a successful mediation). The settlement agreement does not become effective until approved by the local legislative governing body in public session and by the circuit court judge. SC Code § 6-29-915(C) and (D).

Any land use or other change agreed to in mediation which affects existing law is effective only as to the subject real property and sets no precedent as to other property. SC Code § 6-29-915(E).

If the mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, the property owner has the option to pursue an appeal of the board's decision by filing a petition for appeal as provided in SC Code § 6-29-900(A). The petition must be filed with the circuit court within 30 days of the report of impasse filed by the mediator or the council's failure to approve. SC Code § 6-29-915(F).

The circuit court judge must approve the mediated settlement if the settlement has a rational basis in accord with the standards of the Comprehensive Planning Act. If the court does not approve the settlement, it must schedule an evidentiary hearing

and must issue a written opinion containing findings of law and fact. A party may appeal from that decision to the appellate courts or may file a petition for appeal pursuant to SC Code § 6-29-915(F) and (G).

c. **Transcript**. Within 30 days after notice from the clerk of court of the filing of an appeal with a petition, the board's secretary must file with the clerk of court a certified copy of the board proceedings, including a transcript (if any) of the evidence heard by the board, and the board decision including its findings of fact and conclusions. SC Code § 6-29-920(A). Although there is no requirement that the certified record be served on parties in interest, it is common practice for the attorney for the board to file a return to the petition and serve it with a copy of the certified record on counsel for the appealing party.

d. **Standard of Review**. The board's findings of fact are "final and conclusive" on review by the court, and the court may not take additional evidence. The court may determine only whether the board's decision is correct as a matter of law. If the record is insufficient for review, the circuit judge must remand to the board for rehearing. SC Code § 6-29-930(A). Factual findings, reviewed under the "final and conclusive" standard, must be allowed to stand if there is any evidence in the record to support them and they are not influenced by an error of law. *Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach*, 294 S.C. 475, 366 S.E.2d 15 (Ct. App. 1988).

e. **Mode of Trial**. SC Code § 6-29-930(B) deals with the mode of trial for an appeal from a board decision. The judge determines the appeal without a jury when the appeal involves no issues for which there is an established right to a jury or when the parties consent. However, the subsection also provides that a property owner is not precluded from asserting a pre-existing right to a jury trial for any issue beyond the subject matter jurisdiction of the board of architectural review, such as a determination of the amount of damages due for an unconstitutional taking. In *Cobb v. South Carolina Dept. of Transp.*, 365 S.C. 360, 618 S.E.2d 299 (2005), the court determined that, in an inverse condemnation case, a property owner and the government have a right to elect a jury trial on the issue of compensation.

4. **Appeal to State Appellate Courts**. A decision of the circuit court may be appealed to the state appellate courts in the manner provided by the South Carolina Appellate Court Rules. SC Code § 6-29-940. Rule 203, South Carolina Appellate Court Rules, requires service of a notice of appeal on all respondents within 30 days after receipt of written notice of entry of the circuit court order or judgment. The notice of appeal is filed with the clerk of the circuit court and with the clerk of the state Court of Appeals unless the order or judgment involves, as the principal issue, a challenge to the constitutionality of a county or municipal ordinance. In that event, the notice of appeal is filed with the clerk of the circuit court and with the clerk of the state Supreme Court. Rule 204 of the Appellate Court Rules allows either appellate court to transfer an appeal filed in the

wrong court and allows the state Supreme Court, in its discretion and on motion of any party to the case, to obtain jurisdiction by certification of an appealed case involving an issue of significant public interest or a legal principle of major importance. The state Supreme Court also has the discretion, on motion of any party or on its own motion, to issue a writ of certiorari to review a final decision of the state Court of Appeals. Rule 226, South Carolina Appellate Court Rules.

Enforcement

The board is created by the zoning ordinance. The regulations relating to architectural review of buildings and structures in the designated areas are part of (or are incorporated by reference in) the zoning ordinance. Therefore, enforcement of the regulations and orders of the board 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. SC Code §§ 6-29-870 and 6-29-880. Some communities rename these boards by using "historic preservation" or "landmarks" in the title. Local historic preservation legislation may be a part of the zoning ordinance, or it could be a separate ordinance that is incorporated into the zoning ordinance by reference to comply with SC Code § 6-29-870(A). A model historic preservation ordinance can be obtained from the South Carolina Department of Archives and History.

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. The Municipal Association suggests 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**. Ordinances should refer to SC Code §§ 6-29-710, 6-29-870 and 6-29-880.
4. **Definitions**. Definition of key terms, especially those having a particular technical meaning (e.g., historic district, historic property, landmark or substantial hardship.)
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 hearing.

d. **Design guidelines**. The board uses guidelines set by the ordinance for reviewing applications. Typically, the 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

Overview

As with any law, the zoning ordinance will be effective only if enforced. Enforcement is normally the day-to-day responsibility of the zoning administrator.

The Comprehensive Planning Act contains an important statutory provision enabling local enforcement of ordinances adopted pursuant to the Comprehensive Planning Act. SC Code § 6-29-950 expressly authorizes the administrative enforcement mechanisms of (1) a permitting requirement and (2) "stop" orders. It also clearly sanctions the use of particular kinds of civil court orders, such as injunctions, as alternative remedies for ordinance violations. Additionally, a violation of any ordinance adopted pursuant to the Comprehensive Planning Act is a misdemeanor criminal offense, with each day of continuing violation constituting a separate offense. SC Code § 6-29-950(A).

Permits

Section 6-29-950(A) authorizes local zoning ordinances (as well as other ordinances adopted pursuant to the Comprehensive Planning Act) to require a permit (described as a building or zoning permit) as a prerequisite to construction work on, or any other use or occupancy of, land or structures. This section expressly makes it 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. Municipalities and counties are authorized to withhold issuance of building and/or zoning permits for noncompliance with zoning ordinances (and other ordinances adopted pursuant to the Comprehensive Planning Act). This section also declares it unlawful for any other official of the local government to issue, without the zoning administrator's approval, any permit for the use of any land or structure or any construction or alteration of a structure.

Stop Orders

The zoning ordinance may authorize the issuance of a stop order for any work undertaken without a proper building or zoning permit. SC Code § 6-29-950(A). The zoning ordinance also may provide for issuance of a stop order requiring the cessation of any use or activities (or any proposed use or activities) in violation of the zoning ordinance. SC Code § 6-29-950(B).

The stop order should inform the violator of the right to appeal the decision of the zoning administrator to the board of zoning appeals. The stop order provisions of the ordinance also should specify the method of service of the order on the owner or persons performing work on the property and the method of posting the order on the property. A sample form for a stop order is provided in Appendix H.

A stop order is a quick and useful tool for administrative enforcement when the offending party is operating under some mistake and will voluntarily comply with the order. If the violation is

willful, a stop order alone may simply be ignored. Another enforcement method, such as injunction, ordinance summons, or warrant for violation of the ordinance, 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. To facilitate compliance with stop orders, the zoning ordinance should expressly provide that the failure to comply with a stop order is unlawful. Such a provision would allow use of the ordinance summons or a warrant for prosecution of the non-compliance as a criminal offense.

Injunction and Mandamus

SC Code § 6-29-950(A) also allows an alternative enforcement remedy by a civil action in circuit court. The zoning administrator, another appropriate municipal or county officer or authority, and the municipal or county attorney may seek an injunction, order of mandamus, "or other appropriate action or proceeding." The law also allows institution of such a civil action by "an adjacent or neighboring property owner who would be specially damaged by the violation." Standing and "special damage" under this section may be difficult for private parties to establish. See, for example, *Carnival Corp. v. Historic Ansonborough Neighborhood Assoc.*, 407 S.C. 67, 753 S.E.2d 846 (2014). More recently, the South Carolina Court of Appeals held that owners of short-term rental properties in Charleston did not have standing to bring suit against other short-term rental owners who failed to comply with the city's rental ordinance. *Charleston Dev. Co., LLC v. Alami*, 433 S.C. 533, 860 S.E.2d 687 (Ct. App. 2021). Observing that a party is specially damaged by a use of property only "when it has suffered a particularized injury distinct from that suffered by the public generally," the court found that the plaintiffs had not reliably demonstrated such injury and thus lacked standing. *Charleston Dev. Co.,* 433 S.C. at 542, 860 S.E.2d at 692.

The purpose of a court-ordered injunction for a zoning violation is to prohibit use of the property contrary to the zoning ordinance or, in appropriate cases, to require removal of unauthorized structures. To obtain an injunction order from the court for a zoning violation, the local government must show the court that (1) it has an ordinance covering the situation and (2) a violation of the ordinance has occurred. *City of Columbia v. Pic-A-Flick Video, Inc*., 340 S.C. 278, 531 S.E.2d 518 (2000). Because the remedy of injunction for a zoning violation is expressly authorized by SC Code § 6-29-950(A), the government does not need to demonstrate to the court the usual required element of "irreparable harm." The court does not need to consider specifically whether issuance of the injunction is in the public interest. *County of Richland v. Simpkins*, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002).

The municipal or county attorney should be consulted when the local government considers bringing an action for an injunction.

An order of mandamus (also referred to as a writ of mandamus) is an order compelling a public official to perform a ministerial (non-discretionary) duty. Mandamus would not be the

appropriate remedy for a zoning violation by a private property owner because a mandamus order, by definition, is directed only to a public official. However, the remedy may apply to a situation in which a zoning ordinance violation occurs or would occur if an official fails to perform a non-discretionary duty.

Ordinance Summons

State statutory law authorizes municipalities and counties to enact an ordinance providing for an ordinance summons. SC Code § 56-7-80. An ordinance summons may be used to criminally prosecute an ordinance violation. Violation of any ordinance adopted pursuant to the Comprehensive Planning Act is a misdemeanor criminal offense. SC 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.

Any law enforcement officer of the local government or any authorized code enforcement officer, including a zoning official, can issue an ordinance summons. Service of the summons gives a magistrate or a municipal judge jurisdiction to try the case. No custodial arrest of the defendant is made, and the issuing or serving officer collects no bond. A procedure for posting bond is provided on the summons.

The language used in the summons has significant implications. If the summons contains no language warning that failure of the defendant to appear in court after posting bond may result in a trial in absence, then the court may not try the defendant in his absence. See *Richland County v. Simpkins*, 348 S.C. 658, 560 S.E.2d 899 (Ct. App. 2002).

The offender may post and forfeit bond, request a trial by jury, or agree to a trial by the court. If there is a trial, the zoning official must appear as a prosecuting witness. A court may impose a monetary fine and/or confinement in jail upon conviction, plus the assessment of state mandated costs.

The ordinance summons is a very useful enforcement tool. Because there is no custodial arrest or immediate bonding when the summons is served, the ordinance summons procedure generally is preferred over use of an arrest warrant.

Warrant

Changes in state law have altered the previous procedure of arrest warrants based on affidavits of persons who are not law enforcement officers. See SC Code § 22-5-110. Under current law, an arrest warrant may not be issued for the arrest of a person unless sought by a law enforcement officer acting in their official capacity. If an arrest warrant is sought by someone other than a law enforcement officer, the court must issue a courtesy summons. If the defendant named in the courtesy summons fails to appear before the court pursuant to the summons, the court issues an arrest warrant for the underlying offense based on the original

sworn statement of the affiant who sought the courtesy summons, provided the sworn statement establishes probable cause that the underlying offense was committed.

When an arrest 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 disposed of by bond forfeiture, trial by the court, or trial by jury upon request of the offender. If the case goes to trial, the person signing the affidavit must testify as a prosecuting witness. Upon conviction, the court may impose a fine and/or confinement and assessment of costs.

Magistrates and municipal judges do not have the authority to issue injunctions or orders requiring compliance with the zoning ordinance. Conviction of an offender does not guarantee correction of the unlawful condition or use. However, a conviction for the criminal offense may have that indirect effect because each day of violation is a separate offense. Few people would want to run the risk of repeated prosecution for multiple offenses.

Because of the unpopular custodial arrest feature associated with an arrest warrant, it is a seldom-used zoning enforcement tool. The ordinance summons procedure is generally preferred over a warrant. The municipal or county attorney should be consulted before seeking a warrant.

Conflict with Other Laws

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

If there is a conflict between zoning regulations and other laws or regulations, the more restrictive standards govern. SC Code § 6-29-960. This serves to provide maximum protection for the public.

Liability

Tort

Zoning officials and members of a planning commission, board of zoning appeals, or board of architectural review are government employees or government officials covered by the South Carolina Tort Claims Act. SC Code § 15-78-10, *et seq*. A tort is a negligent or willful action that causes loss or injury.

The Tort Claims Act gives immunity from suit and immunity from liability to a government employee or official who commits a tort while acting within the scope of his official duty. SC Code § 15-78-70. However, an employee or official does not have immunity from individual liability if it is proved that his "conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." SC

Code § 15-78-70(b). A person who suffers a loss caused by the negligence of a government employee or official discharging official duties may file a claim only against the governmental entity. The claim may be covered by liability insurance.

A local government is not liable for loss resulting from legislative, judicial or quasi-judicial action or inaction or for loss from discretionary action or inaction. SC Code § 15-78-60 (1) and (5). The governing body exercises legislative functions when adopting a comprehensive plan, zoning ordinance or land development regulations. The board of zoning appeals performs quasi-judicial functions when hearing appeals. The zoning administrator and planning commission use discretion in making some administrative decisions.

Civil Rights

Depriving a person of a right guaranteed by federal law or by the federal constitution can result in a claim for damages under the federal Civil Rights Act. 42 U.S.C. § 1983. Planning and zoning actions that violate equal protection and due process rights guaranteed by the federal constitution can be the basis for claims pursuant to 42 U.S.C. §1983 against both the responsible official individually and the local government.

Generally, a government official or employee has "qualified immunity" from monetary liability under 42 U.S.C. § 1983 for discretionary conduct that does not violate clearly established federal statutory or constitutional rights which would have been known to a reasonable person. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). This principle of "qualified immunity" was applied to a zoning administrator who advised a developer that building permits would not be granted absent a certificate of compliance with conditions of a development permit. *Brickyard Holdings, Inc. v. Beaufort County*, 586 F. Supp. 2d 409 (D.S.C. 2007).

Chapter 5 - Land Development Regulation

Land development regulations govern the change of land use characteristics when raw land is developed and when previously developed land is redeveloped. In the past, such regulations have been referred to as “subdivision regulations.” Current planning practice uses land development regulations to control site design, street layout, provisions for water and sewer service, and other matters related to the development or redevelopment of land.

The Comprehensive Planning Act recognizes that land development takes many forms. The traditional residential subdivision is just one type of land development. The explicit authority of local governments to adopt standards and requirements for proposed land developments is not limited merely to situations involving the subdivision of land into separate parcels.

The local government 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. SC Code § 6-29-1130(A).

Definitions

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. SC Code § 6-29-1110(2).
2. Subdivision is a division 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. It includes all division of land involving a new street or change in existing streets. It covers the alteration of streets or the establishment of new streets within a subdivision previously approved or recorded. Subdivision also includes re-subdivision involving further division or relocation of lot lines of any lot(s) within a subdivision previously made and approved or recorded, and combinations of lots of record. SC Code § 6-29-1110(4).
3. This statutory definition of a “subdivision” includes several exceptions to the definition. The local planning agency is to be informed of the excepted activities and have a record of them. The types of subdivisions of land expressly excepted from the definition are:
    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 5 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.

Purpose of Land Development Regulations

Land development regulations, including the traditional subdivision regulations, are police power regulations. The general intent of land development regulations is to provide for the harmonious, orderly, and progressive development of land as required by considerations of public health, safety, economy, good order, appearance, convenience and general welfare. SC Code § 6-29-1120.

Local governments are authorized to adopt land development regulations 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.

Requirements Which May Be Included

The Act requires that the land development regulations provide that no land development plan, including subdivision plans, 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. SC Code § 6-29-1130(A). Land development regulations may include requirements and standards for the following matters. SC Code § 6-29-1130(A) and (B):

1. the harmonious development of the municipality or county;
2. coordination of streets within subdivisions and other types of land developments with other existing or planned streets or official map streets;
3. the size of blocks and lots;
4. dedication or reservation of land for streets, school sites, and recreation areas and of easements for utilities and other public services and facilities;

5. distribution of population and traffic to create conditions favorable to health, safety, convenience, appearance, prosperity or the general welfare;
6. extent and manner of grading, surfacing and improving streets;
7. extent and manner of installing utilities (including water, sewer and septic tanks);
8. flood plain regulations; and
9. posting by the developer of a surety bond, certified check or other instrument readily convertible to cash to provide for installation of required site improvements in the event of default by the developer. The surety must be in an amount equal to at least 125% of the cost of the required improvements. SC Code § 6-29-1180.

Adoption and Amendment

The local planning commission prepares and recommends land development regulations (and amendments) to the governing body for adoption. SC Code § 6-29-1130(A). The governing body adopts or amends the land development regulations by enacting an ordinance after a public hearing. The governing body must give at least 30 days' notice of the time and place of the public hearing by publication in a newspaper of general circulation in the jurisdiction. SC Code § 6-29-1130(B).

Enforcement

1. **Recording**. No subdivision plat or other land development plan within the jurisdiction of the regulations may be filed or recorded in the county office where deeds are recorded until it bears the stamp of approval and is properly signed by the authority designated in the regulations. SC Code § 6-29-1140 and § 6-29-1160.
2. **Building permit**. No building permit may be issued until the plat or plan bears the stamp of approval and is properly signed by the authority designated in the regulations. SC Code § 6-29-1140.
3. **Transfer of title**. The property owner or his agent 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 the approved plan or plat has been recorded in the county office where deeds are recorded. SC Code § 6-29-1190.
4. **Surety**. If the developer defaults in installing required site improvements, the local government can use the proceeds of the surety bond (or certified check or other surety instrument) posted by the developer to install the required improvements. SC Code § 6-29-1180. In *Repko v. County of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018), the county erroneously agreed to reduce the amount of the required letter of credit to significantly less than the remaining cost of infrastructure improvements. The developer later declared bankruptcy without completing a substantial portion of the required

improvements. Lot owners who could not develop their property, because of the lack of supporting infrastructure, sued the county. The South Carolina Supreme Court found that the county was protected from liability under Section 15-78-60(4) of the Tort Claims Act, which provides that "a governmental entity is not liable for a loss resulting from … failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies." *Repko*, 424 S.C. at 507-08, 818 S.E.2d at 751.

Penalties for Violation

Submitting an unapproved subdivision plat or land development plan for filing or recording is a misdemeanor. A conviction is punishable as provided by law. SC Code § 6-29-1140. The land developer, register of deeds or clerk of court would violate the law by recording an unapproved plat or land development plan. The local government or an affected private party also may request a court to enjoin the unlawful recording. SC Code § 6-29-1160.

A transfer of title to property when the required plan or plat approval and recording have not been accomplished also is a misdemeanor punishable in the discretion of the court. SC Code § 6-29-1190. 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 local government also may request a court to enjoin the transfer. A 2016 amendment provides that the submission of a land development plan or land use plan is not required before transferring undeveloped real property. A local government entity may still require the grantee to file a plat at the time the deed is recorded. SC Code § 6-29-1210.

Administration

The planning commission administers land development regulations adopted by the local governing body. The land development regulations must include a specific procedure for the submission of plans and plats and for approval or disapproval by the planning commission or designated staff. The procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. SC Code § 6-29-1150(A). The planning commission rules may delegate to staff some plat review and approval functions; if such delegation is authorized, the staff action may be appealed to the planning commission by any party in interest. SC Code § 6-29-1150(C).

Plat and Plan Approval

Land development regulations must include time limits, not to exceed 60 days, for approving or disapproving land development plans or plats. Unless the time limit is extended by mutual agreement, failure to act within 60 days of receipt of a completed plan or plat constitutes approval. A letter must be issued to the developer approving the plans or plats and supporting documentation and authorizing the developer to proceed. SC Code § 6-29-1150(A).

Record of Actions and Notification

The planning commission must keep a public record of all actions approving or disapproving plats and plans. The record must include the grounds for approval or disapproval and any conditions attached to the action taken. Written notice of the actions taken must be provided to the developer. SC Code § 6-29-1150(B).

Appeals

If the planning staff is the designated approving authority, any "party in interest" may appeal a staff action to the planning commission. The planning commission must act on the appeal within 60 days. SC Code § 6-29-1150(C). If the planning commission is the designated approving authority, appeal is to circuit court. SC Code § 6-29-1150(D).

An appeal from a planning commission decision must be filed with the circuit court within 30 days after actual notice of the decision. SC Code § 6-29-1150(D). Prior to 2003, the Comprehensive Planning Act did not specify (as it did for the BZA and board of architectural review) the further procedures for an appeal from a planning commission decision on land development regulations to the circuit court. Amendments to the Comprehensive Planning Act in 2003 concerning land development appeals from the planning commission added essentially the same appeal procedures as were concurrently added for the BZA and board of architectural review.

A property owner whose land is the subject of a decision of the planning commission has the option to file with the circuit court either a written appeal petition or a notice of appeal accompanied by a request for prelitigation mediation. A notice of appeal accompanied by a mediation request must be filed within 30 days after the decision of the planning commission is mailed (rather than within 30 days after "actual notice" of the decision which is the time limit for filing an appeal petition with the court from a decision of the commission). SC Code § 6-29-1150(D)(2).

The procedure for prelitigation mediation of a planning commission decision mirrors that for prelitigation mediation of appeals from the BZA and from the board of architectural review. SC Code § 6-29-1170. (See the discussion of prelitigation mediation in Chapters 2 and 3).

The 2003 amendments to the Comprehensive Planning Act also added a provision on mode of trial for an appeal from a planning commission decision to the circuit court. SC Code § 6-29-1150(D)(4). The provision is nearly identical to the corresponding provision for appeals from the BZA and board of architectural review. It provides for a jury trial on any issue beyond the subject matter of the planning commission, such as a determination of the amount of damages due for an unconstitutional taking.

The portion of the Comprehensive Planning Act on land development regulation (Article 7) does not contain express provisions, comparable to those for the BZA and board of architectural review, concerning such things as remand to the administrative official, contents of the final decision, content requirements of the appeal petition filed in circuit court, transcript on appeal,

and standard of review by the court on appeal. In *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 656 S.E.2d 346 (2008), the South Carolina Supreme Court held that a planning commission's denial of an application for subdividing property was subject to the same "any evidence to support" standard of review applicable to court review of decisions by zoning boards of appeals under SC Code § 6-29-840.

Determining Existence of Restrictive Covenant

A 2007 amendment to the Act requires the local planning agency to inquire in the permit application or by written instructions whether the land is subject to any recorded covenant that is contrary to, conflicts with or prohibits the permitted activity. SC Code § 6-29-1145. If the planning agency receives actual notice of such a restrictive covenant from the permit application or from other sources, the agency may not issue a permit until the applicant provides confirmation of release from the covenant. The term "restrictive covenant" is defined in the section to exclude a restriction concerning the type of structure that may be built or placed on the property.

Dedication and Acceptance of Streets or Property

Land development regulations may require dedication or reservation of land for streets, school sites, recreation areas, utility easements, and other public services and facilities. SC Code § 6-29-1130(A). However, the approval of a land development plan or subdivision plat does not automatically constitute acceptance by the local government of the dedication of any street, easement or other property shown on the approved plan or plat. Acceptance of the dedication requires action of the local governing body. SC Code § 6-29-1170.

The land development ordinance or other local ordinance should establish the procedure and action of the governing body to be taken before the street, easement, or other property is accepted as public property.

Street Names

The planning commission is responsible for approving the name of streets or roads laid out within the territory over which the commission has jurisdiction. SC Code § 6-29-1200. A person laying out a new street or road is guilty of a misdemeanor if he shows an unapproved street name on a plat, street marker, or deed.

After reasonable notice in a general circulation newspaper in the community, the local planning commission may change the name of an existing street or road within its jurisdiction. The commission can make the change:

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 finds 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.

After reasonable opportunity for a public hearing, the planning commission issues its certificate designating the change. The certificate must be recorded in the office of the register of deeds or clerk of court. The changed and certified name then becomes the legal name of the street. SC Code § 6-29-1200.

Land Development Ordinance Checklist

A land development ordinance should include standards and requirements for all types of land development that require planning commission or designated planning staff review and approval. These requirements should not be in the zoning ordinance. The following checklist provides a starting point for ordinance preparation:

Types of Developments Included

___ Subdivision of land
- ___ Sketch plan requirements
- ___ Preliminary plat requirements (detailed construction plans)
- ___ Final plat requirements (engineering drawing of lots, blocks and streets; and "as built" drawing of improvements)

___ Condominium complex
- ___ Sketch plan requirements
- ___ Construction plan
- ___ Final plan

___ Group developments
- ___ Commercial development standards
- ___ Industrial park standards
- ___ Single buildings of more than ____ square feet
- ___ Apartment complex
- ___ Mobile home parks
- ___ Other

___ Cluster developments
- ___ Open space standards
- ___ Minimum building site standards
- ___ Improvement requirements

___ Planned developments
- ___ Design requirements
- ___ Development plan requirements
- ___ Development standards
- ___ Land use restrictions
- ___ Phases and timing
- ___ Minor amendment procedures

Administrative procedures

___ Specific procedure for submission and approval/disapproval
___ Approval authority (planning commission or designated staff)
___ Time limits (not to exceed 60 days)
___ Appeal procedure to planning commission from staff action
___ Notice to developer of action to approve or disapprove
___ Surety for construction of required improvements
___ Other

Chapter 6 – Official Map

The Comprehensive Planning Act does not affect existing enabling legislation dealing with an official map. Local governments may still refer to and use SC Code §§ 6-7-1210 through 6-7-1280, the remaining portion of the planning laws that existed prior to the Comprehensive Planning Act.

As the comprehensive plan is reviewed and revised, rights-of-way or other property needed for public uses may be identified. The official map is a tool "to reserve future locations of any street, highway, or public utility rights-of-way, public building site or public open space for future public acquisition and to regulate structures or changes in land use in such rights-of-way, building sites or open spaces." SC Code § 6-7-1220.

Adopting an official map gives the local government an opportunity to acquire property needed for public purposes before the owner changes the land use or develops the property in such a way as to make impractical its future acquisition for public use. It is a tool which may be used to help implement the comprehensive plan. SC Code § 6-7-1220.

Definition

"Official map" means an adopted 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. A public building site is one on which a public building will be constructed for public use with public funds. SC 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. SC Code § 6-7-1240.

After adoption of the major street portion of the comprehensive plan, the planning commission may secure surveys for the exact location of the lines of proposed new, extended, widened, or otherwise improved streets and highways in its jurisdiction. The planning commission marks on the map(s) of the surveyed area the lines recommended by the commission as the mapped lines of the rights-of-way required for future streets and highways and future extensions, widenings, and other improvements to existing streets and highways. The planning commission certifies the map(s) to the governing body for adoption.

After adoption of the comprehensive plan element showing the public building sites, public open spaces, or public utilities, the local planning commission may secure surveys of the exact location of the boundary lines of proposed new and enlarged sites for public buildings, public parks, public playgrounds, public utilities, and other public open spaces in its area of jurisdiction. The planning commission marks on the map(s) of the surveyed area the locations recommended by the commission as the mapped boundary lines of future public building sites, public parks, public playgrounds, public utilities and other future open space areas. The planning commission certifies the map(s) to the governing body for adoption.

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

Official Map Adoption

Before adopting the maps recommended by the planning commission, the governing body must hold a public hearing advertised and conducted according to its lawfully prescribed procedures. If no established procedures exist, a notice of the time and place must be published in a general circulation newspaper in the jurisdiction at least 15 days prior to the public hearing. SC Code § 6-7-1250.

After adoption of the official maps, the governing body certifies the fact of the establishment of the official maps to the clerk of the circuit court of the county. SC Code § 6-7-1230.

The governing body may add to or change the official maps. Before making changes, it must give the local planning commission 30 days to submit a report and recommendation on the proposed changes. If the planning commission fails to submit a report within the 30-day period, it is considered to have recommended approval of the proposed changes. The governing body must hold a public hearing before adopting the maps. SC Code § 6-7-1260.

Enforcement and Appeal Procedure

Permits cannot be issued for constructing, improving, repairing, or moving of any building or structure on property reserved by the official map. Permits cannot be issued for any change in land use on property reserved by an official map. SC Code § 6-7-1270.

Denial of a permit triggers the following appeal procedure for the affected property owner:

1. An appeal shall be presented to the local planning commission.
2. The planning commission shall evaluate the appeal and make a report within 30 days to the local governing body and to any other appropriate public agency. If no report is made within 30 days, the planning commission is deemed to have recommended that the appeal be granted.
3. The planning commission report must recommend one of the following actions:
    a. the governing body take official action to exempt the affected land from the restrictions of the official map;
    b. the governing body take official action to authorize the issuance of desired permits subject to specified conditions; or
    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 to exempt the affected land from the restrictions of the official map;

b. take official action to authorize the issuance of the denied permits subject to specified conditions accepted by the owner; or

c. either enter into an agreement to acquire the property or institute condemnation proceedings to acquire the property. Action to acquire the property may be instituted by the governing body or other appropriate public agency. For example, the school board may acquire the property if the affected property is a school site. If it is a highway right of way, the SC Department of Transportation may acquire the property.

If the governing body fails to act within 100 days after receiving the planning commission report, the proposed appeal is deemed approved. In such a situation, the previously denied permits are issued upon demand. However, applicable zoning provisions pertaining to the property must be followed. SC Code § 6-7-1270.

Property Exemption Procedure

Any property owner whose property is included on an official map may apply to the planning commission for exemption from the official map restrictions.

1. The local planning commission must evaluate the application and make a report within 30 days to the local governing body and any other appropriate public agency. If no report is made within 30 days, the commission is deemed to have recommended granting of the application.
2. The planning commission report must recommend one of the following:
   a. the local governing body take official action to exempt the affected property from the restrictions of the official map, or
   b. the governing body initiate action to acquire the property.
3. After receiving the report of the planning commission, the governing body has 75 days to do one of the following:
   a. Take official action to exempt the affected property from the restrictions of the official map.
   b. Enter into an agreement to acquire the property or institute condemnation proceedings to acquire the property. Action to acquire may be instituted by the governing body or other appropriate public agency.

If the governing body fails to act within 75 days after receiving the planning commission report, it is deemed to have granted the application. Exempting the property from the official map does not affect the zoning restrictions on the property. SC Code § 6-7-1280.

Chapter 7 – Development Agreements

The General Assembly adopted the South Carolina Local Government Development Agreement Act in 1993. SC Code Title 6, Chapter 31, §§ 6-31-10, *et seq*. The Development Agreement Act authorizes binding agreements between local governments and developers for the long-term development of large tracts of land. A development agreement gives a developer a vested right for the term of the agreement to proceed according to land use regulations in existence on the execution date of the agreement. See Appendix J.

Purpose

The General Assembly included a lengthy statement of findings, purpose and intent in the text of the Development Agreement Act. See SC Code § 6-31-10. Principal among these was the desire to provide some measure of certainty as to applicable land development law for developers who made financial commitments for development. The Development Agreement Act also expresses the intent to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities, encourage the efficient use of resources, and reduce the economic cost of development.

Development Permits

Development permits include a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance or any other official action having the effect of permitting property development. SC Code § 6-31-20(4).

Minimum Requirements

A development agreement may not be used for every land development. Two threshold requirements must be met before an agreement is authorized. SC Code § 6-31-40.

1. **Size of property**. The 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 (for example, land above the 100-year flood plain).
2. **Development time**. The length of the development agreement varies with the size of the property. Property containing up to 250 acres of highland is limited to an agreement term of up to five years. Property of 250 to 1,000 acres of highland is limited to a term of up to 10 years. Property of 1,000 to 2,000 acres of highland is limited to a term of up to 20 years. Agreements for property of more than 2,000 acres (and for developments under the Military Facilities Redevelopment Law, regardless of size) may have terms as to length of the agreement as agreed upon by the local government and developer. The local ordinance could set standards for calculating development time.

Contents of Agreement

A development agreement must include the following under SC Code § 6-31-60:

1. **Description and owners**. A legal description of the property and the names of its 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. **Duration**. Development must be projected to take place over a period authorized by SC Code § 6-31-40. The termination date may be extended by agreement.
3. **Uses**. Permitted land uses, including population densities, building intensities and building heights.
4. **Public facilities**. A description of "public facilities," a term defined in SC Code § 6-31-20(12), that will service the development, including who provides the facilities, the date any new facilities will be constructed, and a schedule of availability. SC Code § 6-31-60(A)(4). Requirements for easements and underground utilities could be included. If the local government is to provide public facilities, the agreement must provide that the delivery date of the facilities will be tied to defined completion percentages or other defined performance standards to be met by the developer. SC Code § 6-31-50(C).
5. **Dedication**. Description of any reservation or dedication of land for public purposes and any required or permitted environmental protection provisions. An environmental impact study may be appropriate.
6. **Permits**. 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. **Comprehensive plan**. A finding that the proposed development is consistent with the comprehensive plan and land development regulations. The requirement for such consistency is set out in SC Code § 6-31-70.
8. **Conditions**. Conditions, terms, restrictions or requirements necessary for public health, safety or welfare.
9. **Historic preservation**. Description of any provisions for preservation and restoration of historic structures. The agreement should cite local regulations for historic districts and structures.
10. **Time**. The time and schedule for completion of entire development or any phase. The local government may extend time upon request and upon a showing of good cause by the developer. See SC Code § 6-31-60(B).
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**. Include any other matter not inconsistent with law. A provision should be included for application of new laws. See SC Code § 6 31 80(B)(3). Maps and plans could be required at appropriate stages of development.

A development agreement may be amended or terminated by consent of the parties. SC Code § 6-31-100.

Adoption of Agreement

The following steps are required for approval of a development agreement:

1. **Hearing**. Before entering into a development agreement, the governing body must hold at least two public hearings. The governing body may authorize the planning commission to conduct the hearings. SC Code § 6-31-50(A).
2. **Notice**. Notice of intent to consider a development agreement must be published in a newspaper of general circulation in the county. The notice must specify the location of the property, proposed uses and a place where a copy of the proposed agreement may be obtained. No time for publication of the notice is prescribed. The time should be set in the general ordinance authorizing development agreements. The date, time and place of the second hearing must be announced at the first hearing. SC Code § 6-31-50(B).
3. **Ordinance**. The governing body must approve each development agreement by adoption of an ordinance. SC Code § 6-31-30.

Applicable Laws

1. **Existing law**. Unless otherwise provided by the development agreement, the land development laws in force at the time the agreement is executed will apply to the development of the property. SC Code § 6-31-80(A). The rights of electricity and gas suppliers may not be altered or amended. The Development Agreement Act gives no extraterritorial authority to local governments. SC Code § 6-31-140.
2. **Subsequent law**. Under SC Code § 6 31 80(B), a local government may apply subsequently adopted laws to a development that is subject to a development agreement if it is determined after a public hearing that one of the conditions listed below is met:
    a. **No conflict**. The new laws are not in 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 and expressly state that they apply to a development, subject to a development agreement.
    c. **Anticipated**. The new laws were specifically anticipated and provided for in the development agreement.
    d. **Changes**. Substantial changes in pertinent conditions 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.

Periodic Review

Procedures established by ordinance for development agreements must include a provision for periodic review by the zoning administrator or other appropriate officer at least every 12 months. The developer must be required to demonstrate good faith compliance with the terms of the agreement. SC 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 (setting out 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**. Upon failure of the developer to cure the breach within the time given, the local governing body unilaterally may terminate or modify the agreement. However, the developer must have an opportunity to rebut the determination or to consent to amend the agreement to meet the concerns raised by the findings and determination of breach.

Effect of Subsequent Annexation or Incorporation

A development agreement remains effective for a newly annexed or newly incorporated area for the duration of the agreement, or for eight years from the date of annexation or incorporation, whichever is earlier. However, this continued validity and duration of the agreement is subject to two preconditions: (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 any election for the incorporation or annexation or, if no annexation election was required, prior to the date the municipality ordered the annexation. The agreement may be extended by consent of the parties to the agreement and the municipality for up to 15 years. The municipality may amend or suspend the provisions of the agreement when the provisions produce a danger to the public health or safety of residents. SC Code § 6-31-110.

Recording Agreement

The developer is required to record a development agreement in the land records office of the county where the property is located within 14 days after the agreement is executed. The agreement is binding on successors in interest. SC Code § 6-31-120.

Subsequent State and Federal Laws

Development agreement provisions must be modified or suspended to comply with state or federal laws or regulations enacted after the agreement is executed, if the new laws or regulations prevent or preclude compliance with one or more provisions of the development agreement. SC Code § 6-31-130.

Checklist for Development Agreements

No form for a development agreement can be drafted to encompass all of the various local considerations to be addressed in a specific agreement. The following checklist should be of assistance in meeting the minimum requirements of the Development Agreement Act:

___ Adopt general ordinance authorizing development agreements and establishing procedures and requirements. Include provision setting time for advance notice of public hearings under SC Code § 6-31-50 and procedures for periodic review of agreement under SC Code § 6-31-90.

Agreement provisions:

___ Tract contains _____ acres of highland
___ Time for development is ____ years
___ Legal description of property
___ Names of legal and equitable owners
___ Permitted uses, including population density, building intensities and heights
___ Public facilities available and to be provided, including who will provide, when and schedule of availability. If local government is to provide, set out delivery dates tied to defined completion percentages or other defined performance standards to be met by developer.
___ Reservation or dedication of land for public use
___ Environmental protection provisions
___ Specify local permits needed. State that failure to list a permit does not relieve developer from complying with law
___ Development is consistent with comprehensive plan and land development regulations
___ Conditions for public health, safety and welfare
___ Historic preservation provisions
___ Times for developer ‘s completion of phases
___ If more than one local government involved, specify which is responsible for overall administration of the agreement
___ Provision for application of anticipated new laws
___ Procedures for periodic review by zoning administrator or official
___ Procedures for notice of breach and termination

Ordinance approving specific agreement:

___ Draft ordinance approving agreement
___ Publish newspaper notice of intent to consider agreement and public hearings, SC Code § 6-31-50
___ Make copy of proposed agreement available for public inspection
___ Hold public hearings (council or planning commission)
___ Adopt ordinance approving agreement and authorizing mayor to sign

Execution and Recording:

___ Execute agreement

___ Developer records agreement in county register of deeds office

___ Executed copy placed in local government public records

___ Record deed if lands are dedicated for public use

Appendix A: Checklist and Training Aids

Implementation Checklist for Comprehensive Planning Act of 1994

The Comprehensive Planning Enabling Act of 1994 became effective on May 4, 1994. The Act repealed all prior planning and zoning enabling statutes as of December 31, 1999.

The following checklist is a general guide for compliance with the Comprehensive Planning Act.

1. Planning Commission

- **a.** Must have five to 12 members. SC Code § 6-29-350. For joint commissions, see SC Code § 6-29-350(A).
- **b.** Must adopt rules of procedure. SC Code § 6-29-360.
- **c.** May prepare for recommendation to governing body initial and revised zoning ordinances, land development regulations, official map, landscaping ordinance and capital improvements program. SC Code § 6-29-340(B).
- **d.** May recommend policies and procedures for implementing planning elements. SC Code § 6-29-340(B)(2)(f).

2. Comprehensive Plan

The first step for the planning commission is review and revision of the comprehensive plan.

- **a.** The plan must include at least 10 elements:
  - **1.** population,
  - **2.** economic development,
  - **3.** natural resources,
  - **4.** cultural resources,
  - **5.** community facilities,
  - **6.** housing,
  - **7.** land use,
  - **8.** transportation,
  - **9.** priority investment, and
  - **10.** resiliency.
- **b.** The plan may be developed and adopted in increments. SC Code § 6-29-510(E).
- **c.** Surveys and studies must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues. SC Code § 6-29-510(B).
- **d.** The planning process for each element must include: SC Code § 6-29-510(C).

1. inventory of existing conditions,
2. statement of needs and goals, and
3. implementation strategies with time frames.

e. A majority of the entire commission membership must approve a recommendation of the plan or any element. SC Code § 6-29-520(B).

f. Council must adopt the plan or elements by ordinance after a public hearing. The newspaper notice must be published at least 30 days prior to the hearing. SC Code § 6-26-530.

g. The plan and elements must be reviewed at least every five years and must be updated at least every 10 years. SC Code § 6-29-510(E).

h. Advisory committees may be used in updating the plan or elements. Groups registering an interest must be notified of meetings. SC Code § 6-29-520(A).

3. Zoning Ordinance

a. The planning commission should draft and approve text or district amendments to the zoning ordinance needed to conform the ordinance to the revised comprehensive plan.

b. The Comprehensive Planning Act specifically authorizes use of the following or any other zoning and planning techniques, see SC Code § 6-29-720:

1. cluster development,
2. floating zones,
3. performance zoning,
4. planned development districts, see also SC Code § 6-29-740,
5. overlay zoning,
6. conditional uses, and
7. priority investment zone.

Using some of these techniques may require text amendments to conform uses presently under those titles to the new definitions. (For example, conditional uses). SC Code § 6-29-720.

c. The Comprehensive Planning Act requires only one 15-day newspaper notice of the public hearing on amendments. A notice must be posted on the property or adjacent to it. Notices must be mailed to groups that ask to be informed of meetings. SC Code § 6-29-760(A). The zoning ordinance may prescribe a longer time or additional notice requirements.

d. The governing body or the planning commission may hold the public hearings on amendments. The ordinance should contain a provision authorizing the planning

commission to hold hearings on amendments if council so desires. SC Code § 6-29-760(A).

e. If a landowner whose land is the subject of an amendment will be allowed to comment to the planning commission, at least 10 days' notice (and an opportunity to comment in the same manner) must be given to other interested members of the public and adjacent owners. SC Code § 6-29-760(B).

4. Board of Zoning Appeals

a. The Act refers to the board as the "board of zoning appeals." The name "zoning board of adjustment" is not used. The board has three to nine members. SC Code § 6-29-780.

b. The board "shall adopt rules of procedure." SC Code § 6-29-790. See Appendix D.

c. Newspaper notice of all public meetings is required, and the property must be posted with notice of variances or special exceptions. SC Code § 6-29-790. The rules of procedure should provide the time for publishing notice of meetings as required by the SC Freedom of Information Act.

d. The time in which an appeal to the board from an administrative decision may be taken is 30 days from date of actual notice of the decision, unless otherwise provided by ordinance or rules of the board. SC Code § 6-29-800(B). See Appendix F.

e. Variance standards were revised by the Comprensive PlanningAct. Conditions may be attached to a variance. A use variance may not be granted unless the zoning ordinance so provides. SC Code § 6-29-800(A)(2).

f. Only the board of zoning appeals is authorized to grant special exceptions. SC Code § 6-29-¬800(A)(3).

g. Decisions of the board must separately state findings of fact and conclusions of law and be delivered to parties of interest by certified mail. SC Code § 6-29-800(F). Board findings have the same weight on court appeal as jury findings on appeal. SC Code § 6-29-840. Board findings of fact are binding if there is any evidence in the record to support them.

5. Board of Architectural Review

a. The board is required to adopt rules of procedure. SC Code § 6-29-870(D). See Appendix E.

b. The Comprehensive Planning Act does not set public notice requirements for meetings. The rules of procedure or ordinance should address this requirement. Refer to SC Freedom of Information Act requirements.

c. The rules of procedure or ordinance should provide a time in which an appeal may be taken from an administrative decision. The Comprehensive Planning Act does not set a time. SC Code §6-29-890(A).

d. The Act provides a procedure for appeal to the board of architectural review similar to the procedure for appeal to the board of zoning appeals. SC Code §6-29-890. Ordinance amendments may be needed on this subject.

e. Any existing separate architectural review ordinance should be incorporated by reference into the zoning ordinance. Architectural review is a part of zoning. SC Code § 6-29-870, § 6-29-880.

6. Land Development Regulations

a. Subdivision regulations are called "land development regulations."

b. The revised definition of "subdivision" necessitates ordinance amendments. SC Code §6-29-1110.

c. Land development regulations may be adopted when at least the community facilities element, the housing element and the priority investment element of the comprehensive plan have been adopted. SC Code §6-29-1130(A).

d. Authorization for staff approval of plans requires an ordinance provision. SC Code §6-29-1150.

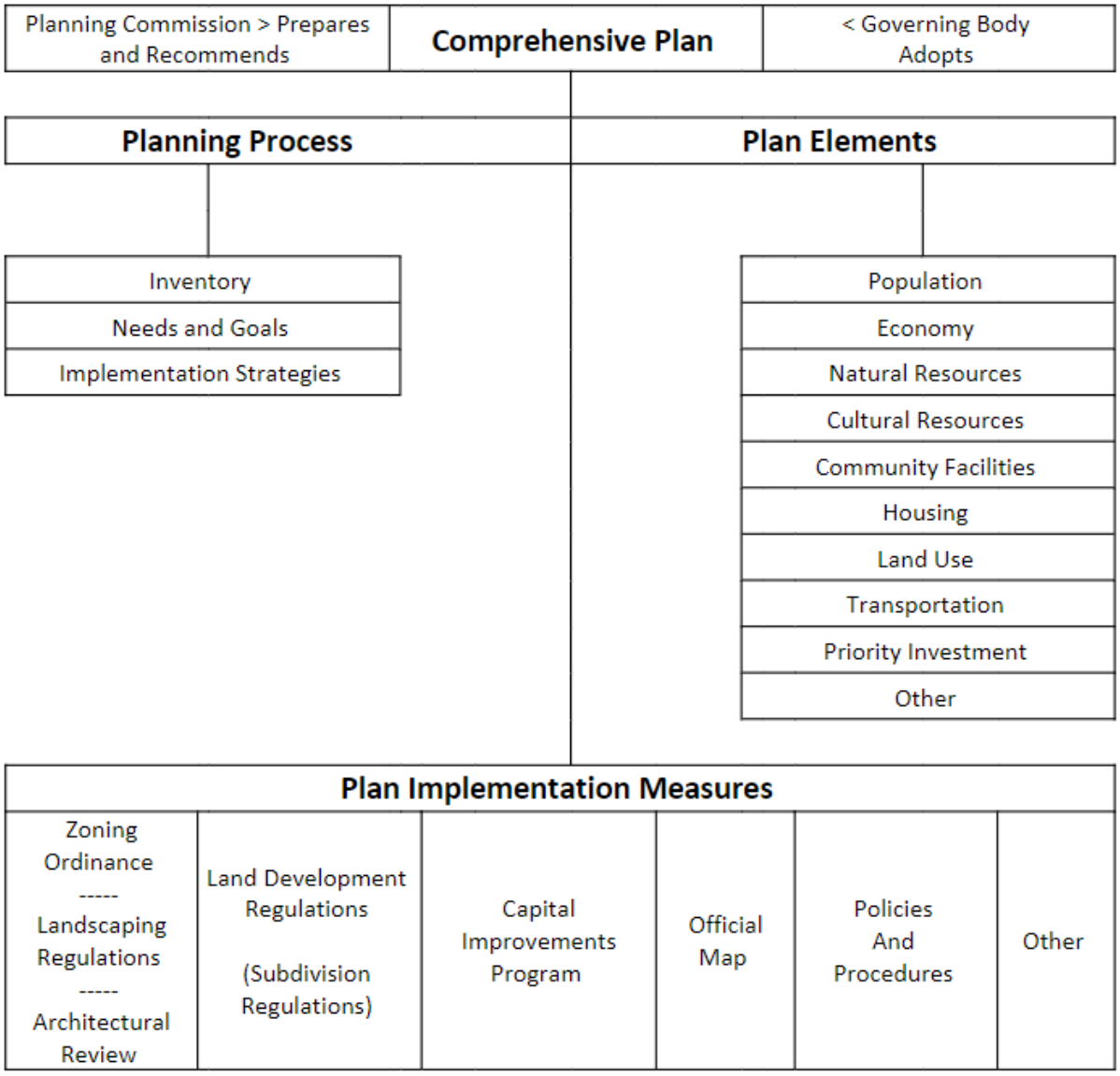
e. The planning commission is authorized to name or rename a street. This may require an ordinance amendment because under prior law the governing body made a name change. SC Code §6-29-1200.

f. If the current zoning ordinance contains requirements for review and approval of any land development by the planning commission, these requirements should be incorporated in the land development regulations and deleted from the zoning ordinance. The planning commission has no role in administering of the local zoning ordinance.

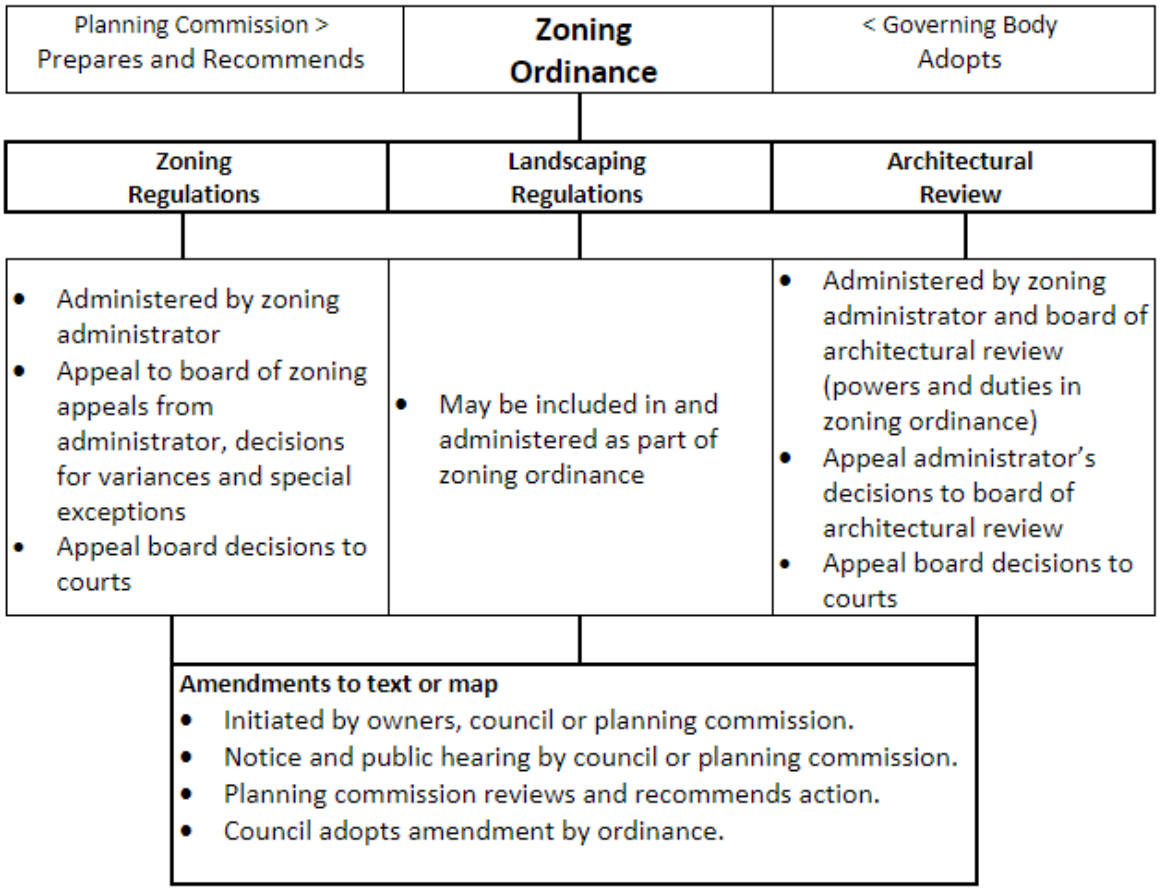
Training Aids

The following charts and summaries are training aids for planning and zoning workshops for council, planning commission, board of zoning appeals, board of architectural review and staff members:

Comprehensive Planning and Implementation



Comprehensive Plan Implementation Through Zoning



- Planning commission does not administer the zoning ordinance.
- Planning commission does not grant zoning variances or special exceptions.
- Planning commission approves plats and plans and may grant variances from land development regulations if authorized by ordinance.
- Board of zoning appeals is the only body authorized to hear appeals from decisions of the zoning administrator, grant variances and grant special exceptions.
- Board of architectural review hears appeals from administrative decisions on architectural review regulations.
- There is no appeal to the governing body from planning commission, zoning board or architectural review board actions.
- Appeals go to circuit court.

Comprehensive Plan Responsibilities

Governing Body (city or county council):

Hold public hearing and adopt, reject or remand to planning commission the comprehensive plan or revisions recommended by the planning commission. Plan must be adopted by ordinance.

Planning Commission:

Prepare the comprehensive plan according to the Comprehensive PlanningAct. Invite public participation and recommend the plan or any element to governing body for adoption. A majority of the entire membership of planning commission must approve recommendation.

Review the elements of the comprehensive plan regularly (at least every five years) to ensure that the comprehensive plan is current and recommend needed changes to the governing body for adoption.

Update the comprehensive plan at least every 10 years and recommend revisions to governing body for adoption.

Board of Zoning Appeals:

The board of zoning appeals has no responsibility for preparing or adopting the comprehensive plan.

Zoning Ordinance Responsibilities:

Governing Body:

Hold a public hearing and adopt, reject or remand to the planning commission the zoning ordinance and zoning district map prepared and recommended by the planning commission.

Hold a public hearing on a proposed amendment to the zoning ordinance that must be submitted to the planning commission for review and recommendation. Adopt or reject the proposed ordinance amendment. The zoning ordinance may provide for the planning commission to hold the required public hearings instead of the governing body.

Appoint and, for cause, remove members of the planning commission and board of zoning appeals. Appoint and remove members of the board of architectural review.

The governing body is not authorized to be involved in administering of the zoning ordinance or to hear appeals from the decisions of the zoning administrator, board of zoning appeals or board of architectural review.

Planning Commission:

Prepare and recommend to the governing body a zoning ordinance that includes the zoning district maps. This may be done only after the governing body has adopted the land use

element of the comprehensive plan. The zoning ordinance must be based on the land use element.

Review and submit recommendations to the governing body on all proposed amendments to the zoning ordinance. The governing body may authorize the planning commission to hold the required public hearing on proposed amendments.

When the comprehensive plan is amended, prepare and recommend to the governing body any necessary amendments to the zoning ordinance.

The planning commission has no responsibility in the day-to-day administration of the zoning ordinance or in deciding zoning appeals.

Board of Zoning Appeals:

Based on provisions of the zoning ordinance and provisions of state law, the board of zoning appeals has exclusive power to do the following:

1. Hear and decide appeals from decisions of the zoning administrator.
2. Hear and decide appeals (requests) for variances from requirements of the zoning ordinance subject to the procedures set by law.
3. Hear and decide appeals (requests) for special exceptions as permitted by the zoning ordinance.

The board of zoning appeals has no responsibility for preparing of the zoning ordinance or reviewing proposed amendments.

Appeals from decisions of the board of zoning appeals are taken to the circuit court not to the governing body or planning commission.

Zoning Administrator:

Acts on requests for zoning permits for land uses permitted by the zoning ordinance.

Processes appeals (including requests for variances and special exceptions) to the board of zoning appeals.

Interprets and enforces the zoning ordinance.

Issues permits for conditional uses if the proposed use meets the conditions set forth in the zoning ordinance.

Appeals from decisions of the zoning administrator are taken to the board of zoning appeals not to the governing body or planning commission.

Architectural Review Responsibilities

Board of Architectural Review (Design Review, Historic Preservation, etc.):

Board of architectural review may be provided for in the zoning ordinance to preserve and protect historic and architecturally valuable districts, neighborhoods or scenic areas, or to protect unique, special or desired character of a defined district. [SC Code § 6-29-870]

1. Not more than 10 members. Council appoints and removes members.
2. Members may not hold any other public office or position in the municipality or county. Members of the planning commission, board of zoning appeals, or council may not serve on the board of architectural review.
3. The board must adopt rules of procedure, keep minutes and exercise those powers provided in the zoning ordinance.
4. Administrative decisions may be appealed to the board; the procedure is essentially the same as that for the board of zoning appeals.
5. Appeal from a decision of the Board of Architectural Review is to circuit court. Appeal from circuit court is to the state appellate courts.
6. Council may appoint the members of the board and prescribe the powers and duties of the board in the zoning ordinance. Council does not administer the architectural regulations and does not hear appeals.

The board of zoning appeals has no authority to deal with matters delegated to the board of architectural review by the zoning ordinance.

The planning commission cannot administer the architectural review regulations or hear appeals related to architectural review matters. The planning commission can recommend zoning ordinance text amendments that affect the powers of the board of architectural review.

Land Development Regulations Responsibilities

Governing Body (city or county council):

Hold a public hearing and adopt, reject or remand to the planning commission the land development ordinance or subsequent amendments recommended by the planning commission.

The governing body must not be involved in the approval of plans or plats and administrative aspects of the land development regulations ordinance.

Planning Commission:

Prepares and recommends a land development regulation ordinance for adoption by the governing body. This may be done only after the planning commission has prepared and

recommended, and the governing body has adopted, at least the community facilities plan element, the housing element, and the priority investment element of the comprehensive plan.

Ensures that the procedure for review and approval of land development plans is spelled out in the land development ordinance. Either the planning commission staff or the planning commission may be designated to review and approve land development plans. If the planning staff is designated to review and approve land development plans, the planning commission becomes the body to hear appeals from decisions made by the staff. Appeals from the decision of the planning commission are made to the circuit court. The governing body is not an appeal board from the decisions of the planning commission.

Board of Zoning Appeals:

The board of appeals has no responsibility for preparing, adopting or administering land development regulations.

Variances and Special Exceptions

Even courts often confuse variances, special exceptions, and conditional uses. See *Hartman v. City of Columbia*, 268 S.C. 44, 232 S.E.2d 15 (1977). Variance and special exceptions are completely different in purpose, effect and procedure.

A **variance** is administrative relief from the literal or strict application of zoning regulations. It is an escape hatch to relieve an owner from denial of all beneficial use of property in unique cases of hardship imposed by the zoning ordinance. It is not used to allow a use of property that is not permitted. The board of zoning appeals may impose reasonable conditions related to the variance.

A **special exception** is granted for a use that is not permitted outright but may be allowed only with prior approval of the board of zoning appeals. No hardship need exist. Prescribed conditions set forth in the ordinance must be met. When granted, a special exception has the same status as a permitted use as long as the conditions are met, regardless of a change in property ownership.

Neither a variance nor an exception can be used as an amendment to the ordinance. Amendment is a legislative function that may be exercised only by the governing body.

Conditional uses may be allowed by a zoning ordinance. The zoning administrator grants conditional uses without action by the board of zoning appeals. Conditional uses that require board approval are special exceptions.

Special exceptions are frequently applied to troublesome uses that attract traffic, involve hazardous materials or activities, generate noise or need restrictions to ensure that they will be compatible with the neighborhood and that adjacent owners will be protected. Conditions imposed in addition to those required by the ordinance must be reasonable.

The governing body cannot delegate to the board of zoning appeals unrestricted power to grant or withhold special exceptions. The board cannot ignore or change the standards set by the ordinance. When ruling on an application for a special exception, the board should record its findings that the ordinance standards have been satisfied and its basis for imposing any additional conditions. Granting a special exception in one case does not bind the board to grant a special exception in another similar case. Each case stands on its own facts. See *Witherspoon v. City of Columbia*, 291 S.C. 44, 351 S.E.2d 903 (1986).

The zoning ordinance sets the procedures for granting variances and special exceptions. Usually, it is not good practice to grant a special exception for a use that also needs a variance. Some ordinances prohibit such action.

Variances and special exceptions run with the land, not the owner, and may give rise to vested rights. See *Baker v. Sullivan's Island*, 279 S.C. 581, 310 S.E.2d 433 (Ct. App. 1983); *Union Oil of California v. City of Columbia Zoning Board*, 276 S.C. 678, 281 S.E.2d 479 (1981).

Unnecessary Hardship Worksheet

Would these facts support a variance? Complete blanks with a "yes" or "no."

1. _____ The variance will be harmless.

2. _____ Applicant will have difficulty locating a site for his use if relief is denied.

3. _____ Applicant will suffer economic disadvantage if a variance is not granted.

4. _____ The hardship existed when applicant bought the property.

5. _____ Other property in the neighborhood suffers from the same problems.

6. _____ Property cannot be used for any permitted purpose without the variance.

7. _____ Strict application of ordinance would destroy the value of the property.

8. _____ Applicant could make increased profit if variance is granted.

9. _____ Applicant can make no reasonable return from any permitted use without a variance.

10. _____ The hardship is not due to the zoning ordinance.

11. _____ A similar variance was granted on other property.

12. _____ Property cannot be sold for any permitted use without the variance.

13. _____ The owner has invested money in anticipation of a variance.

14. _____ A substantial investment was made before more restrictive zoning amendments were adopted.

15. _____ A variance would make an operation more efficient.

16. _____ Adjacent property is used in the same manner as proposed by the variance.

17. _____ Increased highway noise and traffic make use unprofitable without a variance.

18. _____ Taking a portion of the property for highway widening makes lot size nonconforming.

19. _____ Natural conditions make filling or grading too expensive.

20. _____ Owner cannot get a loan because use is not feasible without a variance.

SC Freedom of Information and Ethical Considerations

Planning commissions, zoning boards and architectural review boards are public bodies subject to the SC Freedom of Information Act. SC Code §30-4-20(a). Members are "public officials" subject to the Ethics, Government Accountability, and Campaign Reform Act of 1991. SC Code § 8-13-100, *et seq*.

The SC Freedom of Information Act (SC 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 matters specified by the SC Freedom of Information Act, such as receipt of legal advice, employment matters, and contract negotiations. SC Code § 30-4-70. The commission or board must give written public notice of regular meetings at the beginning of each calendar year. Notice and an agenda for regularly scheduled, special, or rescheduled meetings must be posted at the meeting place and on a public website maintained by the body, if any, at least 24 hours prior to a meeting. Notice must also be given to persons, organizations and news media which request notification of meetings. SC Code § 30-4-80.

Under the ethics rules, a public official is prohibited from using his office to gain an economic benefit for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. SC Code § 8-13-700. "Immediate family" is defined as a child residing in the household, spouse, or person claimed as a dependent for income tax purposes. SC Code § 8-13-100(18).

An economic interest is an interest distinct from that of the general public in a transaction in which the public official may gain an economic benefit of $50 or more. SC Code § 8-13-100(11)(a). An official is not prohibited from participating in or voting upon a matter if his economic interest is no greater than that accruing to all other members of the profession, occupation or large class. SC Code § 8-13-100(11)(b).

If a decision affects an economic interest within the prohibition, the following steps must be taken under SC Code § 8-13-700(B):

1. The official prepares a written statement describing the matter requiring action or decision and the nature of the potential conflict.
2. The official furnishes a copy of the statement to the presiding officer, who will have the statement included in the minutes.

3. The presiding officer excuses the official from any votes, deliberations, and other actions on the matter.
4. The presiding officer causes the statement and reasons for disqualification to be noted in the minutes.

The disqualified member is not required to leave the meeting room during the discussion and voting on the conflicting matter. If a bare quorum is present, having a member leave the room could terminate the meeting. The statute prohibits deliberation and voting; it does not prohibit attendance at the meeting. The ethics disqualification is not an abstention. An abstention is a voluntary refusal to vote.

Appendix B: Model Ordinances

Model Ordinance No. 1: Establishing a Municipal (or County) Planning Commission

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

WHEREAS, it is desired to implement the provisions of Title 6, Chapter 29, Code of Laws of South Carolina;

NOW, THEREFORE, BE IT ORDAINED by the City/Town/county council that the City/Town/county code is amended by adding:

Section 1. Planning Commission Established. There is hereby established a planning commission for the City/Town/county, which shall have the powers and duties as provided in SC Code §§ 6-29-310, *et seq*.

Section 2. Composition of Commission. The planning commission shall have [5 to 12] members appointed by Council for terms of three years, staggered so that one third of the members have terms expiring in each year. Members shall serve until their successors are appointed and qualified. No member of the planning commission shall hold an elected public office in the City/Town or county.

Section 3. Compensation. Members of the planning commission shall serve without compensation. Actual expenses incurred in the performance of official duties may be reimbursed from budgeted funds pursuant to policies and procedures for employees of the City/Town/county.

Section 4. Removal of Members. Members of the planning commission may be removed at any time by council for cause. The existence of cause shall be discussed by the council in executive session as permitted by the SC Freedom of Information Act, SC Code § 30-4-70(a)(1), and the determination of removal shall be by vote in public session declaring a vacancy in the position without a statement of cause. Any fact which, in the discretion of council, is deemed to adversely affect the public interest, including lack of attendance at meetings, may constitute cause.

Section 5. Organization and Rules of Procedure. The planning commission shall organize, elect officers, and adopt rules of procedure as required by SC Code § 6-29-360.

[OPTIONAL] Section 6. Public Hearings. The planning commission shall hold all public hearings on amendments to the zoning ordinance and map pursuant to SC Code § 6-29-760(A).

Adopted: _____ [date]

Model Ordinance No. 2: Establishing a Municipal Joint Area Planning Commission and Initiating Development of a Comprehensive Plan

WHEREAS, the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (SC Code §§ 6-29-310, *et seq*.) authorizes an agreement for unincorporated areas to be placed under municipal jurisdiction for planning, zoning, and land development regulation; and

WHEREAS, the mayor and council of the City/Town desire that all plans and ordinances affected by the Act be revised and brought into conformity with the Act; and

WHEREAS, it is necessary to establish an expanded municipal planning commission to carry out planning functions for the area designated by ordinance adopted by _____ County and the City/Town, including the development of a comprehensive plan meeting requirements of the Act;

NOW, THEREFORE, BE IT ORDAINED by the mayor and council of the City/Town of _____ _____, South Carolina, as follows:

Section 1. Area Planning Commission Established. There is hereby established, pursuant to SC Code § 6-29-320, a municipal planning commission to be known as the City/Town Metropolitan Area Planning Commission which shall perform all planning functions in the area of jurisdiction established pursuant to SC Code § 6-29-330(A), including the revision of the comprehensive plan which shall be commenced immediately after organization of the planning commission and shall conform to the requirements of the Comprehensive Planning Enabling Act of 1994.

Section 2. Area of Jurisdiction. The _____ county council and the mayor and council of the City/Town of _____ have adopted an ordinance pursuant to the Act providing that the territory described therein shall be under the jurisdiction of the City/Town for the purposes of comprehensive planning and all other provisions of the Act. The area described in that ordinance [Ordinance No. _____] is the area of jurisdiction of the City/Town Metropolitan Area Planning Commission and shall be known as the Metropolitan Planning Area.

Section 3. Area Planning Commission.

(a) The City/Town planning commission is hereby abolished and is replaced by the City/Town Metropolitan Area Planning Commission which is hereby established. The planning commission shall consist of [5 to 12] members appointed by City/Town Council. The incorporated and unincorporated portions of the planning area shall be represented on the commission as nearly as practical proportionate to the population in each area according to the most recent decennial census.

(b) Terms of the members shall be for three years or until their successors are appointed. Terms of initial appointees shall be staggered so that one third of the members shall have terms expiring in each year.

(c) Members may be appointed to succeed themselves up to a maximum of three full three-year terms. Thereafter, members may be appointed only after they have been off the planning commission at least one year.

(d) The mayor and council may remove any member for cause by majority vote of the council. A vacancy for any reason shall be filled for the unexpired term.

(e) A member shall not hold an elective public office and shall serve without pay. Members may be reimbursed for actual expenses incurred in the performance of their duties from available funds approved in advance, pursuant to City/Town policies and procedures.

Section 4. Organization. The planning commission shall organize itself, adopt rules of organizational procedure, elect a chairman and vice chairman for terms of one year, and appoint a secretary who may be an employee of the City/Town or county. The planning commission shall keep a public record of its resolutions, findings, and determinations, and shall comply with the South Carolina Freedom of Information Act in the conduct of its business.

Section 5. Purchases and Contracts.

(a) The planning commission may purchase equipment and supplies and may employ or contract for staff and experts it considers necessary and consistent with funds available.

(b) The 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, 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.

Section 6. Duties, Functions, and Responsibilities. The Metropolitan Area Planning Commission shall have all duties, functions, and responsibilities as set forth in the Comprehensive Planning Enabling Act of 1994, SC Code Ann. §§ 6-29-310, *et seq*. The mayor and council may refer any matter or class of matter to the 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 mayor and council, to submit a report.

Section 7. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Adopted: _____ [date]

Model Ordinance No. 3: Establishing Joint City County Planning Commission

NOTE: *Each participating municipality and the county should adopt a separate ordinance. This sample ordinance may be adapted for use by a county.*

WHEREAS, a municipality and a county are authorized by SC Code § 6-29-320 to establish by ordinance a joint planning commission; and

WHEREAS, the City/Town of _____ [County of _____] 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 Enabling Act of 1994, SC Code Title 6, Chapter 29, and for the representation of the City/Town and the county on the planning commission; [*NOTE: more than one municipality may participate in a joint planning commission.*]

NOW, THEREFORE, BE IT ORDAINED by the mayor and council of the City/Town of _____ _____ [County of _____], South Carolina, as follows:

Section 1. Joint Planning Commission Established. Pursuant to SC Code § 6-29-320 and an ordinance of _____ County, there is established a joint planning commission, which shall perform all planning functions in the area of jurisdiction of the City/Town and the county, including revision of the comprehensive plan which shall be commenced immediately, and which shall conform to the requirements of the Comprehensive Planning Enabling Act of 1994.

Section 2. Joint Commission Membership. The City/Town planning commission is hereby abolished and is replaced by the joint planning commission which is to consist of [5 to 12] members, _____ appointed by county council and _____ appointed by City/Town council. It is the intent that the incorporated and unincorporated portions of the county shall be represented on the commission as nearly as practical proportionate to the population in each area according to the most recent decennial census, and the number of appointments by each body shall be adjusted as necessary after each census.

[OPTION: Sections 3 and 4 are used where municipality and county adopt the same zoning ordinance.]

Section 3. Joint Board of Zoning Appeals Established. Pursuant to SC Code § 6-29-780(A) and an ordinance of _____ County, there is established a joint board of zoning appeals, which shall perform all functions prescribed by the Act in the area of jurisdiction of the City/Town and the county under the common zoning ordinance adopted by both City/Town and county.

Section 4. Joint Board Membership. The City/Town board of zoning appeals is hereby abolished and is replaced by the joint board of zoning appeals which is to be reorganized to consist of nine members, _____ members appointed by county council and _____ appointed by City/Town council, with adjustments after each census as necessary to provide representation as prescribed in Section 2 above.

Section 5. Terms of Members; Vacancies; Expenses.

(a) Terms of the members of the commission [and board] shall be for three years or until their successors are appointed. Terms of initial appointees shall be staggered so that one third of the members shall have terms expiring in each year.

(b) Members may be appointed to succeed themselves up to a maximum of three full three-year terms. Thereafter, members may be appointed only after they have been off the commission [or board] at least one year.

(c) The mayor and council may remove any member appointed by City/Town council for cause by majority vote of the council. A vacancy for any reason shall be filled for the unexpired term.

(d) A member shall not hold an elective public office and shall serve without pay. Members may be reimbursed for actual expenses incurred in the performance of their duties from available funds approved in advance.

Section 6. Organization. The joint planning commission [and joint board of zoning appeals] shall organize themselves, adopt rules of organizational procedure, elect a chairman and vice chairman for terms of one year, and appoint a secretary who may be an employee of the City/Town or county. The planning commission [and board] shall keep public records of their resolutions, findings, determinations and orders.

Section 7. Finances.

(a) The funding of the joint planning commission [and board] shall be as follows: [Insert finance provisions as agreed upon by the City/Town and county.]

(b) The joint 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 available.

(c) The joint 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, 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.

Section 8. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Adopted: _____ [date]

Model Ordinance No. 4: Designating County Planning Commission as Planning Commission of Municipality

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

WHEREAS, the county council has adopted an ordinance approving the terms of the agreement for exercise of the powers granted in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, SC Code Title 6, Chapter 29, by the county planning commission within the territory of the City/Town;

NOW, THEREFORE, BE IT ORDAINED by the mayor and council of the City/Town of _____ _____, South Carolina, as follows:

Section 1. Designation of County Planning Commission. Pursuant to SC Code § 6-29-330(B), the _____ County planning commission is hereby designated as the official planning commission of the City/Town, which shall perform all planning functions in the area of jurisdiction of the City/Town, including revision of the comprehensive plan.

Section 2. Zoning Amendments.

(a) Proposed amendments to the City/Town zoning ordinance shall be forwarded by the zoning administrator to the county planning commission for review as required by SC Code § 6-29-760(A).

[OPTION 1]

(b) The planning commission shall give notice, conduct the required public hearing, and make a recommendation to City/Town council within 30 days after receipt of a proposed amendment.

[OPTION 2]

(b) The planning commission shall conduct its review and make its recommendation to town council with 30 days after receipt of a proposed amendment. City/Town council shall give notice and conduct the required 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.

Adopted: _____ [date]

Appendix C: Planning Commission Rules of Procedure

Article I: Organization

Section 1. Rules. These rules of procedure are adopted pursuant to SC Code § 6-29-360 for the _____ (City/Town/County) Planning Commission which consists of _____ members appointed by council.

Section 2. Officers. The officers of the commission shall be a chairman and vice chairman elected for one-year terms at the first meeting of the commission in each calendar year. The commission shall appoint a member of the staff as secretary of the commission.

Section 3. Chairman. The chairman shall be a voting member of the commission and shall:

- **a.** call meetings of the commission;
- **b.** preside at meetings and hearings;
- **c.** act as spokesperson for the commission;
- **d.** sign documents for the Commission;
- **e.** transmit reports and recommendations to council; and
- **f.** perform other duties 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 absence of 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;
- **b.** assist the chairman in preparation of agenda;
- **c.** keep minutes of meetings and hearings;
- **d.** maintain commission records as public records;
- **e.** attend to commission correspondence; and
- **f.** perform other duties normally carried out by a secretary.

Article II: Meetings

Section 1. Time and Place. An annual schedule of regular meetings shall be adopted, published and posted at the designated City/Town/county office in December of each year. Special meetings may be called by the chairman upon 24 hours' notice, posted, and delivered to all members and local news media. Meetings shall be held at the place stated in the notices and shall be open to the public.

Section 2. Agenda. A written agenda shall be furnished by the secretary to each member of the commission and the news media, and shall be posted at least five days prior to each regular meeting or at least 24 hours prior to a special meeting. Items may be added to the agenda at a meeting by majority vote.

Section 3. Quorum. A majority of the members of the commission shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

Section 4. Rules of Order. Robert's Rules of Order Newly Revised, 12th Edition, shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.

Section 5. Voting. A member must be present to vote. Each member shall vote on every question unless disqualified by law. The question of disqualification shall be decided by the member affected, who shall announce the reason for disqualification, give it to the chairman in writing, have it placed in the minutes, and refrain from deliberating or voting on the question.

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 the notice required by statute or ordinance 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.

Section 2. Procedure. In matters brought before the commission for public hearing that were initiated by an applicant, the applicant, his agent, or his attorney shall be heard first, members of the public next, and staff next. The applicant shall have the right to reply last. No person may speak for more than five minutes without consent of the commission. No person speaking at a public hearing shall be subject to cross-examination. All questions shall be posed by members of the commission. In matters not initiated by an applicant, members of the public shall speak in the order in which requests were received or in such order as the commission shall determine.

Article IV: Records

Section 1. Minutes. The secretary shall record all meetings and hearings of the commission on tape, which shall be preserved until final action is taken on all matters presented. The secretary shall prepare minutes of each meeting for approval by the commission at the next regular meeting. Minutes shall be maintained as public records.

Section 2. Reports. The secretary shall assist in the preparation and forwarding of all reports and recommendations of the commission in appropriate form. Copies of all notices, correspondence, reports, and forms shall be maintained as public records.

Section 3. Attendance. The minutes shall show the members in attendance at each meeting and the reason for any absence submitted by a member. The commission shall recommend to the governing body the removal for cause of any member who is absent from three consecutive meetings without adequate reason.

Article V: Review Procedure

Section 1. Zoning Amendments. Proposed zoning text and district amendments shall be considered and recommendations shall be forwarded to the governing body within 30 days after receipt of the proposed amendments, unless additional time is given by the governing body. When so authorized, the planning commission shall conduct any required public hearing prior to making a recommendation.

Section 2. Plats. Plats submitted for review pursuant to land development regulations 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 SC Code § 6-29-1110(2). 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. [*NOTE: This process may be included in the land development ordinance provisions.*]

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 governing body on a proposed amendment. The elements of the comprehensive plan shall be reviewed and updated on a schedule adopted by the commission, meeting the requirements of SC Code § 6-29-510(E).

Section 4. Reconsideration. The commission may reconsider any review when so requested by the governing body, 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 governing body for funding in the annual budget. The recommendations shall include an explanation and justification for proposed expenditures.

Section 2. Expenditures. Budgeted funds shall be expended only for approved purposes in accordance with financial policies and procedures set by the governing body, including procurement rules. Upon adoption of a budget by the governing body, 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 the commission shall be made to members of the commission and staff upon submission of vouchers supported by receipts.

Section 3. Personnel. The commission shall employ such staff and consultants as may be authorized and funded by budget or make recommendations for staff members to be employed by the City/Town/county. Consultants shall be engaged by majority vote of the commission after review of proposals invited by public notice and mail, and personal interviews with applicants by the commission, or a committee of commission members and staff.

Article VII: Adoption and Amendment

Section 1. Amendment. These rules may be amended at any regular meeting of the commission by majority vote of the members of the commission at least seven days after the written amendment is delivered to all members.

Section 2. Adoption. These rules were adopted by vote of a majority of the members of the commission at a regular public meeting on _____.

Attest: _____ **Sign:** _____

Secretary Chairman

Appendix D: Board of Zoning Appeals Rules of Procedure

Article I: Organization

Section 1. Rules. These rules of procedure are adopted pursuant to SC Code § 6-29-790 for the City/Town/County Board of Zoning Appeals with _____ members appointed by council.

Section 2. Officers. The officers of the board shall be a chairman and vice chairman elected for one-year terms at the first meeting of the board in each calendar year. The board shall appoint a member of the staff as secretary of the board.

Section 3. Chairman. The chairman shall be a voting member of the board and shall:

a. call meetings of the board;

b. preside at meetings and hearings;

c. swear in witnesses;

d. act as spokesperson for the board;

e. sign documents for the board;

f. have orders of the board served on parties; and

g. perform other duties 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 absence of the chairman and vice chairman, an acting chairman shall be elected by the members present.

Section 5. Secretary. The secretary shall:

a. provide and publish notice of appeals and meetings;

b. assist the chairman in preparation of agenda;

c. properly post property involved in appeals for variances or special exceptions;

d. keep recordings and minutes of meetings and hearings;

e. maintain board records as public records;

f. serve board decisions on parties;

g. attend to board correspondence; and

h. perform other duties normally carried out by a secretary.

Article II: Meetings

Section 1. Time and Place. An annual schedule of regular meetings shall be adopted, published, and posted at the designated City/Town office in December of each year. Special meetings may be called by the chairman upon 24 hours' notice, posted and delivered to all members and local

news media. Meetings shall be held at the place stated in the notices and shall be open to the public.

Section 2. Agenda. The secretary shall furnish a written agenda to each member of the board and the news media and shall post such agenda at least five days prior to each regular meeting and at least 24 hours prior to a special meeting. Items may be removed from the agenda or postponed at a meeting by majority vote.

Section 3. Quorum. A majority of the members of the board shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

Section 4. Rules of Order. Robert's Rules of Order Newly Revised, 12th Edition, shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.

Article III: Appeals 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 deemed necessary. The failure to submit adequate information may be grounds for dismissal. An application filed by an agent shall be accompanied by written designation of the agent signed by the applicant or party in interest.

Section 2. Time for Appeal. An appeal from an administrative decision must be filed within 15 days after the decision becomes a matter of public record by denial or issuance of a permit or the filing of a written decision in the office of the zoning administrator. An appeal shall be filed by delivery of the approved appeal form to the secretary of the board who shall notify the official appealed from.

Section 3. Calendar. Appeals and applications shall be marked with the date of receipt and placed on the hearing calendar in the order in which 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 15-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.

Section 5. Continuances. The board may continue an appeal or application hearing one time for good cause shown.

Section 6. Notice. Public notice of a hearing of the board shall be published in a local newspaper and posted on or adjacent to the property affected at least 15 days prior to the hearing. The notice shall contain a description of each matter to be heard and identify the applicant and property affected.

Article IV: Hearing Procedure

Section 1. Appearances. The applicant or any party in interest may appear in person or by agent or attorney. 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 requested at least 10 days prior to a hearing and signed by the chairman. The board may call its own witnesses when deemed appropriate.

Section 3. Cross-examination. No party shall have the right to cross-examine witnesses; however, the opportunity to examine opposing witnesses may be freely extended when conducted in an orderly manner. Intimidation of witnesses will not be allowed.

Section 4. Evidence. Relevant documents, photographs, maps, plans, drawings, etc., will be received in the record without authentication in the form of legible copies. Relevant testimony which is not cumulative or hearsay will be received. The 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 hearing, subject to modification by the chairman, shall be:

- **a.** statement of matter to be heard (chairman or secretary);
- **b.** presentation by applicant (10-minute limit);
- **c.** presentation by official appealed or presentation by opponents (10-minute limit);
- **d.** rebuttal by applicant (5-minute limit);
- **e.** unsworn public comment, when appropriate;
- **f.** the board may question participants at any point in the hearing; and
- **g.** matters in which additional time is granted may be moved to end of the agenda.

Section 6. Disposition. The board may deliberate and make final disposition of a matter by majority vote of members present and qualified to vote, provided that a valid quorum exists. The vote may be taken at the same or a subsequent meeting. A member may not vote on a matter which he or she has not heard. Deliberating and voting shall be done in public.

Section 7. Form of Order. An order shall be issued disposing of a matter by granting or denying relief with such conditions may be deemed necessary, or by affirming, modifying, or reversing an administrative decision. A matter may be dismissed for lack of jurisdiction or prosecution. Findings of fact and conclusions of law shall be separately stated in an order.

Section 8. Service of Order. The secretary shall deliver a copy of an order to each party in interest by certified mail 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 15 days after delivery of the order accompanied by new evidence which could not reasonably have been 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 record all meetings and hearings of the board on tape, which shall be preserved until final action is taken on all matters presented. The secretary shall prepare minutes of each meeting for approval by the board at the next regular meeting. Minutes shall be maintained as public records.

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

Article VI: Amendment and Adoption

Section 1. Amendment. These rules may be amended at any regular meeting of the board by majority vote of the members of the board at least seven days after the written amendment is delivered to all members.

Section 2. Adoption. These rules were adopted by vote of a majority of the members of the board at a regular public meeting on _____.

Attest: _____ **Sign:** _____

Secretary Chairman

Appendix E: Board of Architectural Review Rules of Procedure

Article I: Organization

Section 1. Rules. These rules of procedure are adopted pursuant to SC Code § 6-29-870 for the (City/Town/county) Board of Architectural Review with _____ members appointed by council.

Section 2. Officers. The officers of the board shall be a chairman and vice chairman elected for one-year terms at the first meeting of the board in each calendar year. The board shall appoint a member of the staff of the City/Town/county as secretary of the board.

Section 3. Chairman. The chairman shall be a voting member of the board and shall:

- **a.** call meetings of the board;
- **b.** preside at meetings and hearings;
- **c.** act as spokesperson for the board;
- **d.** sign documents for the board;
- **e.** have orders of the board served on parties; and
- **f.** perform other duties 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 absence of the chairman and vice chairman, an acting chairman shall be elected by the members present.

Section 5. Secretary. The secretary shall:

- **a.** provide and publish notice of appeals and meetings;
- **b.** assist the chairman in preparation of agenda;
- **c.** keep recordings and minutes of meetings and hearings;
- **d.** maintain board records as public records;
- **e.** serve board decisions on parties;
- **f.** attend to board correspondence; and
- **g.** perform other duties normally carried out by a secretary.

Article II: Meetings

Section 1. Time and Place. An annual schedule of regular meetings shall be adopted, published, and posted at the designated City/Town/county office in December of each year. Special meetings may be called by the chairman upon 24 hours' notice, posted and delivered to all members and local news media. Meetings shall be held at the place stated in the notices and shall be open to the public.

Section 2. Agenda. The secretary shall furnish a written agenda to each member of the board and the news media and shall post such agenda at least five days prior to each regular meeting and at least 24 hours prior to a special meeting. Items may be removed from the agenda or postponed at a meeting by majority vote.

Section 3. Quorum. A majority of the members of the board shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

Section 4. Rules of Order. Robert's Rules of Order Newly Revised, 12th Edition, shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.

Article III: Appeals Procedure

Section 1. Form of Appeal. Appeals from administrative decisions and applications for variances shall be filed on forms approved by the board and provided to applicants by the secretary. The board may require additional information deemed necessary. The failure to submit adequate information may be grounds for dismissal. An application filed by an agent shall be accompanied by written designation of the agent signed by the applicant or party in interest.

Section 2. Time for Appeal. An appeal from an administrative decision must be filed within 15 days after actual notice of the decision by delivery of the approved appeal form to the secretary of the board who shall notify the official appealed from.

Section 3. Calendar. Appeals and applications shall be marked with the date of receipt and placed on the hearing calendar in the order in which 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 15-day time for appeal has expired. Withdrawn applications for variances may be refiled after six months and shall be placed on the calendar according to the date refiled.

Section 5. Continuances. The hearing of an appeal or application may be continued one time by the board for good cause shown.

Section 6. Notice. Public notice of a hearing of the board shall be published in a local newspaper and posted on or adjacent to the property affected at least 15 days prior to the hearing. The notice shall contain a description of each matter to be heard and identify the applicant and property affected.

Article IV: Hearing Procedure

Section 1. Appearances. The applicant or any party in interest may appear in person or by agent or attorney. 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 requested at least 10 days prior to a hearing and signed by the chairman. The board may call its own witnesses when deemed appropriate.

Section 3. Cross-examination. No party shall have the right to cross-examine witnesses; however, the opportunity to examine opposing witnesses may be freely extended when conducted in an orderly manner. Intimidation of witnesses will not be allowed.

Section 4. Evidence. Relevant documents, photographs, maps, plans, drawings, etc., will be received in the record without authentication in the form of legible copies. Relevant testimony which is not cumulative or hearsay will be received. The 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 hearing, subject to modification by the chairman, shall be:

- **a.** statement of matter to be heard (chairman or secretary);
- **b.** presentation by applicant (5-minute limit);
- **c.** presentation by official appealed or presentation by opponents (5-minute limit);
- **d.** rebuttal by applicant (3-minute limit);
- **e.** unsworn public comment when appropriate;
- **f.** the board may question participants at any point in the hearing;
- **g.** matters in which additional time is granted may be moved to end of the agenda.

Section 6. Disposition. The board may deliberate and make a final disposition of a matter by majority vote of members present at the hearing and qualified to vote, provided that a valid quorum exists. The vote may be taken at the same or a subsequent meeting. A member may not vote on a matter which the member has not heard. Deliberations shall be conducted and votes taken in public.

Section 7. Form of Order. An order shall be issued disposing of a matter by granting or denying relief with such conditions as may be deemed necessary, or by affirming, modifying, or reversing an administrative decision. A matter may be dismissed for lack of jurisdiction or prosecution. Findings of fact and conclusions of law shall be separately stated in an order.

Section 8. Service of Order. The secretary shall deliver a copy of an order to each party in interest by certified mail 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 15 days after delivery of the order accompanied by new evidence which could not reasonably have been 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 record all meetings and hearings of the board on tape, which shall be preserved until final action is taken on all matters presented. The secretary shall prepare minutes of each meeting for approval by the board at the next regular meeting. Minutes shall be maintained as public records.

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

Article VI: Adoption and Amendment

Section 1. Amendment. These rules may be amended at any regular meeting of the board by majority vote of the members of the board at least seven days after the written amendment is delivered to all members.

Section 2. Adoption. These rules were adopted by vote of a majority of the members of the board at a regular public meeting on _____.

Attest: _____ **Sign:** _____

Secretary Chairman

Appendix F: Sample Forms for Board of Zoning Appeals

Form 1: Notice of Appeal, Board of Zoning Appeals

Date Filed: _____ Permit Application No. _____ Appeal No. _____

Instructions

This form must be completed for a hearing on **appeal** from action of a zoning official, application for a **variance,** or application for **special exception.** Entries must be printed or typewritten. If the application is on behalf of the property owner(s), all owners must sign. If the applicant is not an owner, the owner(s) must sign the Designation of Agent. An accurate, legible plot plan showing property dimensions and locations of structures and improvements must be attached to an application for variance or special exception.

THE APPLICANT HEREBY APPEALS [indicate one]:

- ☐ **from action of a zoning official as stated on attached Form 2**
- ☐ **for a variance as stated on attached Form 3.**
- ☐ **for a special exception as stated on attached Form 4.**

APPLICANT(S) [print]: _____

Address: _____

Telephone: _____ [work] _____ [home]

Interest: _____ Owner(s): _____ Adjacent Owner(s); Other: _____

OWNER(S) [if other than Applicant(s)]: _____

Address: _____

Telephone: _____ [work] _____ [home]

[Use reverse side if more space is needed.]

PROPERTY ADDRESS:

Lot: _____ Block: _____ Subdivision: _____

Tax Map No.: _____ Plat Book: _____ Page: _____

Lot Dimensions: _____ Area: _____

Zoning District: _____ Zoning Map Page: _____

DESIGNATION OF AGENT [complete only if owner is not applicant]: I (we) hereby appoint the person named as Applicant as my (our) agent to represent me (us) in this application.

Date: _____ _____

_____

Owner signature(s)

I (we) certify that the information in this application and the attached Form 2, 3 or 4 is correct.

Date: _____ _____

_____

Applicant Signature(s)

Form 2: Appeal from Action of Zoning Official, Board of Zoning Appeals

Date Filed: _____ Permit Application No. _____ Appeal No. _____

1. Applicant hereby appeals to the board of zoning appeals from the action of the zoning official affecting the property described in the Notice of Appeal [Form 1] on the grounds that:

☐ **granting** ☐ **denial** of an application for a permit to _____ _____ was erroneous and contrary to provisions of the zoning ordinance in Section _____; or other action or decision of the zoning 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 property is:

_____

_____

_____

4. Applicant requests the following relief:

_____

_____

_____

Date: _____ _____

Applicant Signature

Form 3: Variance Application, Board of Zoning Appeals

Date Filed: _____ Permit Application No. _____ Appeal No. _____

1. Applicant hereby appeals to the board of zoning appeals for a variance from the strict application to the property described in the Notice of Appeal [Form 1] of the following provisions of the zoning ordinance:

_____

so that a zoning permit may be issued to allow use of the property in a manner shown on the attached plot plan, described as follows: _____

_____

for which a permit has been denied by a zoning official on the grounds that the proposal would be in violation of the cited section(s) of the zoning ordinance.

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 particular piece of property as follows: _____

_____

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

_____

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 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. The following documents are submitted in support of this application: _____

_____

_____ **[A plot plan must be submitted.]**

Date: _____ _____

Applicant signature

Form 4: Special Exception Application, Board of Zoning Appeals

Date Filed: _____ Permit Application No. _____ Appeal No. _____

1. Applicant hereby appeals to the board of zoning appeals for a special exception for use of the property described in the Notice of Appeals [Form 1] as: _____

_____

which is a permitted special exception under the district regulation in Section _____ of the zoning ordinance.

2. Applicant will meet the standards in Section _____ of the zoning ordinance which are applicable to the proposed special exception in the following manner:

_____

_____

3. Applicant suggests that the following conditions be imposed to meet the standards in the zoning ordinance:

_____

_____

4. The following documents are submitted in support of this application:

_____

_____ **[A plot plan must be submitted.]**

Date: _____ _____

Applicant signature

Form 5: Order on Appeal from Action of Zoning Official, Board of Zoning Appeals

Date Filed: _____ Permit Application No. _____ Appeal No. _____
The board of zoning appeals held a public hearing on _____ to consider the appeal of _____ from the action of the zoning official alleged to be erroneous as set forth on the Form 2 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the board makes the following findings of fact and conclusions:

1. The decision of the zoning official was based on the interpretation of Section(s) _____ of the zoning ordinance and zoning map that: _____

_____

2. The board makes the following findings of fact which are supported by the evidence:

_____

_____

3. The board concludes that zoning ordinance section(s) _____ is/are **applicable** in this case and shall be interpreted as follows:

_____

_____

4. The board concludes that Section(s) _____ is/are **not applicable** in this case.

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** ☐ **and the following action be taken:**

_____

_____

Approved by the board by majority vote.

Date issued: _____ _____
Chairman

Date mailed to parties in interest: _____ _____
Secretary

Notice of appeal to circuit court must be filed within 30 days after date this Order was mailed.

Form 6: Order on Variance Application, Board of Zoning Appeals

Date Filed: _____ Permit Application No. _____ Appeal No. _____

1. The board of zoning appeals held a public hearing on _____ to consider the appeal of _____ for a variance from the strict application of the zoning ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the board makes the following findings of fact and conclusions.

2. The board concludes that applicant ☐ **has** - ☐ **does not have** an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact: _____

_____

3. The board concludes that these conditions ☐ **do** - ☐ **do not generally** apply to other property in the vicinity based on the following findings of fact: _____

_____

4. 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:

_____

_____

5. The board concludes that authorization of the variance ☐ **will** - ☐ **will not** be of substantial detriment to adjacent property or to the public good, and the character of the district ☐ **will** - ☐ **will not** be harmed by the granting of the variance based on the following findings of fact: _____

_____

6. The board concludes that the effect of the variance ☐ **would** - ☐ **would not** be to allow the establishment of a use not otherwise permitted in the zoning district, based on Section ____ of the ordinance; ☐ **would** - ☐ **would not** extend physically a nonconforming use of the land; and ☐ **would** - ☐ **would not** change the zoning district boundaries shown on the official zoning map, based on the following findings of fact:

_____

_____

The board, therefore, orders that the variance is ☐ **denied** - ☐ **granted**, subject to the following conditions: _____

_____

Approved by the board by majority vote.

Date issued: _____ _____

Chairman

Date mailed to parties in interest: _____ _____

Secretary

Notice of appeal to circuit court must be filed within 30 days after date this Order was mailed.

Form 7: Order on Special Exception Application, Board of Zoning Appeals

Date Filed: _____ Permit Application No. _____ Appeal No. _____
The board of zoning appeals held a public hearing on _____ to consider the appeal of _____ for a special exception which may be permitted by the board pursuant to Section _____ of the zoning ordinance as set forth on Form 4 for the property described on Form 1 to be used for: _____

_____

After consideration of the evidence and arguments presented, the board makes the following findings of fact and conclusions:

1. The board concludes that the standards in Section _____ of the zoning ordinance which are applicable to the proposed special exception ☐ **have** - ☐ **have not** been met based on the following findings of fact: _____

   _____

2. The board concludes that the proposed special exception ☐ **will** - ☐ **will not** substantially diminish value of adjacent property or property in the district based on the following findings of fact: _____

   _____

3. The board concludes that the proposed 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**, subject to the following conditions: _____

_____

_____

Approved by the board by majority vote.

Date issued: _____ _____
Chairman

Date mailed to parties in interest: _____ _____
Secretary

Notice of appeal to circuit court must be filed within 30 days after date this Order was mailed.

Checklist for Zoning Appeals

	Step	Action Required	Time	After
1.	Notice of Appeal to Board	File appeal form with zoning official and board secretary [Forms 1 and 2, 3 or 4]	Time set by rules or ordinance - if not, then 30 days	Actual notice of action
2.	Set Board Hearing	Board sets hearing date	Reasonable time	Appeal filed
3.	Notice of Hearing	Publish in newspaper and notify parties in interest	15 days	Prior to hearing
4.	Board Decision	Board conducts hearing and makes written decision with findings of fact and conclusions [Form 5, 6 or 7]	Reasonable time or as set by rules	Hearing
5.	File Decision	Serve on parties in interest by certified mail - retain as permanent public record	Immediately	Decision rendered
6(a).	Appeal to Circuit Court	File petition with clerk of court stating grounds of appeal - copy to board desirable	30 days	Decision of board is mailed
6(b).	Appeal to Circuit Court	Property owner elects to file notice of appeal with mediation request	30 days	Decision of board is postmarked
7.	Notice by Clerk of Court	Notify board secretary of appeal	Immediately	Petition is filed
8.	File Record	Board secretary files certified copy of proceedings, transcript, evidence and decision with clerk. Board attorney may file a return and serve on opposing counsel with copy of certified record.	30 days	Notice from clerk
9.	Hear Appeal	Circuit court sets hearing at next term of court (probably will not be set until reached according to filing number)	10-day notice	During term of court
10.	Appeal to State Appellate Courts	Serve and file notice of appeal	30 days	Notice of entry of circuit court order

Appendix G: Sample Forms for Notices

Notice of Public Hearing on Comprehensive Plan

City/Town/County Council of _____, SC will hold a public hearing at _____[*time*] on _____[*date*] at _____[*place*] on the _____ element(s) of the comprehensive plan recommended by the planning commission for adoption by council pursuant to SC Code § 6-29-530.

Copies of the documents to be considered are available for public inspection in the office of the City/Town/County Clerk at _____.

***NOTE**: This notice must be published in a general circulation newspaper in the community not less than 30 days prior to the public hearing. SC Code § 6-29-530.*

Notice of Public Hearing on Zoning Amendments

[City/Town/County Council/The Planning Commission] of _____, SC will hold a public hearing at _____[*time*] on _____[*date*] at _____ _____[*place*], on the following proposed amendments to the zoning ordinance and/or zoning map:

Text amendment No. _____ changing Section _____ to read:

[*insert text or summarize effect of text change if too long to print verbatim*]

[*and/or*]

Map amendment No. _____ changing the zoning district designation for certain property owned by _____[*owner*] at _____[*address*], Tax Map No. _____, consisting of _____[*description, e.g., lot, block, subdivision, acreage*] from _____[*e.g., C-1, limited commercial*] to_____ [*e.g., C-3, general commercia*l].

New uses permitted in the proposed district are: _____

Documents related to the amendments are available for public inspection in the office of the zoning administrator at _____

***NOTE**: This notice must be published in a general circulation newspaper in the community and posted on or adjacent to the property affected at such time as the zoning ordinance prescribes, or not less than 15 days if the zoning ordinance does not prescribe a time, prior to the public hearing. The notice must be mailed to groups listed as desiring notice. If the zoning ordinance so requires, the notice must be mailed to adjacent property owners. SC Code § 6-29-760.*

Notice of Board of Zoning Appeals Hearing

The Board of Zoning appeals of _____, South Carolina, will hold a public hearing at _____[*time*] on _____[*date*] at _____[*place*] on the following appeals:

Appeal No. ___ by _____ from 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 _____

Appeal No. ___ by _____ for a special exception pursuant to 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 _____

***NOTE**: The notice must be published in a general circulation newspaper in the community and mailed to parties in interest at least 15 days prior to the hearing. SC Code § 6-29-800(C).*

Notice of Board of Architectural Review Hearing

The Board of Architectural Review of _____, South Carolina, will hold a public hearing at _____[*time*] on _____[*date*] at _____ _____[*place*] on the following appeals:

Appeal No. ___ by _____ from decision of the zoning administrator that which affects property at _____

***OPTION**: If the zoning 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 _____

***NOTE**: SC Code § 6-29-890 does not specify a minimum time for published public notice of a hearing by the board. The time period specified for published notice for hearings by the board of zoning appeals is at least 15 days prior to the hearing. For this reason, at least 15 days is suggested for hearings by the board of architectural review.*

Notice of Public Hearing on Land Development Regulations

City/Town/County council of _____, South Carolina, will hold a public hearing at _____ _____[*time*] on _____[*date*] at _____[*place*] on the land development regulations recommended for adoption by the planning commission pursuant to SC Code § 6-29-1130.

The proposed regulations are available for public inspection in the office of _____ at _____

***OPTION**: The following language is appropriate when the hearing involves an amendment to existing regulations*:

on the proposed amendment to the land development regulations changing Section _____ to read:

[*insert text or summarize effect of text change if too long to print verbatim*]

***NOTE**: The notice must be published in a general circulation newspaper in the community not less than 30 days prior to the hearing. SC Code § 6-29-1130.*

Notice of Public Hearing on Development Agreement

The City/Town/County council [*or the planning commission, if authorized by ordinance*] of _____ _____, South Carolina, 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:

_____

_____

This agreement is available for public inspection and copying in the office of _____ at _____

***NOTE**: The notice must be published in a general circulation newspaper in the county. SC Code § 6-31-50 does not specify the time for publication. The time should be set in the general ordinance authorizing development agreements.*

Appendix H: Sample Forms for Zoning Actions

Sample Zoning Map Amendment (Rezoning) Application

Date filed: _____ Request No.: _____

Instructions

A zoning map amendment may be initiated by the property owner(s), planning commission, zoning administrator, or City/Town/County Council. If the application is on behalf of the property owner(s), all owners must sign. If the applicant is not an owner, the owner(s) must sign the designation of agent section.

The applicant hereby requests that the property described below be rezoned from _____ _____ to _____

Applicant(s) [print]: _____
Address: _____
Telephone: _____ [work] _____[home]
Interest: ☐ Owner(s) ☐ Agent of owner(s) ☐Other

Owner(s) [if other than applicant(s)]: _____
_____
Address: _____
Telephone: _____ [work] _____[home]

[*Use reverse side if more space is needed.*]

Property address: _____
Lot: _____ Block: _____ Subdivision: _____
Tax Map No.: _____ Plat Book: _____ Page: _____
Lot Dimensions: _____ Area: _____
Zoning District: _____ Zoning Map Page: _____

Designation of agent [*complete only if owner is not applicant*]: i (we) hereby appoint the person named as applicant as my (our) agent to represent me (us) in this request for rezoning.

Date: _____ _____
Owner signature(s)

I (we) certify that the information in this request is correct.

Date: _____ _____
Applicant signature(s)

Sample Zoning Permit Application

Date filed: _____ Fee Paid: _____ Application No.: _____

Instructions

If the application is on behalf of the property owner(s), all owners must sign. If the applicant is not an owner, the owner(s) must sign the Designation of Agent section.

The applicant hereby requests a zoning permit pursuant to Section _____ of the zoning ordinance to use the property described below in the following manner: _____

_____

Applicant(s) [print]: _____

Address: _____

Telephone: _____ [work] _____ [home]

Interest: ☐ Owner(s) ☐ Agent of owner(s) ☐Other

Owner(s) [if other than Applicant(s)]: _____

Address: _____

Telephone: _____ [work] _____ [home]

[*Use reverse side if more space is needed*.]

Property address: _____

Lot: _____ Block: _____ Subdivision: _____

Tax Map No.: _____ Plat Book: _____ Page: _____

Lot Dimensions: _____ Area: _____

Zoning District: _____ Zoning Map Page: _____

Designation of agent [*complete only if owner is not applicant*]: I (we) hereby appoint the person named as applicant as my (our) agent to represent me (us) in this request for rezoning.

Date: _____ _____

Owner signature(s)

I (we) certify that the information in this request is correct.

Date: _____ _____

Applicant signature(s)

Date: _____ ☐ Approved. ☐Disapproved for the following reasons: _____

_____ _____

Zoning Administrator

Sample Form for Stop Work Order

STATE OF SOUTH CAROLINA)
COUNTY OF _____) **STOP ORDER**
CITY/TOWN OF _____)

TO: _____

Address: _____

Pursuant to SC Code § 6-29-950 and Section _____ of the _____ City/Town/County zoning ordinance,

YOU ARE ORDERED TO STOP WORK

ON THE BUILDING AND/OR PROPERTY LOCATED AT: _____ in the City/Town/County until such time as the following code violations are corrected:

☐ No proper zoning permit.

☐ No proper certificate of appropriateness.

☐ No proper building permit.

☐ Violation of Code Section _____ as follows: _____

_____

Failure to comply with this Stop Work Order is a misdemeanor punishable by a fine of $500 and/or imprisonment for 30 days for each day of violation, in addition to fines and penalties which may be imposed for code violations. Issuance of this Stop Work Order may be appealed to the board of zoning appeals.

Contact the undersigned at _____

Telephone: _____

Date issued: _____

Date personally served and posted on property: _____

_____
Zoning Official

Appendix I: South Carolina Local Government Comprehensive Planning Act of 1994

Code of Laws of South Carolina
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

Editor's Note
2007 Act No. 31, Section 6, provides as follows:
"All local governments that have adopted a local comprehensive plan in compliance with the provisions of Article 3, Chapter 29, Title 6 of the 1976 Code shall revise their local comprehensive plans to comply with the provisions of this act at the local government's next review of its local comprehensive plan as provided in Section 6-29-510(E) following the effective date of this act."

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. The planning commission must solicit input for this analysis from homebuilders, developers, contractors, and housing finance experts when developing this element;

(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;

(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 plan elements.

(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 2, eff May 23, 2007; 2020 Act No. 163 (S.259), Section 2, eff September 29, 2020; 2023 Act No. 57 (S.284), Section 7, eff May 19, 2023.

Editor's Note

2023 Act No. 57, Section 9, provides as follows:

"SECTION 9. Before the beginning of the 2030 Legislative Session, the Director of the Department of Parks, Recreation and Tourism, in consultation with the Secretary of Commerce and the Commissioner of Agriculture, shall issue a report to the General Assembly detailing the effects on tourism and workforce housing resulting from the codified provisions of this act."

Effect of Amendment

The 2007 amendment, in subsection (D), in paragraph (5) deleted "transportation network;" following "considers", in paragraph (6) added the second sentence, added paragraph (8) pertaining to transportation elements, and added paragraph (9) pertaining to priority investment elements analyzing likely federal, state, and local funds available.

2020 Act No. 163, Section 2, in (D), added (10), requiring local comprehensive plans to include a resilience element.

2023 Act No. 57, Section 7, in (D)(6), added the third sentence and made a nonsubstantive change.

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, eff May 23, 2007.
Effect of Amendment
The 2007 amendment added paragraph (C)(7) relating to "priority investment zone".

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.

Code Commissioner's Note—
Codified as Section 6-29-775 at the direction of the Code Commissioner.

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, eff June 2, 2003.
Effect of Amendment
The 2003 amendment rewrote this section.

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(C)(1).

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 3, eff June 2, 2003.
Effect of Amendment
The 2003 amendment added subsections (B) and (C) and designated the existing paragraph as subsection (A).

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, eff June 2, 2003.

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.

Effect of Amendment

The 2003 amendment, in subsection (A) inserted "with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F)" preceding ", the clerk of circuit court", substituted "the appeal" for "it", inserted "duly" preceding "certified copy", and substituted "the board" for "it", in subsection (B) substituted "any" for "a" and "does" for "shall", and in subsections (A) and (B) made nonsubstantive changes.

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, eff June 2, 2003.
Effect of Amendment
The 2003 amendment added subsection (B), designated the existing paragraph as subsection (A), and made nonsubstantive changes.

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, eff June 2, 2003.
Effect of Amendment
The 2003 amendment, in subsection (A) added the last four sentences relating to remand procedures, in subsection (C) substituted "the hearing" for "it" and "appeal or other matter" for "same", and in subsections (A),(B), and (C) made nonsubstantive changes.

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(C)(1).

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 8, eff June 2, 2003.
Effect of Amendment
The 2003 amendment added subsections (B) and (C) and designated the existing paragraph as subsection (A).

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, eff June 2, 2003.

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, eff June 2, 2003.
Effect of Amendment
The 2003 amendment, in subsection (A) inserted "with a petition as provided in Section 6-29-900(A) or Section 6-29-915(F)" preceding ", the clerk of circuit court", and in subsections (A) and (B) made clarifying and nonsubstantive changes.

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, eff June 2, 2003.
Effect of Amendment
The 2003 amendment added subsection (B), designated the existing paragraph as subsection (A), and made nonsubstantive changes.

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, eff May 23, 2007.
Effect of Amendment
The 2007 amendment added item (1) defining "Affordable housing", item (3) defining "Market-based incentives" and item (5) defining "Traditional neighborhood design" and redesignated item (1), "Land development", as item (2) and item (2), "Subdivision", as item (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, eff May 23, 2007.

Effect of Amendment

The 2007 amendment, in subsection (A) in the first sentence added ", the housing element, and the priority investment element" and substituted "have" for "has".

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.

Effect of Amendment

The 2007 amendment, in subsection (A), substituted "in the application or by written instructions to an applicant whether" for "if", rewrote subsection (B); and in subsection (C), added paragraph (1) defining "actual notice" and redesignated paragraphs (1) and (2) as paragraphs (2) and (3).

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(C)(1).

(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.
Effect of Amendment
The 2003 amendment substituted "considered" for "deemed" in subsection (A), made nonsubstantive changes in subsection (C), added subsections (D)(2), (D)(3), and (D)(4), redesignated subsection (D) as (D)(1), and in newly designated (D)(1) substituted "must' for "may" and inserted "the" preceding "circuit court".

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 (H.3972), Section 1, eff March 14, 2016.

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, eff June 2, 2003.

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, eff June 2, 2003; 2004 Act No. 287, Section 3, eff July 22, 2004.
Effect of Amendment
The 2004 amendment, in paragraph (B)(1), substituted "of 35,000 and greater" for "above 70,000".

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 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 of the Senate and Speaker of the House of Representatives.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003; 2008 Act No. 273, Section 2, eff June 4, 2008; 2019 Act No. 1 (S.2), Sections 32, 33, eff January 31, 2019.

Effect of Amendment

The 2008 amendment, in subsection (B), in the introductory paragraph deleted "with the advice and consent of the Senate" from the end of the first sentence; and in paragraph (B)(5) deleted "or the Governor's appointment is not confirmed by the Senate" following "appointment".

2019 Act No. 1, Section 32, in (D)(3), substituted "President of the Senate" for "President Pro Tempore of the Senate".

2019 Act No. 1, Section 33, in (G), in the second sentence, substituted "President of the Senate" for "President Pro Tempore of the Senate".

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, eff June 2, 2003.

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, eff June 2, 2003.

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, eff June 2, 2003.

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, eff June 2, 2003.

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, eff June 2, 2003.

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, eff July 1, 2005.

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, eff July 1, 2005.

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, eff July 1, 2005.

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, eff July 1, 2005.

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, eff July 1, 2005.

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, eff July 1, 2005.

ARTICLE 13
Federal Defense Facilities Utilization Integrity Protection

Code Commissioner's Note
Redesignated as Article 13 at the direction of the Code Commissioner.

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, eff October 28, 2004.
Code Commissioner's Note
Redesignated from Section 6-29-1510 to Section 6-29-1610 at the direction of the Code Commissioner.

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, eff October 28, 2004.
Code Commissioner's Note
Redesignated from Section 6-29-1520 to Section 6-29-1620 at the direction of the Code Commissioner.

SECTION 6-29-1625. Definitions.

(A) For purposes of this article and for the allocation of Base Protection Plan appropriations from the Department of Veterans' Affairs' Military Enhancement Fund, "federal military installations" includes Fort Jackson, Shaw Air Force Base, McEntire Joint National Guard Base, Joint Base Charleston, Beaufort Marine Corps Air Station, Beaufort Naval Hospital, Parris Island Marine Recruit Depot, Fort Eisenhower, U.S. Coast Guard Sector Charleston, North Auxiliary Airfield, 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, eff October 28, 2004; 2024 Act No. 173 (H.3934), Section 1, eff May 20, 2024.
Code Commissioner's Note
Redesignated from Section 6-29-1525 to Section 6-29-1625 at the direction of the Code Commissioner.
Effect of Amendment
2024 Act No. 173, Section 1, rewrote (A).

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, eff October 28, 2004.
Code Commissioner's Note
Redesignated from Section 6-29-1530 to Section 6-29-1630 at the direction of the Code Commissioner.

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, eff October 28, 2004.
Code Commissioner's Note
Redesignated from Section 6-29-1540 to Section 6-29-1640 at the direction of the Code Commissioner.

Appendix J: 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Appendix K: 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 365 days. (*Please note that a program completed more than 180 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 master's or doctorate degree in planning from an accredited college or university.

_____ I hold a master's 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.

Date: _____ _____

Signature

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