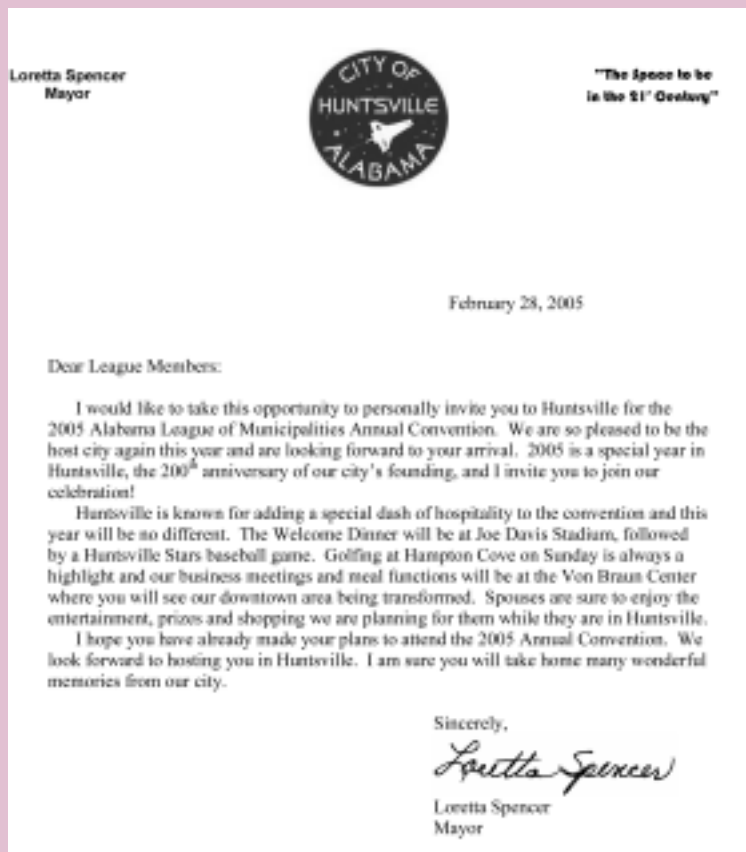


THE ALABAMA MUNICIPAL JOURNAL

May 2005

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2005 Convention Preview



Mayor Loretta Spencer

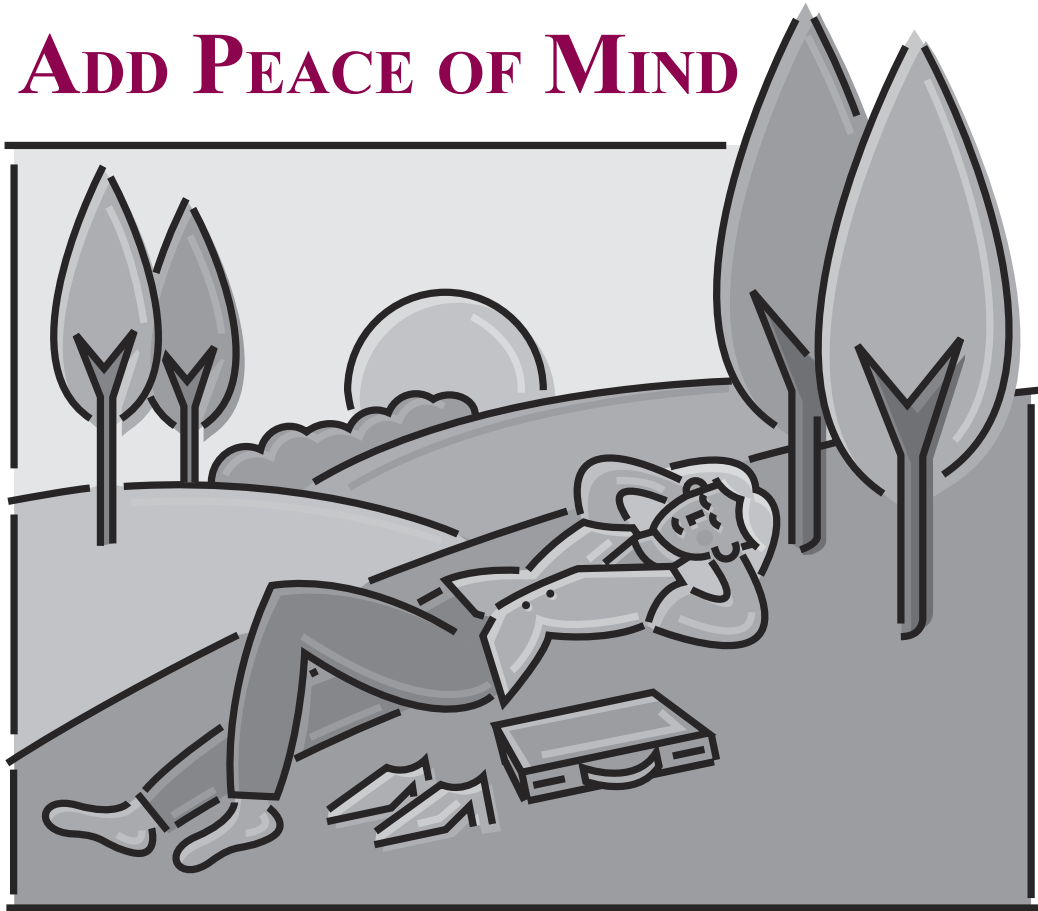
Inside:

- Quick Guide to the Convention
- Program Overviews for Municipal Attorneys, Municipal Clerks and Public Personnel Administrators
- Convention Entertainment
- New Open Meeting Law Enacted
- USDA Announces Availability of \$8.9 Million in Broadband Grant Funds

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CARRIE A. BANKS, Communications Director, carrieb@alalm.org
GREGORY D. COCHRAN, Director, Intergovernmental Relations, gregc@alalm.org
EDYE GOERTZ, Member Services Director, edyeg@alalm.org
LORELEI A. LEIN, Staff Attorney, loril@alalm.org
MARY ELLEN WYATT HARRISON, Staff Attorney, marye@alalm.org
SHARON CARR, Administrative/Legal Assistant, sharonc@alalm.org
FAITH ANN GUNN, Accounting Manager, faitha@alalm.org
THERESA LLOYD, CMO Program Administrator, theresal@alalm.org
RACHEL WAGNER, Librarian, rachelw@alalm.org
LAURA ANNE WHATLEY, Communications Assistant, lauraw@alalm.org
TWANNA WALTON, Legal Research, twannaw@alalm.org
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2005 CONVENTION PREVIEW

Welcome to Huntsville!

Mayor Loretta Spencer and the Huntsville City Council extend a warm welcome to all delegates and spouses to the 2005 League Convention. They hope your stay in the Rocket City will be both pleasant and productive. The League staff would like to thank Mayor Spencer and her staff; the Huntsville City Council; and the dedicated municipal personnel who have put in the extra time to make this convention a success.

The Convention Program

Please take a moment to review the “Quick Guide to the Convention” segment on the next page for a brief overview of convention proceedings. In addition, the following pages provide program highlights which have been developed for each component of our municipal family. For the concurrent sessions, we urge each municipality to assign at least one member to each session so your municipality can benefit from all of the information presented. In addition to the concurrent sessions, we want to emphasize the importance of the following events:

- **Resolutions Committee meeting on Sunday, May 22 at 3:00 p.m.**
- **Opening Session on Monday, May 23 at 9:00 a.m.**
- **Ask Your Attorney/Roundtable Discussions on Tuesday, May 24 at 9:00 a.m.**
- **General Business Session on Tuesday afternoon at 3:00 p.m.**

We encourage each delegate to attend these sessions and to participate fully in convention proceedings. We on the League staff hope that your attendance at the 2005 convention is both beneficial and informative to you as municipal officials and to the continued progress of your communities. If we can assist you in any way, please don't hesitate to ask.

The 37th Annual Municipal Officials Golf Tournament will be held at the Hampton Cove Golf Course on Sunday, May 22, 2005 at 8:00 a.m. All golfers should arrive 30 minutes before the start of the tournament. If you are not pre-registered to play, you may register the day of the tournament. Please visit the convention registration desk for more information and directions to the course.

Concurrent Sessions

Following the Opening Session of the Convention, an hour-long presentation on **Act 2005-40 – The New “Sunshine” Law** will be given by Perry Roquemore, League Executive Director and Ken Smith, League Deputy Director. On Monday afternoon, Delegates will be able to choose from the following Concurrent Session topics:

2:00 p.m. – 3:30 p.m.

Panel Discussion

- Performance Contracting: Building Better Communities in Alabama
- Decentralized Wastewater Treatment for Small Communities

Advice on Entering Professional Service Contracts

The Ins and Outs of Parliamentary Procedure

3:45 p.m. – 5:15 p.m.

Reducing Your Police Operations Liability

- In Car Video Camera Systems
- The Police Chiefs Certified Law Enforcement Executive Training Program
- Skid Car Proactive Driver Training

Panel Discussion

- The Extra Ordinary Abilities of People with Disabilities
- Increase Your Employees' Paycheck Through FSA and DCA Accounts
- Hurricane Preparedness

¢ents of Place

Welcome Reception

The League's Welcome Reception will take place Saturday, May 21 at Joe Davis Stadium. Buses will leave the various conference hotels at 5:30 p.m. A Bar-B-Que dinner will be provided as well as tickets to the 7:05 baseball game between the Huntsville Stars and the Chattanooga Lookouts. For those who do not want to attend the game, buses will be available to return people to their hotels. **If you plan to attend the game, please be sure to sign up for tickets when you pick up your name tag and registration materials at the registration desk in the Von Braun Center.**

Spouses' Program

Saturday, May 21

Welcome Reception (see above).

Sunday, May 22

Spouses are invited to play in the Annual Municipal Golf Tournament at Hampton Cove Golf Course. No activities have been scheduled for Sunday evening to allow delegates and spouses to enjoy the attractions and fine cuisine Huntsville has to offer.

Monday, May 23

The annual Spouses Breakfast will begin at 9:00 a.m. in the Holiday Inn Select Grand Salon. See the "Quick Guide to the Convention" on this page for other Monday activities.

Tuesday, May 24

Buses to the Botanical Gardens will pick up spouses from the various hotels at 8:30 a.m. A brunch will be held in the Gardens from 9 until 10. Around 10:30, spouses will have the option of remaining at the gardens, returning to their hotels or going to Parkway Place Mall. Between 1:30 and 2 p.m., buses will pick up spouses from the Gardens and the Mall and return to the hotels.

QUICK GUIDE TO THE CONVENTION

SATURDAY, MAY 21

- 1:00 p.m.-5:00 p.m. **Registration** – Von Braun Center, South Hall Prefunction
3:00 p.m. **AMIC Annual Meeting** – Holiday Inn Select, Grand Salon A
5:30 p.m. - until. **Welcome Reception** – Joe Davis Stadium
8:00 a.m.-5:00 p.m. **Municipal Law Conference**, Holiday Inn Select, Heritage I

SUNDAY, MAY 22

- 7:30 a.m. **Annual Municipal Golf Tournament** – Hampton Cove
1:00 p.m.-5:00 p.m. **Registration** – Von Braun Center, South Hall Prefunction
3:00 p.m. **Resolutions Committee*** – Holiday Inn Select, Grand Salon B

MONDAY, MAY 23

- 8:00 a.m.-5:00 p.m. **Registration** – Von Braun Center, South Hall Prefunction
9:00 a.m.-11:00 a.m. **Opening Session*** – South Hall Meeting Rooms 3-5
11:15 a.m.-12:15 p.m. **Act 2005-40 – The New "Sunshine" Law*** – South Hall Meeting Rooms 3-5
12:30 p.m. **Luncheon** – Governor Bob Riley, Von Braun Center, South Hall II
2:00 p.m. - 5:15 p.m. **Concurrent Sessions*** – Von Braun Center
6:00 p.m. **Reception** – Von Braun Center, Exhibit Hall
7:15 p.m. **Banquet** – Von Braun Center, South Hall II
Entertainment – The Lovin' Spoonful, Von Braun Center, Concert Hall

TUESDAY, MAY 24

- 8:00 a.m.-3:00 p.m. **Registration** – Von Braun, South Hall Prefunction
9:00 a.m.- 12: 30 p.m. **Ask Your Attorney – Roundtable Discussions*** – Von Braun Center
12:15 p.m. **Box Lunches** – Von Braun, South Hall Prefunction
3:00 p.m. **General Business Session** – Holiday Inn Select, Grand Salon
6:00 p.m. **Reception** – Von Braun Center, South Hall Prefunction
7:15 p.m. **President's Banquet** – Von Braun, South Hall II Distinguished Service Awards; CMO Classes of 2005; Installation of officers
Entertainment – Kings of Swing

* Attendance at session will earn credits in the Elected Officials Training Program (basic or advanced) or Continuing Education Credits.

Casual dress is appropriate for all meetings. Business attire is appropriate for the Monday and Tuesday evening banquets.

Municipal Clerks' Program May 23-24

The program for municipal clerks will begin at 8:00 a.m. on Monday, May 23 with the breakfast and business meeting of the Alabama Association of Municipal Clerks and Administrators (AAMCA) in the Heritage Ballroom of the Holiday Inn Select.

At 9:00 a.m., clerks will meet in the West Hall of the Von Braun Center for the remainder of the Monday program as well as the Tuesday program. Topics will include:

- Competitive Bid Law and Purchasing
- Managing Time
- Legislative and Legal Update
- Annexation
- The Municipal Clerk: What Is This Job and How Did I Get Here?
- Attorney General Opinions
- New Open Meetings Law

Association of Public Personnel Administrators' Program May 23

The program for public personnel administrators will begin at 9:00 a.m. on Monday, May 23 in the Von Braun Center, South Hall Reception.

Establishing a System: Working Better with Your Elected Officials (6 hours). A challenge for public personnel administrations is the need to work continually with a changing group of elected and appointed officials who often have limited backgrounds or experiences with human resource issues in the public sector, but have major responsibilities and obligations in this area. This course discusses ways that the HR Administrator can: (1) Communicate better with their elected officials; (2) Provide employees and elected officials with accurate and timely information on human resource administration functions; and (3) Carry out their obligations and roles within the administration more effectively.

Barbara Montoya, Human Resources Director for the Montgomery City/County Personnel Board and Ernie Smith, Economic Development Director for the City of Gulf Shores and former mayor of the City of Greenville are the instructors for this session. Dr. Jim Seroka, Director of the Auburn University Center for Governmental Services will be presiding.

Program for Municipal Attorneys

Municipal attorneys are invited to participate in the Annual Municipal Law Conference on Saturday, May 21 at the Holiday Inn Select.

- 8:00 **Registration** – Heritage Ballroom Foyer
- 8:30 **Occupancy Limits & Enforcement – The Station Night Club Fire** – Tom Dwyer, Rhode Island Interlocal Risk Management Trust
- 10:00 **Break**
- 10:15 **Legislative Update** – Perry Roquemore, Executive Director, ALM
- 11:15 **Negotiating Engineering Contracts** – Bob Ennis, City Attorney, Tuscaloosa
- 11:45 **AAMA Business Meeting**
- 12:00 **Lunch** – Heritage II and III

- 1:00 **Electronic Filing in Federal Court** – Harwell G. Davis, III, United States Magistrate Judge, United States District Court, Northern District of Alabama
- 2:00 **False Claims Act** – Randy Van Vleck, General Counsel, New Mexico Municipal League
- 2:30 **Break**
- 2:45 **Municipalities, Intellectual Property and Jake Brakes** – Tim Nunnally, Senior Associate City Attorney, Tuscaloosa
- 3:15 **Municipal Development Projects – Montgomery's East Chase Experience** – Walter Byers, City Attorney, Montgomery; J. Scott Pierce, Kaufman & Rothfeder, P.C.
- 4:15 **Attorney General's Opinion Update** – Brenda Smith, Assistant Attorney General
- 4:45 **Adjourn**



The Lovin' Spoonful to Perform Monday Night

In early 1965 as the "British invasion" dominated the American music scene, two rockers from Long Island, Steve Boone and Joe Butler, teamed up with two folkies from Greenwich Village, John Sebastian and Zal Yanovsky, to form the Lovin' Spoonful and go on to record and perform some of the songs that would dominate the charts and establish them among the greats of the mid-sixties era.



Combining the best of folk music and rock and roll, with a touch of country thrown in, they gave us such hits as "Do You Believe in Magic," "Daydream," "You Didn't Have to be So Nice," "Nashville Cats" and the anthem for a hot July evening, "Summer in the City." All this in the span of 4 years and 5 albums. In addition to that they also wrote and performed two soundtrack albums for two directors very early in their careers, Woody Allen "Whats Up Tigerlily" and Francis Ford Coppola "You're a Big Boy Now." They toured almost constantly during this period and were one of the first rock bands to perform on college campuses almost as much as for teenage concert goers.

In 1967 Zal Yanovsky left the band to pursue a solo career and was replaced by Jerry Yester, a member of the Modern Folk Quartet and friend of the band since its earliest days. All of the band's energy was soon focused on recording their fourth album the very ambitious Everything Playing. It was the first attempt for a rock band to record an album on the new Ampex 16 track tape recorder and quite a challenge it was. It was worth the effort however, producing hits like "Darlin' Be Home Soon," "Six O-Clock" and "She's Still A Mystery To Me" on the American charts and "Boredom" and "Money" in the UK and Europe.

In June 1968 John Sebastian left the band to go solo and Joe, Steve and Jerry went back into the studio to record what would be their last hit single of the 1960's, "Never Goin' Back" with legendary Nashville session player Red Rhodes on pedal steel guitar. As 1969 approached the skies were darkening in Good Time Music land and sensing opportunities in individual endeavors the three remaining

members went their separate ways with a promise to not let the spark go out.

In 1991 a long awaited settlement with their record company inspired Joe and Steve to contact Jerry and start up the Lovin' Spoonful again. After a two month rehearsal in the Berkshire Mts., the group started touring anew, visiting over 150 cities and countries worldwide and reaching out to a whole new

audience in addition to those that have enjoyed their music over the years. So look for them coming to your neighborhood bringing a brand new batch of Good Time Music.

March 6, 2000 marked a milestone for the band as they were officially inducted into the Rock and Roll Hall of Fame.

Gadsden Band "Kings of Swing" to Play Following President's Banquet Tuesday Evening

Mayor Steve Means of Gadsden and his band "Kings of Swing" will play for convention attendees following the Tuesday evening President's Banquet. A dance floor will be set up near the band.

With the help of Rip Reagan, the band director at Gadsden State Community College, Mayor Means formed Kings of Swing in 1994 when the Center for Cultural Arts in Gadsden needed a swing band for a party celebrating the 50th anniversary of the United States victory in World War II. The band was an instant success, playing covers such as Woody Herman's "Woodchoppers Ball" and Glenn Miller's "Moonlight Serenade," as well as some original pieces written by Reagan. The World War II celebration was such a hit that the Kings of Swing have been playing ever since.

Kings of Swing, which is made up of a variety of area musicians, was profiled in the June 2004 issue of *Southern Living*.

2005 EXPO PARTICIPANTS

The Exhibit Hall will be open Monday, May 23 from **10:00 a.m. to 5:00 p.m.** and from **6:00 p.m. to 7:00 p.m.** On Tuesday, May 24, the Hall will be open from 8:00 a.m. through the morning coffee breaks. The League has created several quality times for interaction between the exhibitors and officials by scheduling the Monday evening reception and the Tuesday morning breakfast and coffee breaks in the Exhibit Hall. Holding these activities in the Exhibit Hall affords mayors, councilmembers and municipal employees more opportunities to visit with exhibitors during the convention. There will be 176 booths and 12 bulk space vendors at this year's convention in Huntsville. Listed below are booth numbers and names of Expo participants that had signed up at the time this publication went to print. For a complete list of vendors participating in this year's Expo, visit our website at www.alalm.org.

In an effort to offer our municipal officials additional interaction with our vendors, the League has added a new element to this year's Expo. Thirty-minute presentations, or *ExpoTheaters*, by various vendors have been scheduled on Monday and Tuesday in the Exhibit Hall. Be sure to check your program for the times and topics of each *ExpoTheater*.

- | | | |
|---|--|-------------------------------------|
| 1017 4Site, Inc. | 1005 F.W. Dougherty Engineering | 304 Sherlock, Smith & Adams |
| 401 AIG Valic | 910 GOVAUCTIONS.US | 510 Silver Trunk |
| 205 Alabama Avantage | 111 Gov Deals | 802 Smith Data Processing |
| 801 ALATAx | 607 HADCO | 1014 Southeastern Equipment Co. |
| 605 Alabama Bankers Bank | 1016 Hammill & Associates | 204 Southern Playgrounds |
| 1004 Alabama Cable Telecommuni-
cation Association | 1007 Holiday Designs | C Sunbelt Fire |
| E Alabama Correctional Industries | 310 Holophane | 808 Syscon |
| 104 Alabama Manufactured Housing Inst. | 905 Ingenuity | 404 Tank Pro |
| 301 Alabama Municipal Electric Authority | 913 Johnson & Associates | 507 Tudor Recreation Equip. |
| 210 Alabama Municipal Funding Authority | 202 Judicial Correction Services | 805 Tyler Technologies |
| 107 Alabama Municipal Revenue Officers | 405 Junior Davis & Associates | 1013 Universal Concepts |
| 701 Alabama One Call | 201 Key to City | 904 USDA Rural Development |
| 1001 Alabama Municipal Insurance Corp | 1011 KHAFRA Engineering | 907 Utility Service Company |
| A AMIC Skid Car Display | 608 Life Insurance Company of
Alabama | 714 Verizon Wireless |
| 811 ARCADIS | 901 Local Government Data
Processing | 713 Waste Management |
| 604 Arrow Disposal Service | 910 Mcpherson Companies | 402 Wilson Price |
| 308 Asphalt Zipper | 601 Municipal Code Corp. | State & Federal Agencies |
| 504 Badger Meter, Inc. | 1002 Municipal Workers Comp Fund | 1016 National Safety Council |
| 408 Bank of New York | 302 Musco Sports Lighting | 916 Al Parks & Recreation Assoc. |
| 307 Barge, Waggoner | F NAFECO | 813 Center for Econ Develop JSU |
| 602 Benefits for America | 902 National Cable Consulting | 718 ALDOT |
| 704 Bridge & Slaughter | 804 Neptune Technology Group | 705 Municipal Revenue Services |
| 1000 BFI | 911 Nestor Traffic Systems | 710 NLC |
| 207 Capital Mgt & Asset Group | 711 Organizing Associates | 418 Huntsville Career Center |
| 110 Columbia Southern University | 407 Onyx Waste | 518 RSA |
| 102 CDG Engineers & Associates | 517 Pac Mac/Hol Mac | 318 Al Coop Extension System |
| 810 CGI Communications | 505 Paul Krebs & Assoc | 218 State Employee Insurance Board |
| 813 City Tech | 108 Polyengineering | 118 Center for Govt Services, AU |
| 807 Civil Solutions | 1010 Robert Huff Designs | 217 DesignAlabama |
| G Computer Technology Solutions | 917 Sain Associates | 717 ADECA |
| 105 Conquest GMC Trucks | B Samson Equipment Co. | 618 ADOR |
| 101 Dixie Decorations | D Schwarze Equipment | 817 Al. Dept. of Rehab Services |
| 117 Durham Auctions | 502 Sentell Engineering | 617 Al. Dept. of Ag & Industries |
| 208 Empire Pipe & Supply | 702 Sharp Communications | 916 All Kids/Public Heath Dept |
| 501 Fleegal & Associates | | |



The President's Report

Jim Byard, Jr.
Mayor of Prattville

Alabama Mayor's Design Summit

Alabama is a beautiful state. From the mountains, to the plains and southward to the coast, the towns and cities that dot our state's landscape offer their own unique, special charm. Each has something that makes it stand out – such as the boll weevil monument in Enterprise, Vulcan in Birmingham, Bienville Square in Mobile, Huntsville's Twickenham area, gracious and majestic mansions in Selma and Eufaula or the nearly 200-year-old Daniel Pratt industrial buildings in my hometown, Prattville.

Unfortunately, some of our towns have been bypassed and lie dormant, or nearly so, because motorists now take alternate routes. Others, once just 'crossroads' boasting only a gas station and one or two locally-owned stores, have become thriving, growing metropolitan areas, also due to the interstate system. These communities which have never had a "downtown" now face the task of creating one, or trying to provide an identity for their rapidly-growing area. Still others are undergoing renovation and revitalization of downtown business and residential districts.

Mayors and councilmembers alike seem to be faced daily with decisions affecting the makeup and personality of their towns. Are older buildings left to deteriorate, and eventually be torn down? Is there an exodus to newer, glitzier shopping areas, leaving empty "big-boxes" behind? Are there ordinances in place to protect historic structures and spaces? Are nondescript metal prefabs sandwiched in between buildings with architectural character and detail? Must all cities and town along the interstate look alike – each with identical 'cookie cutter' restaurants and stores? Are once formerly lush, green forested or open spaces coated with a layer of asphalt? How can our communities avoid being a carbon copy of the one just down the road, in the next county or a neighboring state? These are perplexing questions. How

can we be progressive and open to new businesses (increasing our tax-base), and yet keep our unique identity?

Never before has the challenge of planning and good design been so important to our state. Decisions made now will impact our communities for years to come. These decisions will also more quickly affect tourism, local trade and commerce, as well as general economic development.

DesignAlabama, in partnership with the Alabama League of Municipalities and Auburn University Center for Architecture and Urban Studies, has created the Alabama Mayor's Design Summit – a forthcoming annual event which will assist in addressing these issues. Through an application process, five Alabama mayors will be selected each year to attend the day and a half summit where professionals will mentor the officials in working through specific design issues facing their communities. Graduates will be equipped with the tools to help manage the growth and design challenges their communities face. The first of these summits will be held at the Ross Bridge Hotel and Conference Center in Birmingham February 16-17, 2006.

This summit will be based loosely on the successful Mayors' Institute on City Design, which is dedicated to improving the design and livability of America's cities. I was honored to attend the Mayor's Institute in Charlotte, North Carolina in November of 2002. Other Alabama graduates of this program are former Mayors Quitman Mitchell of Bessemer, Steve Hettinger of Huntsville, and Richard Arrington, Jr. of Birmingham, as well as current Mayors Mike Dow of Mobile and Bernard Kincaid of Birmingham. As a result of my experience at the Mayor's Institute, I have learned the importance of good design and I have an increased respect for our Planning Department, our Planning Commission and all those that make Prattville a more beautiful, efficient and livable community for local citizens, community businesses and for visitors to our area. While all solutions cannot be implemented immediately, Prattville has specific goals which we work toward.

You will hear more about the Mayor's Design Summit at our upcoming League of Municipalities Annual Meeting in Huntsville. I encourage you to take advantage of what can be learned and accomplished through participation in the Design Summit. Our constituents have entrusted us to preserve and protect the heart of our community – its unique personality – and to plan for future generations. It is our duty to keep "Alabama, the Beautiful". ■

See pages 29 and 30 of this publication for registration information on the Design Summit.

City Manager Elected to ICMA Board

City Manager, Sam Gaston, has been elected to a three-year term on the Executive Board of the International City-County Management Association (ICMA). He will begin his term as a Regional Vice-President from the Southeast Region in September and is the first Alabamian to serve on the ICMA Board.

ICMA is the professional and educational organization for chief appointed managers and administrators in local government and has 8,000 members worldwide.

Local Government Data Processing Corporation

714 Armstrong Lane
Columbia, Tennessee 38401
Phone: 931-381-1155
FAX: 931-381-0678
E-mail: agibbons@lgdpc.com
Web address: www.lgdpc.com
Contact: Angela Gibbons

Local Government Data Processing Corporation was established in 1977 as a private, not-for-profit corporation chartered to provide computer services to local governments in the Tennessee Valley. These services are provided on an at-cost basis. LGDPC offers Revenue, Financial, Court, Assets, and Utility Management software. LGDPC's versatile software has the capability to run on a variety of platforms, including Microsoft Windows and UNIX. At LGDPC, customer service is our top priority.

Vendor Profiles are included in the League's Gold and Platinum advertising packages. For more information on how your company can purchase a package, contact Greg Cochran at 334-262-2566 or gregc@alalm.org.

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Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

U.S. Supreme Court Action Affects Municipalities

Municipalities scored victories in two recent Supreme Court decisions focusing on search and seizure rules and whether individuals and companies can receive monetary damages when local governments deny wireless towers. NLC participated as a friend of the court in both cases. NLC was also represented in the much publicized cable modem case. Arguments in this case were heard by the court late last month.

Unreasonable Search and Seizure?

In *Muehler v. Mena*, the Court, adopting arguments advanced by state and local organizations, held that the handcuffed detention by police of Iris Mena during the execution of a lawful search warrant was reasonable and did not violate her constitutional protection against unwarranted search and seizure under the Fourth Amendment. Mena was an occupant in a house where police had probable cause to suspect gang members resided. This case arose from an investigation into a gang related drive-by shooting in Simi Valley, Calif., in 1998.

Chief Justice William Rehnquist wrote in the majority opinion that Mena's detention in handcuffs "was no ordinary search." Justices Anthony Kennedy, Antonin Scalia, Sandra Day O'Connor and Clarence Thomas joined in the opinion.

"The governmental interests in not only detaining, but using handcuffs, are at their maximum when, as here, a warrant authorizes a search for weapons and a wanted gang member resides on the premises. In such inherently dangerous situations, the use of handcuffs minimizes the risk of harm to both officers and occupants," the decision stated.

The Court also found that police questioning of Mena's immigration status did not constitute a separate Fourth Amendment violation. "We have 'held repeatedly that mere police questioning does not constitute a seizure,'" wrote Rehnquist.

While the Court unanimously reversed the court of appeals judgment that local police violated Mena's Fourth Amendment rights, cities and their police departments should consider evaluating local policies in light of separate opinions by five justices about the reasonableness of indiscriminate use of handcuffing by police during searches.

In a separate opinion joined by Justices David Souter, Ruth Bader Ginsberg and Stephen Breyer, Justice John Paul Stevens expressed concern that legal precedent "does not give officers carte blanche to keep individuals who pose no threat in handcuffs throughout a search, no matter how long it lasts. [A] jury could have reasonably found from the evidence that there was no apparent need to handcuff [Mena] for the entire duration of the search and that she was detained for an unreasonably prolonged period."

These four justices would instruct the court of appeals on remand to consider whether the evidence supports Mena's claim that police used excessive force in detaining her for the duration of the search.

Likewise, Kennedy wrote separately a "brief statement to help ensure that police handcuffing during searches becomes neither routine nor unduly prolonged."

Recoverable Damages in Municipal Decisions Regarding Wireless Towers

In *City of Rancho Palos Verdes v. Abrams*, a unanimous Supreme Court ruled that monetary remedies under federal Section 1983 are not available to plaintiffs when a municipality exceeds its authority to regulate wireless commercial services under the Telecommunications Act of 1996.

"Section 1983 does not provide an avenue for relief every time a state actor violates a federal law," wrote Justice Scalia in the Court's opinion that overturned a federal Ninth Circuit holding that those separate remedies are available to plaintiffs.

This case arose from a denial by the City of Rancho Palos Verdes of a resident's conditional-use permit request to construct and operate several antenna towers from his home for commercial purposes. The resident then filed suit against the city, claiming that the denial violated Section 332(c)(7) of the Telecommunications Act. The district court ruled for the resident, but held that relief was limited to the specific remedies provided under Section 332(c)(7).

On appeal, the Ninth Circuit reversed for the city, but sent the case back to the lower court for determination of money damages and attorney's fees under Section 1983.

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While the Court's decision shields municipalities from liability for attorney's fees in the context of Section 332(c)(7), it does not inoculate cities against other legal challenges to local authority under the remaining sections of the Telecommunications Act of 1996.

Arguments Held in Cable Modem Case

The U.S. Supreme Court heard arguments on March 29 in what may be the final stage of the long-running legal battle over the classification of cable modem services. The National League of Cities (NLC) had joined the petition to the Supreme Court after the Ninth Circuit Court of Appeals refused to reconsider a decision by one of its three-judge panels that declared cable modem service – an increasingly popular way to access the Internet – an “information service,” but not a “cable service” subject to franchise fees as defined by the Telecommunications Act of 1996.

However, when the Supreme Court agreed to hear the case, it rejected local governments' arguments that cable modem services should be regulated as a cable service. Therefore, the oral argument focused on whether the Federal Communications Commission (FCC) correctly deregulated the service, or whether cable modem service should be treated like traditional telephone and Internet Service Provider (ISP) services.

Before the case was argued, it was widely believed that the cable industry and the FCC would likely prevail in the case. However, the very strong showing presented by the challengers indicates that the FCC may be reversed.

According to Tillman Lay, who represented NLC and other local government interests in the case, an FCC victory in the case “would embolden the FCC to accelerate its campaign to deregulate virtually all Internet-based communications services and subject them to exclusive FCC jurisdiction, thus preempting most, if not all, state and local regulation of such services.”

If, on the other hand, the Internet Service Providers prevail in the case, Lay said localities' historical right-of-way authority over telecommunications services “would remain on the firmer footing provided by longstanding state and local laws applicable to telephone, telecommunications and other utility service providers.”

The Court's opinion will be released before the session is over at the end of June. The Supreme Court could either make final decision regarding the meaning of the law, or, could send the case back to the Court of Appeals with instructions to grant the FCC greater deference. ■



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ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran
Director, Intergovernmental Relations

USDA Announces Availability of \$8.9 Million in Broadband Grant Funds

Agriculture Acting Under Secretary for Rural Development Gilbert Gonzalez today announced \$8.9 million in broadband grant funds are available for connecting essential community facilities to high-speed telecommunications in rural towns and communities where no broadband service exists.

“The need to expand broadband service is essential to economic growth in these most isolated communities,” said Gonzalez. “Having access to high speed telecommunications for basic community services assists rural communities in meeting public safety needs.”

More than \$30 million in three years have been invested by USDA Rural Development to open the door to broadband infrastructure through the Community Connect Broadband Grant Program. To date, 90 communities have participated in the program to connect essential services of police and fire protection, local government, hospitals, libraries and schools to broadband service. For their part of the project, the communities will make at least 10 computers available to the public with set hours and instruction available for use on the internet. “With this program, we are reaching some of the most remote and challenged communities in rural America,” said Gonzalez.

The notice of funding availability (NOFA) will appear in the March 30, 2005 Federal Register. All publications must be received or carry proof of shipping no later than 60 days after the publication of the NOFA. Submit electronic grant applications at <http://www.grants.gov> and follow the instructions found on the web site. Completed paper applications are to be submitted to the USDA Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 2845, Stop 1550, Washington, DC 20250-1550.

USDA Rural Development’s mission is to deliver programs in a way that will support increasing economic opportunity and improve the quality of life of rural residents. As a venture capital entity, Rural Development has invested over \$50 billion since the beginning of the Bush Administration to provide equity and technical assistance to finance and foster growth in homeownership, business development, and critical

community and technology infrastructure. As a result, over 800,000 jobs have been created or saved through these investments. Further information on rural programs is available at a USDA Rural Development office (Huntsville 256-544-5795; Tuscaloosa 205-553-1733; Dothan 334-793-7819; Bay Minette 251-937-7350) or by visiting USDA’s web site at www.rurdev.usda.gov.

EPA to Begin Tracking ‘Greenhouse’ Gases

The government will start keeping track of all the “greenhouse” gases that farmers and foresters voluntarily reduce to help combat global warming. Officials in the Energy and Agriculture departments issued guidelines Wednesday for counting those efforts. They said the action indicates how seriously the Bush administration views the problem of gases that trap heat in the atmosphere like a greenhouse. Agriculture Secretary Mike Johanns said farm and forest landowners now have “a unique opportunity to be part of the solution to greenhouse gas emissions” such as carbon dioxide, methane, nitrous oxides, refrigerants and other compounds.

For example, they can report using no-till agriculture, installing a waste digester, improving nutrient management or managing forest land in ways that cut those gases. The Forest Service and Natural Resources Conservation Service also have prepared an online method for farmers and ranchers to estimate soil carbon sequestration — the natural process by which carbon dioxide in the air is turned into carbon stored in soil and plants. Since 1992, the United States has kept a registry of voluntary efforts by businesses, groups and individuals to reduce greenhouse gases. Doing so helps build a public record for policymaking and negotiations with other countries. David Hawkins, director of Natural Resources Defense Council’s climate center, called the reporting registry a “charade that is intended to allow the government and the participants to portray that they are doing something about global warming, when they are not.”

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For example, companies running nuclear reactors can claim greenhouse gas reductions by saying they would have otherwise operated coal-fired power plants, Hawkins said. In another case, Hawkins said, one coal-fired power plant in Maryland claims reductions for selling some of its carbon dioxide to the food and beverage industry, even though the carbon dioxide is eventually released anyway once a drink is opened and consumed.

“To call it a reduction is absurd, but the Department of Energy allows them to file it as a report and call it a reduction,” Hawkins said. In 2003, the Agriculture Department said it would start rewarding farmers and ranchers whose tilling and planting practices help reduce greenhouse gases by increasing carbon sequestration. It was not clear whether those rewards are linked in any way to the voluntary reporting. Carbon sequestration is regarded as a way of slowing the growth in greenhouse gases but not by itself a solution to global warming.

Black Freedmen’s Farm Environmental Art and Science Program

In Alabama’s impoverished Black Belt counties, students can now explore Black Freedmen’s Living Historical Farm for Children, a 40 acre wooded property with a pond, to learn first-hand about forests, wildlife, ecology, and water quality. The program began in 2003 when Auburn University’s Center for the Book joined forces with its Environmental Institute and College of Education to sponsor environmental science field trips for Wilcox County’s underserved students. With visits to the Historical Farm, the students obtain a deeper knowledge, appreciation, and understanding of the cultural and natural resources of the region by 1) utilizing a unique living historical facility and 2) using visual and literary arts to learn about and explore the environment, with a special focus on forests and watershed awareness. Black Freedmen’s Living Historical Farm for Children is located in Wilcox County, which is situated in the heart of rural Alabama’s Black Belt. Each Fall and Spring, Wilcox County 5th - 8th grade classes now come out to the Farm and are aided by three scientists and one artist to get hands-on experience and learn about the environment and art. For more information about the Black Freedmen’s Farm Environmental Art and Science Program contact Dr. Upton Hatch, Auburn University Environmental Institute, hatchlu@auburn.edu, (334) 844-4132.

Montgomery County’s Nature’s Classroom

Learning about nature just got a lot more fun for both teachers and their students in Montgomery County. In a new program at the Museum of Art and Arboretum, first-grade and kindergarten students get a chance to explore nature through art and hands-on explorations in the field. At the Montgomery Art Museum students get to use their own artistic

talents to explore the local animal world. And at a pond on the Arboretum land they work with local experts to investigate fish life and the importance of clean water. With further natural explorations the students learn about the fresh water cycle, watersheds, wildlife, and pollution. With the children’s natural curiosity about the world around them, the enthusiasm and skills of the educators involved, and the chance to be outdoors, the program will undoubtedly become a local favorite and one that will inspire environmental stewardship for the future. For more information on the Museum of Art and Arboretum visit <http://eng.ci.montgomery.al.us/nature.asp>, or contact Jimmy Smitherman at jsmither@aces.edu, www.aces.edu, or call the Museum of Art and Arboretum at (334) 269-4815.

Forever Wild Secures \$2.4 Million from Forest Legacy Program

According to the Department of Conservation, the Forever Wild Land Trust was recently awarded two U.S. Forest Legacy grants totaling \$2.4 million. The federal matching grants will help facilitate purchases of land in the Mobile-Tensaw Delta in South Alabama and the Cumberland Mountains Preserve, in Northeast Alabama. In the past five years, Alabama has received \$21.6 million from federal land acquisition programs, including \$8 million from the Forest Legacy program. The additional federal funds were made possible because the programs received their required matching funds from the Forever Wild Program.

The Mobile-Tensaw Delta purchase consists of 684 acres, and will adjoin the Forever Wild Jacinto Port Tract. This area in south Alabama is an important travel corridor and year long habitat for the state’s largest remaining black bear population. The Cumberland Mountains Preserve, located in Madison and Jackson counties consists of 7,846 acres, and are adjacent to Forever Wild’s Walls of Jericho Tract, one of the most biologically significant areas in the region. For more information about the Forever Wild Program go to www.outdooralabama.com.

Nature Conservancy Secures Reef Restoration Funds

Thanks to Congressman Jo Bonner, the Nature Conservancy in Alabama and Mississippi will receive \$35,000 to restore reef habitat in the eastern Mississippi Sound. The grant, which comes from the National Oceanic and Atmospheric Administration (NOAA) will focus on restoration of five acres of reef habitat in partnership with the Mississippi Department of Marine Resources. The Conservancy will also identify an additional 30 acres of ecologically suitable reef restoration sites across the Mississippi Sound, in both Alabama and Mississippi waters. Reefs stabilize estuaries, decrease shoreline erosion and provide critical fisheries habitat. For more information about this important project contact the Nature Conservancy at 251-473-4009. ■



THE LEGAL VIEWPOINT

By Ken Smith
Deputy Director/Chief Counsel

New Open Meeting Law Enacted

The Alabama Legislature has passed, and the Governor has signed, Act No. 2005-40, the Alabama Open Meetings Act. This new law repeals the Sunshine Law, Section 13A-14-2, Code of Alabama, 1975, beginning on October 1, 2005. Thus, until October 1, municipalities should continue to follow the Sunshine Law in conducting their meetings. In the meantime, though, municipalities should begin to implement some of the processes required by the new law so they will be ready to follow them starting in October.

Act No. 2005-40 makes numerous significant changes to the manner in which municipalities and other public entities must hold meetings. As with any new law of this length and complexity, some unresolved questions remain. This article summarizes how the new law will impact municipalities.

Who is Covered?

Meetings of all “governmental bodies” are subject to the new law. Clearly, of course, municipal governing bodies themselves must conduct open meetings pursuant to the requirements of Act No. 2005-40. But what other municipal entities must hold open meetings? And which gatherings of these entities are subject to the new law?

Pertinent to municipalities, Act No. 2005-40 defines governmental bodies to include:

1. All municipal “boards, bodies, and commissions” which “expend or appropriate public funds”; and,
2. All municipal “multimember governing bodies of departments, agencies, institutions, and instrumentalities “including, without limitation, all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by” the municipality. Thus, any municipal board or agency that has the power to expend or appropriate municipal funds

must conduct open meetings pursuant to the requirements of the new Act. Additionally, the Act applies to any instrumentality, including separate corporations, whose membership is composed of at least a majority of members who were appointed by the municipality.

The term “governmental body” does not include “voluntary membership associations comprised of public employees, counties, municipalities, or their instrumentalities which have not been delegated any legislative or executive functions by the Legislature or Governor.”

What types of gatherings of these entities are covered? The law defines a “meeting” as:

1. “The prearranged gathering of a quorum of a governmental body, a quorum of a committee or a quorum of a subcommittee of a governmental body at a time and place which is set by law or operation of law”;
2. “The prearranged gathering of a quorum of a governmental body, a quorum of a committee or a quorum of a subcommittee of a governmental body during which the body, committee or subcommittee of the governmental body is authorized, either by law or otherwise, to exercise the powers which it possesses or approve the expenditure of public funds”; and,
3. “The gathering, whether or not it was prearranged, of a quorum of a governmental body, a quorum of a committee or a quorum of a subcommittee of a governmental body during which the members of the governmental body deliberate specific matters that, at the time of the exchange, the participating members expect to come before the body, committee or subcommittee at a later date.”

The term “meeting” does not include the following:

1. “Social gatherings, conventions, conferences, training programs, press conferences, media events, or other similar gatherings “so long as the governmental body does not

continued next page

deliberate specific matters that, at the time of the exchange, the participating members expect to come before the governmental body at a later date”, even if a quorum is present at these events; and

2. “Occasions when a quorum of a governmental body gathers, in person or by electronic communication, with state or federal officials for the purpose of reporting or obtaining information or seeking support for issues of importance to the governmental body.”

These definitions make it clear, first, that there must be a quorum present for the Act to apply. The quorum requirement applies to both the governing body itself and all committees of the governing body. Secondly, the first two parts of the definition apply to prearranged gatherings. This could include regular as well as special meetings. Finally, any gathering of a quorum of members where deliberations of actions that are expected to come before the body later are subject to the Act. Fortunately, the Act also makes it clear that certain types of get-togethers are not covered. This allows members to attend social events or conventions, or similar activities, together, provided that they do not deliberate matters that are expected to come before the body later.

Preservation of Existing Exemptions and Inclusions

Although Act No. 2005-40 specifically repeals the former Sunshine Law, Section 13A-14-2, all specific references in the Code of Alabama 1975 to Section 13A-14-2, are preserved and are now considered to refer to the new Act instead. The idea behind this is to preserve any exclusion or inclusion from the requirement to hold public meetings that existed prior to the new Act. The Code Commissioner is authorized to implement changes to statutes when appropriate.

Meeting Notice

Act No. 2005-40 requires providing notice to the public of meetings of those gatherings which are subject to the Act. Municipal governing bodies provide notice by posting notice on a public bulletin board at city hall at least seven days prior to the date of the meeting. A separate corporation where a majority of the membership is appointed by the municipality which has an office at a location other than city hall may instead provide notice on a public bulletin board in the principal office of the corporation. All other governmental bodies must post notice of each meeting in a location that is reasonably accessible by the public, or in some other method that is convenient to the public.

It should be pointed out that there is a small ambiguity in the notice section. Separate *corporations* are permitted to post notice at their principal office, if they have one separate from the city hall. The notice provision then states

that the public bulletin board must be at the office of the *corporation or other instrumentality*. It is unclear what other instrumentalities are covered. The League recommends that unless the entity in question is a separate corporation with an office at a location other than city hall, notice should be posted on a public bulletin board at city hall. Note that any entity may satisfy the notice requirement by posting at city hall. Additional notice may also be provided if desired.

Any change of the location or method for posting notices must be approved by the members of the governmental body at an open meeting and announced to the public at an open meeting. Note that this is a two-step process. Both steps, though, can be performed at the same open meeting.

Notice must be posted as soon as practicable after a meeting is called. The notice must be posted no less than 24 hours before the scheduled start of the meeting, unless:

1) Notice cannot be given due to emergency circumstances requiring immediate action to avoid physical injury to persons or damage to property; or

2) The notice relates to a meeting to be held solely to accept the resignation of a public official or employee.

In these instances, notice must be given as soon as practical, but in no case less than one hour before the meeting is to begin.

The notice must include the time, date and place of the meeting. If a preliminary agenda is created, the agenda must be posted as soon as practicable in the same location or manner as the notice. If a preliminary agenda is not available, the posted notice shall include a general description of the nature and purpose of the meeting. Please note, though, that the Act specifically provides that the governing body may still discuss at a meeting additional matters not included in the preliminary agenda.

If practicable, the governing body must also provide direct notification of a meeting to any member of the public or news media who has registered to receive notification of meetings. The municipality may require the person requesting notice to pay the actual cost of issuing notices, if there is one, in advance. Direct notice to persons who have registered shall, at a minimum, contain the time, date, and place of the meeting. This notice must be given at the same time the general notice is provided.

The governing body may promulgate reasonable rules and regulations necessary for the uniform registration and payment for direct notice and for the distribution of the notices. The governmental body has the authority to choose the method of providing direct notice. This may include using electronic mail, telephone, facsimile, the United States Postal Service, or any other method reasonably likely to provide the requested notice.

Minutes

The Act requires all entities subject to the Act to keep accurate records (minutes) of all meetings. The minutes shall include the date, time, place of the meeting, which members were present or absent, and any action taken at the meeting. These minutes must be maintained as a public record. Minutes are not required for executive sessions.

Conducting Meetings

All covered entities must adopt rules of parliamentary procedure and follow them during the meeting. Unless specifically allowed by statute, votes shall not be taken during an executive session, nor may the body vote by secret ballot. All votes on matters before a governmental body, including, but not limited to, votes to appropriate or to authorize an employee to spend public funds without further authorization of the governmental body, to levy taxes or fees, to forgive debts to the governmental body, or to grant tax abatements, shall be made during the open or public portion of a meeting for which notice has been provided pursuant to this act. Voice votes are allowed.

Recording Meetings

The League has frequently been asked whether members of the public may make audio or video recordings of a meeting. Act 2005-40 specifically allows any person in attendance at the meeting to make a recording provided the recording does not disrupt the conduct of the meeting. This does not apply to executive sessions. The governmental body may adopt reasonable rules for the implementation of this provision.

Executive Sessions

The Act specifically states that executive sessions are not required for any reason. It does, however, permit the body to enter into executive sessions for certain specified reasons. Unlike the Sunshine Law, the new Act provides a number of exceptions. These exceptions are:

(1) To discuss the general reputation and character, physical condition, professional competence or mental health of individuals, or to discuss the job performance of certain public employees. The entity may not go into executive session to discuss the job performance of an elected or appointed public official, an appointed member of a state or local board or commission, or any public employee who must file a Statement of Economic Interests with the Alabama Ethics Commission pursuant to Section 36-25-14, Code of Alabama 1975. The salary, compensation, and job benefits of specific public officials or specific public employees may not be discussed in executive session.

(2) To consider the discipline or dismissal of, or to hear formal written complaints or charges brought against a public

employee, a student at a public school or college, or an individual, corporation, partnership, or other legal entity subject to the regulation of the governmental body, if an executive session is expressly allowed by federal law or state law.

(3) To discuss with the attorney the legal ramifications of and legal options for:

a) Pending litigation;

b) Controversies not yet being litigated but imminently likely to be litigated or imminently likely to be litigated if the governmental body pursues a proposed course of action; or

c) To meet or confer with a mediator or arbitrator with respect to any litigation or decision concerning matters within the jurisdiction of the governmental body involving another party, group, or body.

Prior to voting to convene an executive session under this exception, an attorney licensed in Alabama must provide a written or oral statement reflected in the minutes that this exception applies to the planned discussion. This declaration does not constitute a waiver of attorney/client privilege. However, any deliberation between the members regarding what action to take relating to pending or threatened litigation based upon the advice of counsel must be conducted in the open portion of the meeting.

(4) To discuss security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or other infrastructures, the public disclosure of which could reasonably be expected to be detrimental to public safety or welfare. If the discussion involves critical infrastructure or critical energy infrastructure information, the owners and operators of such infrastructure must be given notice and an opportunity to attend the session.

(5) To discuss information that would disclose the identity of an undercover law enforcement agent or informer or to discuss the criminal investigation of a person, other than a public official, who is alleged or charged with specific criminal misconduct allegations or against whom charges of specific criminal misconduct have been made or to discuss whether or not to file a criminal complaint. Prior to entering executive session for any of these purposes, the entity must obtain a written or oral declaration entered on the minutes that the discussions would imperil effective law enforcement if disclosed outside of an executive session from a law enforcement officer with authority to make an arrest or a district or assistant district attorney or the attorney general or an assistant Attorney General.

(6) To discuss the consideration the governmental body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property. However, the material terms of the contract must be

continued next page

disclosed in the public portion of a meeting prior to the execution of the contract. Only persons representing the interests of the governmental body in the transaction may be present during an executive session held pursuant to this exception. The entity cannot hold an executive session for this purpose if:

a. Any member of the entity involved in the transaction has a personal interest in the transaction and attends or participates in the executive session concerning the real property; or

b. A condemnation action has been filed to acquire the real property involved in the discussion.

(7) To discuss preliminary negotiations involving matters of trade or commerce in which the entity is in competition with private individuals or entities or other governmental bodies in Alabama or other states or foreign nations, or to discuss matters or information defined or described in the Alabama Trade Secrets Act. Prior to holding an executive session pursuant to this exception, a person involved in the recruitment or retention effort or who has personal knowledge that the discussion will involve matters or information defined or described in the Alabama Trade Secrets Act must advise the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the competitive position of a party to the negotiations or upon the location, retention, expansion, or upgrading of a public employee or business entity in the area served by the governmental body if disclosed outside of an executive session, or would disclose information protected by the Alabama Trade Secrets Act.

(8) To discuss strategy in preparation for negotiations between the governmental body and a group of public employees. Prior to holding an executive session pursuant to this exception, a person representing the interests of a governmental body involved in the negotiations must advise the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the negotiating position of the governmental body if disclosed outside of an executive session.

(9) To deliberate and discuss evidence or testimony presented during a public or contested case hearing and vote upon the outcome of the proceeding or hearing if the governmental body is acting in the capacity of a quasi-judicial body, and either votes upon its decision in an open meeting or issues a written decision which may be appealed to a hearing officer, an administrative board, court, or other body which has the authority to conduct a hearing or appeal of the matter which is open to the public.

The Act also spells out a specific procedure for entering into an executive session, other than one held for a quasi-

judicial or contested case hearing. The procedure is as follows:

(1) A quorum of governmental body must first convene a meeting as defined in the Act.

(2) A majority of the members of the governmental body present must adopt, by recorded vote, a motion calling for the executive session. The motion must state the reason for the executive session. If the stated reason requires an oral or written declaration to justify the executive session as set out above, the oral or written declaration must be made prior to the vote.

(3) The vote of each member, as well as the written or oral declaration, shall be recorded in the minutes.

(4) Prior to calling the executive session to order, the presiding officer shall state whether the governmental body will reconvene after the executive session and, if so, the approximate time the body expects to reconvene.

Immunity

The Act specifically states that members of the covered entity and any of its employees participating in a meeting that complies with the Act have an absolute privilege and immunity from suit for any statement made during the meeting which relates to a pending action. This immunity is in addition to all others that may apply.

Enforcement

The process for enforcing the new Open Meetings Act is significantly different from that followed for enforcing the Sunshine Law. The Sunshine Law was part of the Alabama criminal statutes, and violations were enforced as misdemeanors. Instead, the new Open Meetings Act is enforced as a civil violation.

The civil action must be brought in the county where the governmental body's primary office is located. Suit may be brought by any media organization, any Alabama citizen, the Attorney General, or the district attorney for the circuit in which the governmental body is located. However, no member of a governmental body may serve as a plaintiff in an action brought against another member of the same governmental body for an alleged violation.

An action alleging a violation of the Act must be brought within 60 days of the date that the plaintiff knew or should have known of the alleged violation. In any event, though, any action under the Act must be brought within two years of the alleged violation.

The complaint must be verified and name in their official capacity all members of the governmental body who remained in attendance at the alleged meeting. The complaint must also specifically state one or more of the following the reasons for the complaint:

(1) That the defendants disregarded the notice requirements for holding the meeting, as spelled out above.

(2) That the defendants disregarded the provisions of the Act during a meeting, other than during an executive session.

(3) That after voting to go into executive session, the defendants discussed during the executive session matters other than those subjects included in the motion.

(4) That the defendants intentionally violated some other provision of the Act.

Members of a governmental body who are named as defendants must serve an initial response to the complaint within seven business days of receiving personal service of the complaint. A preliminary hearing on the complaint must be held no later than 10 business days after the date of the filing of the defendants' initial response to the complaint or, if no response is filed, no later than 17 business days after the filing of the complaint, or on the nearest day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties.

In the preliminary hearing on the complaint, the plaintiff must establish by a preponderance of the evidence that a meeting of the governmental body occurred and that each defendant attended the meeting. Additionally, to establish a prima facie case the plaintiff must present substantial evidence proving the alleged violation.

If the court finds that the plaintiff has met its initial burden of proof, the court shall establish a schedule for discovery and set the matter for a hearing on the merits. If, at the preliminary hearing, the plaintiff establishes a prima facie case that the defendants discussed matters during the executive session other than those included in the motion to go into the executive session, the burden of proof at the hearing on the merits shifts. The defendants must then prove by a preponderance of the evidence that the discussions during the executive session were limited to matters related to the subjects included in the motion.

During a proceeding involving claims alleging that matters beyond the motion were discussed, the court shall conduct an in camera (a private hearing) proceeding or adopt another procedure as necessary to protect the confidentiality of the matters discussed. If there is a determination that the executive session was proper, items discussed during the executive session shall not be disclosed or utilized in any other legal proceeding by any individual or attorney who attends the in camera portion of the proceedings.

Upon proof by a preponderance of the evidence of a violation, the circuit court shall issue an appropriate final order including, if appropriate, a declaratory judgment or injunction. Prior to a final determination of the merits, temporary restraining orders or preliminary injunctions may

be issued upon proper motion and proof as provided and required in the Alabama Rules of Civil Procedure. The court must issue a final order on the merits within 60 days after the preliminary hearing unless all parties and the court consent to allow a longer period.

The court may invalidate any action taken during a meeting held in violation of the Act, provided that:

1) The complaint is filed within 21 days of the date when the action is made public,

2) The violation was not the result of mistake, inadvertence, or excusable neglect, and

3) Invalidating the action taken will not unduly prejudice third parties who have changed their position or acted in good faith reliance upon the challenged action of the governmental body.

No action taken at an open meeting conducted in a manner consistent with the Act shall be invalidated because of a violation that took place prior to the meeting.

A final order issued against a defendant shall state specifically upon which claim or claims the ruling is based. For each meeting proven to be held in violation of the Act, the court must impose a civil penalty, up to one thousand dollars (\$1,000) or one half of the defendant's monthly salary for serving on the governmental body, whichever is less. If the claim relates to improper discussions during executive sessions, monetary penalties may only be assessed against members of the governmental body who voted to go into the executive session and who remained in the executive session during the improper discussion.

Penalties imposed against a member of a governmental body found to have acted in violation of this act shall not be paid by nor reimbursed to the member by the governmental body he or she serves. However, a governmental body is authorized to pay for or provide for the legal expenses of present or former members of the body named as defendants in any action alleging a violation of the Act. ■

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By Lorelei A. Lein
Staff Attorney

Legal Notes

Alabama Decisions

Public Records: Employees of a city water works and sewer board are “public officers and servants” of the city for purposes of the Open Records Act, and, thus, records necessary for board employees to carry out their activities are public records subject to disclosure, even though the board is a public corporation. *Water Works v. Consolidated Pub., Inc.*, 892 So.2d 859 (Ala. 2004).

Streets and Roads: A resolution by a municipal governing body to “support and endorse” a proposed route for a state highway does not violate Section 11-52-11 of the Code of Alabama 1975 requiring a municipal planning commission to approve plans prior to the construction or authorization of a public road. *Farmer v. City of Dothan*, 892 So.2d 431 (Ala. 2004).

Planning and Zoning: A decision by a governing body to approve a planned residential development (PRD) is arbitrary and capricious if the zoning ordinance requires the parcels to be “adjacent to, touching, or separated from a common border by right of way, alley, or easement” and the proposed plan includes parcels that are separated by a conservation easement as well as a stretch of private road and several undeveloped public roads. *Fort Morgan Ass’n v. Baldwin County Comm’n*, 890 So.2d 139 (Ala. Civ. App. 2003).

Employees: An employee handbook for county employees does not constitute a binding employment contract where the handbook states that it is meant to serve as a guide for employees and that the conditions of the handbook might vary with the occasion. *Harper v. Winston County*, 892 So.2d 346 (Ala. 2004).

Attorney General Opinions

Storm Water: State-owned property is exempt from the storm-water fees and assessments levied pursuant to Section 11-89C-9 of the Code of Alabama 1975. 2005-078.

Annexation: An improvement district formed by a municipality pursuant to Section 11-99A-10 of the Code of

Alabama 1975 may annex property across a bay from the municipality if the property is directly across from the city, has a minimum of 200 feet of water frontage, and all property owners consent to the formation of the district. 2005-084.

Emergency Management: Where an E911 Board has designated a county-funded ambulance service for dispatch in its coverage area, it has no duty or obligation to dispatch a for-profit ambulance service when requested to do so. 2005-088.

Ethics Commission Opinions

AO NO. 2005-06. Municipal employees, who are responsible for the administration of federal funds from HUD, may perform grant proposal development and/or writing services for organizations, communities, and municipalities outside the municipality they work for, but may not do so for those entities within their jurisdiction who have, or may in the future apply for federal funds through their municipal office. These services must be performed on their own time, and they may not use any public equipment, facilities, time, materials, human labor, or other public property to assist in performing such work.

AO NO. 2005-07. A former city engineer may provide consulting services through her corporation to entities whose work she reviewed while city engineer, as it is employment with those entities that is prohibited by the “Revolving Door” provisions of the Ethics Law, and not the providing of consulting services as an independent contractor. However, a former city engineer may not, for a period of two years after leaving public service, represent an entity to which she is providing consulting services before the public entity she previously worked for.

AO NO. 2005-08. A city may waive a rental fee for a city owned stadium at the request of a city council member to hold an event when there is no personal gain accruing to the city council member, his or her family member, or a business with which he or she is associated, and where the activity is non-profit in nature and provides a public benefit.

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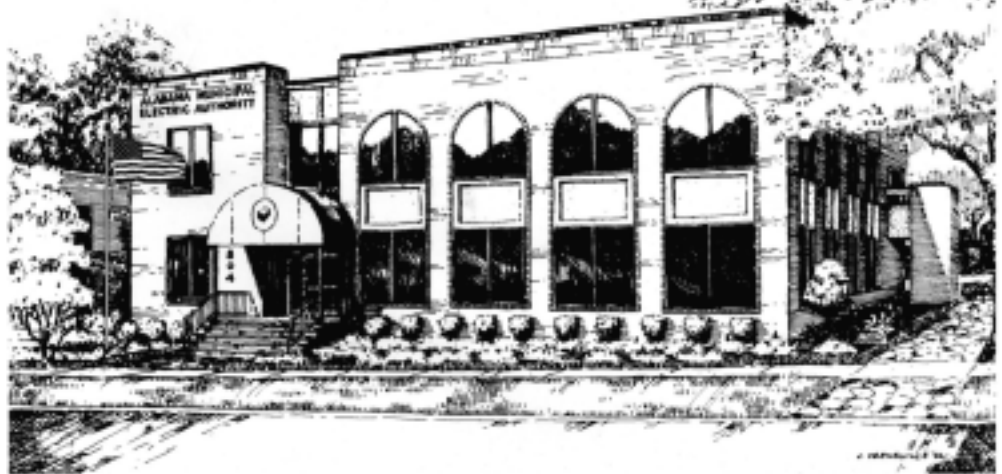
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Mary Ellen Wyatt Harrison
Staff Attorney

Federal Legislative and Regulatory Issues

Fight for CDBG Program Continues

The fight on Capitol Hill for the Community Development Block Grant continues. At press time, the CDBG grant discussion had moved into the appropriation committees of the United States House of Representatives and Senate. Action taken on the Hill to date has suggested strong sentiment against moving the CDBG program from the Department of Housing and Urban Development (HUD) to the Department of Commerce.

The battle to keep the program within HUD at its current funding level is far from over. Local government officials should continue to contact Senator Shelby and Senator Sessions as well as their respective House Representatives to encourage them to support the current funding levels. To contact your House Representative, please visit www.house.gov/writerep/. To contact Senator Shelby and Senator Sessions, please visit www.senate.gov/.

Collective Bargaining Bill for Public Safety Offers in House

House Bill 1249 was introduced by Rep. Dale Kildee (D-MI) to provide collective bargaining rights for public safety officers employed by States or their political subdivisions. The last action on this bill was taken on March 10, 2005, when it was referred to the House Committee on Education and the Workforce. The bill would guarantee the right of public employees to bargain collectively with their employers over hours, wages and conditions of employment. The bill mandates that each State pass laws providing minimum collective bargaining rights to their public safety employees and outline certain provisions to be included in those laws. Strikes and lockouts are prohibited by the bill and States with collective bargaining laws already on the books will be exempt from the Federal statute.

Grants Available for 2006 Summer Youth Programs

Organizations planning to host arts education programs for youth ages 5 through 18 during the summer of 2006 have an opportunity to win grants of up to \$35,000 to support these endeavors. Through its Summer Schools in the Arts program, the National Endowment for the Arts provides funds to plan, implement, evaluate and close-out rigorous and challenging initiatives aimed at increasing young people's appreciation for – and knowledge and skills in – the arts. Summer Schools in the Arts grants fund summer programs that:

- provide instruction in one or more arts disciplines;
- offer a comprehensive curriculum where participants actively create and/or perform — and respond to — the arts;
- culminate in public performances, exhibitions or other demonstrations of participants' achievements in the arts;
- use national, state or local arts education standards to measure (through pre- and post-assessment tests) the extent to which students gain knowledge and skills; and
- entail at least 90 hours of instruction involving the same group of students.

Applicants also are encouraged to offer free or subsidized tuition for economically disadvantaged students. This, however, is not a requirement. Nonprofit organizations, state and local governments, and Indian tribes and tribal communities are eligible for grants of \$15,000 to \$35,000 each, if they have a three-year history of providing arts education instruction and meet NEA's legal requirements (www.nea.gov/grants/apply/GAP06/AwardAdministration.html#legal). The program is very competitive, and NEA intends to award no more

continued next page

than 50 grants in FY 06. Grantees are required to provide a 100 percent match. Governments and organizations that intend to apply for Summer Schools in the Arts grants must submit a statement of interest by May 23, 2005, to be eligible. In no more than three pages, the statement needs to describe:

- the community in which the project would take place and the demographics of the expected student population;
- the number and age range of project participants and how they will be selected or register for the program;
- the extent to which children and youth of limited financial resources will participate;
- the curriculum, including scheduling approaches and the duration of instruction;
- how the curriculum is linked to national, state or local arts education standards;
- the culminating performance or exhibition;
- plans for assessing and documenting the program's effectiveness;
- the project budget, including sources of matching funds; and
- activities over the past three years that testify to the applicant's ability to carry out the proposed project.

The statement of interest must be submitted through Grants.gov, at the following link: apply.grants.gov/UpdateOffer?action=package&id=304. Additional information on preparing a statement of interest is available online at www.nea.gov/grants/apply/SummerSchools.html. NEA will use these statements to narrow the list of contenders to no more than 100 projects. Entities that the agency selects to continue on will be notified of their status by July 18, and will have until Sept. 12, 2005, to complete the application process.

Preserving and Providing Access to Records

A grant to locate and preserve documents of national and state historical significance is available through the National Archives and Records Administration. It is anticipated that thirty matching grants will be awarded. It is estimated that \$5 million dollars of grant money will be distributed. The deadline for application is October 1, 2005. The purposes of the grant are to locate and preserve documents of national and state historical significance. Additional information may be obtained by visiting the following website www.fedgrants.gov/

Applicants/NARA/HQ/NHPRC/NHPRC-RecordsOther-05/listing.html or contacting Daniel Stokes at (202) 501-5610 or daniel.stokes@nara.gov.

Publishing Historically Significant Records Relating to the History of the United

A grant to publish historical documents important for the comprehension and appreciation of U.S. history is available from the National Archives and Records Administration. The deadline is October 1, 2005. For more information visit the following website www.fedgrants.gov/Applicants/NARA/HQ/NHPRC/NHPRC-PublicationsOther-05/listing.html or contact Timothy Connelly at (202) 501-5610 or timothy.connelly@nara.gov.

Grants for Broadband Transmission Service

Grants to provide currently unserved areas with broadband transmission service that fosters economic growth and delivers enhanced educational, health care and public safety services are available to state and local governments, Indian tribes and tribal organizations, incorporated organizations, and private nonprofit and for-profit corporations. The deadline for grant application is May 31, 2005. For more information please see *Fed. Reg.*, March 30, 2005, pages 16210-16214 or contact Orren Cameron at (202) 690-4493.

Suicide Prevention Grant Resources Available

The deadline for state, local and tribal governments, public and Indian housing authorities, nonprofit organizations and institutions of higher education to apply for a grant that will assist in created and operating a national Suicide Prevention Resource Center is June 1, 2005. For more information, please visit the following website http://www.samhsa.gov/grants/2005/nofa/sm05017_suicide_resources.aspx or contact Richard McKeon at (240) 276-1873 or via e-mail at: richard.mckeon@samhsa.hhs.gov.

HOPE VI Revitalization of Severely Distressed Public Housing Program

Public housing authorities may apply for a grant to demolish, rehabilitate and reconfigure severely distressed public housing projects; relocate residents displaced during a revitalization project; replace obsolete public housing projects; acquire units and land to develop new public housing units and facilities; and offer community and supportive services to residents of public housing projects. The deadline is June 29, 2005. For more information visit the following website <http://www.hud.gov/offices/pih/programs/ph/hope6/>

grants/fy05/index.cfm or contact Lawrence Gnessin at (202) 401-8812, ext. 2676 or email lawrence_gnessin@hud.gov.

High-Speed Rail Program Grant

A grant is available to local governments who work to develop technologies and engage in demonstration projects that would advance the deployment of high-speed rail service in the United States. Technologies most likely to help facilitate the deployment of higher speed rail service are those which will:

- Bring about cost reductions in constructing and maintaining equipment, track, and facilities.
- Reduce operating costs by providing more efficient operations.
- Improve the reliability of equipment and infrastructure components by reducing failures and/or reducing false failure detections.
- Improve safety by reducing human and technology failures.
- Enhance revenue-generating capability by attracting greater ridership through reducing trip times, upgrading customer service quality, increasing reliability, or improving on-time performance.
- Enhance the social benefits or environmental aspects of higher speed rail.

Qualifying projects are those which show promise to make a significant difference in the ability to implement and sustain higher speed passenger operations: those technologies or methods which specifically address impediments to providing and maintaining operations at higher speeds than are currently practical or cost-effective. Detailed information on the grant can be found at <http://www.fra.dot.gov/downloads/RRDev/baa2005-1.pdf>. The deadline is December 30, 2005. For more information, please contact Illona Williams at (202) 493-6130 or by email at illona.williams@fra.dot.gov.

Capital Grant Component of the Homeless Providers Grant and Per Diem Program

If your local government is interested in remodeling or altering existing buildings, acquiring or rehabilitating buildings, construction of new buildings for supported housing and supportive service centers for homeless veterans, there is a grant available to provide assistance in meeting the local government's goal. The deadline is June 8, 2005. The grant can also be used to acquire vans for outreach to, and transportation of, homeless veterans. For more information contact Guy Liedke at (877) 332-0334. ■

NLC Summit to Focus on Your City's Families

One of NLC's most successful and exciting events on children, youth and family issues will take place on September 25-28, 2005 at the Westin Riverwalk Hotel in San Antonio. This premier national summit will bring together municipal officials and other community leaders to discuss and promote action on programs and policies that work toward successful outcomes for children, youth, families, schools and communities. The registration form is available for download now at www.nlc.org/iyef.

Summit attendees will share programs and learn strategies, enhance leadership, develop action plans and build relationships. Workshops will focus on the following topics:

- Leadership by local elected officials;
- Afterschool programming;
- Youth development;
- Early childcare and education;
- Collaboration between city hall and schools;
- Funding strategies;
- Support for working families; and
- Creating and maintaining community teams.

This summit is sponsored by NLC's Institute for Youth, Education, and Families (YEF Institute) in collaboration

with the City of San Antonio and the Texas Municipal League.

Great Opportunity for Teams

Community teams of four or more will benefit the most from this summit. Not only will they learn about new information and ideas through plenary speeches, panel discussions and workshops, but will have the opportunity to pursue an individualized process of planning and agenda setting for its own community with the assistance of a consultant facilitator.

Consider sending a team composed of people responsible for parks and recreation, health, libraries, schools, public safety, housing or community development as well as parents, youth and key non-government leaders from business, neighborhood organizations, religious groups and private service delivery agencies.

The 2005 summit is NLC's seventh conference on "Your City's Families." Agendas and reports from previous conferences are available on-line.

Details: Information about summit registration, hotel reservations and previous conferences can be downloaded at www.nlc.org/iyef. For other questions, leave a detailed message at **202-626-3014** or e-mail iyef@nlc.org. ■

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Alabama Mayor's Design Summit

2006 APPLICATION page 1

DesignAlabama is a non-profit, citizen-led organization providing educational resources and assistance related to urban planning, architecture, landscape architecture, industrial design, graphic design, fashion design and engineering. We believe that the quality of life and the economic growth of this state are enhanced through attention to and investment in good design. We further believe that the design disciplines affect our environment in a variety of ways and therefore must be practiced in the most responsible way. It is for this reason that **DesignAlabama** seeks to work with designers, non-designers and public officials to put good design into use in their communities.

It is therefore our honor to announce the first Alabama Mayors Design Summit.

Please note bulleted information below for details about the summit and how to apply.

- In partnership with the Alabama League of Municipalities, Alabama State Council on the Arts, **DesignAlabama** will present the Alabama Mayors Design Summit at the **Ross Bridge Hotel and Conference Center in Birmingham, Alabama on February 16 and 17, 2006.** The **intense day and a half workshop** will **partner 5 Alabama mayors with 6 professional design experts** to work in a roundtable environment **to create tangible solutions for a design challenges facing their communities.** It is the aim of the conference that each attending mayor will gain knowledge and understanding of design terms, design issues, design trends, make valuable contacts, and begin development of preliminary design solutions to real problems.
- During the day and a half summit, **each mayor will be asked to make a 20-minute presentation on his or her city and the design issue to be discussed.** Each mayor will be asked to bring maps, photographs, renderings and other items related to the design issue. Each mayor's design issue will be addressed in a roundtable discussion with all participating mayors and design professionals.
- *Please sign below stating that you understand that selected mayors will each make a 20-minute presentation on their city and design issue and bring all related materials. **Complete both sides of this application and return the original and two copies by August 1, 2005 to: DesignAlabama, Post Office Box 241263, Montgomery, Alabama 36124.***
- **Mayors chosen to participate in the Mayor's Summit will be notified by November 15, 2005.**

If you have any questions or comments please contact Gina Clifford at 334-353-5081.

Signature

Date

Alabama Mayor's Design Summit

2006 APPLICATION page 2

If you are nominating a mayor, please complete both sections below. If you are a mayor filling out an application for yourself, please complete only the top half of this page.

MAYOR Information

Your Name _____

City _____

Mailing Address _____

City/State _____ Zip Code _____

Contact Phone _____ Contact Fax _____

Contact Email _____

Name of Administrative Assistant (if applicable) _____

NOMINATOR Information

Nominator's Name _____

City _____

Mailing Address _____

City/State _____ Zip Code _____

Contact Phone _____ Contact Fax _____

Contact Email _____

Please attach additional pages, but no more than two, to provide the information requested below.

Briefly describe yourself (or nominee) and your (or nominee's) background in public and community service, especially your (or nominee's) time as mayor.

Describe the design issue facing your city, what has been done in the past and/or is currently being done to resolve this design issue. Submit any pertinent information concerning your design issue (such as maps, renderings and photos, *no larger than 11" x 17" in size*) with your application.

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