

# The Alabama Municipal JOURNAL

May/June 2018

Volume 75, Number 6



## AMIC Funds Historic Municipal Law Chair



The investiture of Michael E. DeBow as the Stephen Everett Wells Professor of Municipal Law was held at Samford University's Cumberland School of Law on February 8, 2018. Pictured left to right: Steve Wells, President of the Alabama Municipal Insurance Corporation (AMIC); Michael DeBow, Professor of Municipal Law, Cumberland School of Law; and Ken Smith, Executive Director, Alabama League of Municipalities. Page 9.

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# The Alabama Municipal JOURNAL

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#LiveLocallyAlabama

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## On the Cover:

The Board of Directors for the Alabama Municipal Insurance Corporation (AMIC) recently endowed \$1,050,000 to Samford University's Cumberland School of Law in Birmingham, AL to establish the Stephen Everett Wells Chair in Municipal Law. This groundbreaking academic position, named for AMIC President Steve Wells, is designed to ensure that future lawyers are educated about municipal law and the issues affecting municipalities – and that those issues will receive sound scholarly research to enhance municipal services to citizens.

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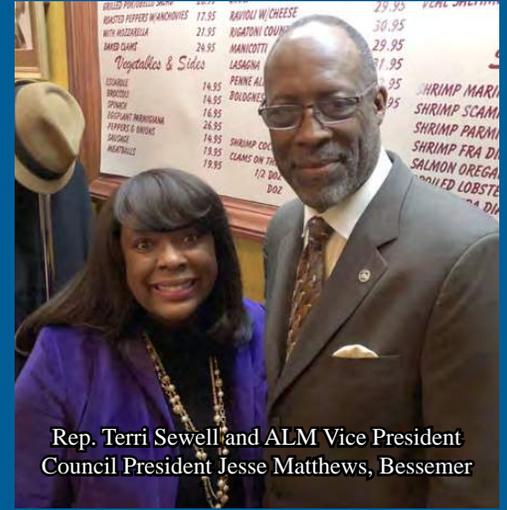
For staff bios and contact information:  
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# NLC Congressional City Conference • Washington D.C. • March 11-14, 2018

More than 100 Alabama delegates attended this year's NLC Congressional City Conference. In addition to workshops and meetings, they heard key legislative updates from Greg Cochran, ALM's Director of Advocacy and Public Affairs as well as updates from NLC, the Department of Justice and Sen. Richard Shelby. District Dinners were held with five of Alabama's seven districts and were attended by Representatives Bradley Byrne (District 1), Martha Roby (District 2), Mike Rogers (District 3), Robert Alderholt (District 4) and Terri Sewell (District 7).



ALM President Mayor Howard Rubenstein, Saraland (right) and ALM staff members Kayla Farnon, Ken Smith and Greg Cochran (left) with Rep. Bradley Byrne (middle)



Rep. Terri Sewell and ALM Vice President Council President Jesse Matthews, Bessemer



Mayor David Bradford, Muscle Shoals and Rep. Robert Aderholt



Rep. Martha Roby and Greg Cochran, ALM



Rep. Mike Rogers and Mayor Gary Fuller, Opelika



Sen. Richard Shelby addressed Alabama delegates attending the NLC Congressional City Conference

# The President's Report

By Dr. Howard Rubenstein, Mayor, Saraland



## Parting Thoughts and One Final “Pearl”

As I write my last article as President of the Alabama League of Municipalities, I would like to express my deep gratitude to my fellow Alabama Mayors and Councilmembers for your trust and support over the past 18 months. I unexpectedly started my term as President six months earlier than usual and have greatly appreciated the honor of serving as president during this expanded term. I have had the opportunity to work closely with our outstanding municipal leaders as well as network with many fine state and national government officials. I also appreciate the outstanding help and support that I have received from Executive Director Ken Smith and the wonderful staff with the Alabama League.

I am proud of our many accomplishments during the past 18 months. Advocacy has been one of my priorities during my term. The League's Executive committee graciously allowed me to proceed with my vision for organizing advocacy dinners for our state's elected officials. Now in its second year, this program has been very successful. Reaching out to our state senators and representatives in this manner has improved our municipal/state relationships. This has also helped convey our concerns and priorities to our state elected leaders. Our advocacy department has been expanded with the welcome addition of Advocacy Communications Coordinator,

Kayla Farnon. Our new Live Locally Alabama initiative ([livelocallyalabama.org](http://livelocallyalabama.org)) will also help share the value of municipal government to citizens and other stakeholders and governmental decision makers.

The League is also proceeding forward with a formal strategic plan. I think this is crucial to the continued relevancy and excellence of our organization. We have received input from all of our major stakeholders and are currently organizing data and information we have gathered into an appropriate format of goals and objectives. Appropriate implementation of this plan will enable our League to remain effective, responsive and relevant.

League programs such as AMIC, MWCF, AMFund and MIS continue to provide outstanding services to Alabama's municipalities. League educational programs have expanded with online options and the League continues its excellent resource of legal advice to member municipalities and their elected officials.

Several important challenges lie ahead of us as we move forward. Skyrocketing online sales are creating a significant drain on municipal sales tax and business license revenue causing difficulty providing the essential quality of life services our residents expect. Amending Alabama's Simplified Sellers Use Tax (SSUT) to a more equitable distribution for our towns and cities was a high priority this legislative session to help address this problem. Formation of our League Digital Economy Task Force has been very instrumental in shaping and sharing our message. I would like to thank Chairman Mayor Walt Maddox of Tuscaloosa and all the League elected officials who volunteered to serve on this very important committee. Opposing federal and state unfunded mandates is also crucial to prevent additional financial burdens on our municipalities. We must always strive to prevent legislative efforts that would dilute our power and authority to operate in a manner to best serve our residents.

I will leave you with one final “pearl” of wisdom: *we are much stronger together than as separate entities*. I am hopeful that all Alabama's towns and cities will continue to use the Alabama League of Municipalities as a vehicle to preserve our ability to improve and strengthen our communities. ■



ALM President Mayor Howard Rubenstein, Saraland with ALM Vice President Council President Jesse Matthews, Bessemer at the 2018 NLC Congressional City Conference in Washington, D.C.



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# Municipal Overview

By Ken Smith, Executive Director



## Welcome to the 2018 League Convention!

The League staff has planned an outstanding agenda for the 2018 annual League convention at the Montgomery Convention Center in Montgomery, May 19-22. I hope you'll be able to join us for our signature event. This year's convention is jam-packed from start to finish with pertinent information you need to help you and your municipality grow and develop and we look forward to welcoming you to the Capital City!

The convention brings together over 1,100 municipal leaders from across the state to hear presentations and share information. These policy makers and their advisors will be joined by hundreds of state and federal officials, experts in specific areas of concern and vendors offering solutions that will enable them to better serve their citizens. The convention offers you with an ideal opportunity to learn about local government, network with other local officials, share experiences and brainstorm ideas for improving your community. Attending and participating in the convention is one of the best ways to prepare yourself to serve your municipality. Municipal leaders in Alabama share a common bond – the desire to improve the quality of life in their communities. Once they take office, though, municipal officials soon realize that much of what takes place locally is impacted by decisions and developments occurring far beyond their borders. The convention allows these officials to discuss the impact of these changes and how they should respond to best serve their citizens. In this day of tightening budgets and increasing state and federal mandates, the need for immediate and accurate information has become ever more acute. Decisions based on incorrect data can waste valuable time and money and may even lead to increased liability costs through lawsuits or the assessment of state or federal penalties.

### Maximizing Your Attendance

**First, it is important to study the program carefully and understand what takes place at each session.** If this is your first convention, you may find yourself overwhelmed and a little confused about where to start. I'd encourage you to attend the Orientation for New Attendees that takes place

Saturday morning, at 9:00. That session will give you an overview of your options.

How can you make the best use of your time at the convention? If you are a municipal clerk, while you are welcome and encouraged to attend other portions of the convention, you may want to limit your attendance to the training provided by your association.

What other type events are available for you to attend? The roundtable sessions provide a wonderful opportunity for you to learn what is happening in similar-sized municipalities around the state. The chance to share information, ask questions and learn how others have addressed issues simply should not be missed.

But don't overlook the training sessions. Substantive training and updates take place at the general and concurrent sessions and at the opening and closing sessions. These sessions provide you with detailed information on specific issues. You will hear from recognized experts who can help you navigate the frequently choppy waters you will find yourself in at times.

League policy and business takes place at the resolutions committee and, of course, at the business session. If you are attending the convention strictly for training, it may seem unnecessary or not worthwhile to attend the policy and business sessions. I disagree with that conclusion, though. I think these sessions offer unique educational and networking opportunities and provide you with a good overview of how your League functions and operates and lets your municipality directly affect the direction your League takes in the future.

**Second, to take full advantage of your convention attendance, mark your program to keep track of the sessions you want to attend. Or, even better, the League provides you with an app to keep track of sessions that interest you.** If you don't make plans, it's easy to lose track of time and find yourself lost in conversation with someone outside a training session. This may cause you to miss a session you specifically wanted to attend.

Not that there is anything wrong with conversing with other attendees – in fact, you should take advantage of every chance to get to know your fellow officials across the state and discuss municipal business with them. Here's a brief overview of the agenda to help you plan ahead.

*continued page 31*

# Budget Shortfall?



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# AMIC Funds Historic Municipal Law Chair

*Insuring the Future of Local Government*

Carrie Banks • Communications Director • ALM



In an effort to further strengthen its mission of *Insuring the Future of Local Government*, the Alabama Municipal Insurance Corporation (AMIC) Board of Directors recently endowed \$1,050,000 to Samford University's Cumberland School of Law in Birmingham to establish the Stephen Everett Wells Chair in Municipal Law. This groundbreaking academic position, named for AMIC President Steve Wells, is designed to ensure that future lawyers are educated about municipal law and the issues affecting municipalities – and that those issues will receive sound scholarly research to enhance municipal services to citizens.

AMIC was established in 1989 by the Alabama League of Municipalities (ALM) and provides liability insurance to more than 570 members consisting of municipalities and other incorporated municipal entities such as utility boards and industrial development boards throughout the state. AMIC came into existence as a result of the “hard” insurance market of the mid 1980s – a time when many municipalities could not obtain insurance and those that could were charged exorbitant prices. AMIC writes all lines of automobile insurance, commercial general liability, police professional liability, public officials errors and omissions coverage, cyber liability, bonds, property and inland marine.

Wells has focused his entire career on protecting cities and towns. He ran a similar municipal insurance company in Alaska for 10 years before becoming AMIC President in 2000. Shortly after he was hired, Wells spearheaded the purchase of a permanent AMIC headquarters in downtown Montgomery and moved all services in-house. Under his leadership, AMIC partnered with ALM's Municipal Workers Compensation Fund, Inc. (MWCF) in 2001 to develop a Loss Control Division that provides a variety of additional value-added services including proactive driver training, firearms training and regionally assigned loss control representatives who travel throughout the state.

*continued next page*



Henry Strickland, Dean, Cumberland School of Law; Mayor Melvin Duran, Priceville, AMIC Board of Directors; Mayor Ronnie Marks, Athens, AMIC Board of Directors; Steve Wells, President, AMIC; Michael DeBow, Professor, Cumberland School of Law; Mayor Charles Murphy, Robertsdale, AMIC Board of Directors; Andrew Westmoreland, President, Samford University; Michael Hardin, Provost and Vice President Academic Affairs, Samford University. *Photo provided by Samford University.*

As AMIC's coverage and services have expanded, the one constant challenge the organization has continually faced is the lack of sound understanding of municipal law by the legal and judicial professions. Considering that AMIC currently uses 70 attorneys from 22 law firms equating to 40,000 billable hours per year, it's a significant challenge that ultimately affects the financial health of Alabama's cities and towns.

"I've been in this business for nearly 30 years and we have always had issues with attorneys, local judges and Supreme Court judges who do not understand municipal law," Wells said. "We have been struggling for years on how to resolve the problem. AMIC's board of directors ultimately concluded that the best way was through education – a funded law school chair dedicated specifically to municipal and public entity law. I applaud them for having the wisdom and vision to see the need for this chair and, quite frankly, the courage to appropriate the money. It's a lot of public money but we know it's going to do a tremendous amount of good. Municipalities provide the most essential services to citizens with the least amount of money and the least amount of statutory protection. We're certain this will bring benefits to our cities for many, many decades to come."

Mayor Billy Joe Driver of Clanton, AMIC board chairman and past president of ALM, praised the efforts of Wells and the organization in taking this historic approach. "The long-term goal of this academic chair is to create a better understanding of municipal statutes, which will result in more reasonable legal results," he said. "Or – more simply stated – to save taxpayer dollars."

### **AMIC Partners with Cumberland School of Law**

Wells and his five-member board of directors were methodical in their approach. The process, which took nearly four years, included conversations with numerous stakeholders and the necessary due diligence that ultimately led to Samford University's Cumberland School of Law. "Cumberland was the right fit for this unique initiative," Wells said. "They had a highly qualified professor who could take this on; they were really excited about doing it; and from there all the chips fell into place and it was an easy decision."

Cumberland Dean Henry "Corky" Strickland worked closely with Wells to develop this innovative municipal law academic chair – a first for Alabama and an area of law that has generally been overlooked nationally. "Municipalities are the boots on the ground in American government that provide a vast majority of the essential services citizens expect from government," he said. "I am excited for Cumberland to be part of this effort and look forward to future opportunities to partner with AMIC and Alabama municipalities to serve the citizens of Alabama."

ALM Executive Director Ken Smith applauds this effort. "The endowment of a municipal law chair at Cumberland School of Law is a very important step in expanding the educational awareness of legal issues confronting municipalities on a daily basis," he said. "As an attorney who has practiced in municipal law for over 30 years, I know how specialized this area of the law has become. Most municipal attorneys are not full time – the municipality is likely to be only one of many clients. The variety of issues confronting municipal lawyers is unique and requires not

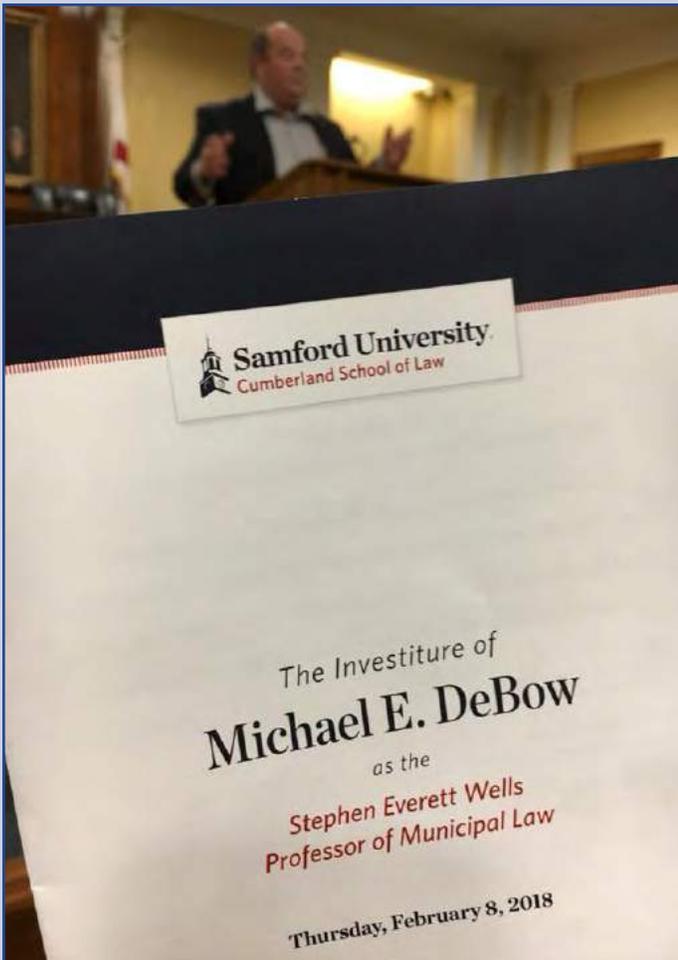
only a knowledge of the full legal spectrum, but intimate awareness of how issues specifically impact the municipal client and those who work for and serve municipal citizens. Very few law schools adequately prepare attorneys for municipal representation and the Stephen Everett Wells Chair will educate future municipal lawyers and promote legal research that will help our officials better serve their citizens."

### **Stephen Everett Wells Professor of Municipal Law**

Michael E. DeBow, who has taught at Cumberland since 1988, was selected from law school faculty recommendations as the inaugural Stephen Everett Wells Professor of Municipal Law. His teaching and research interests include property,



*Henry Strickland, Dean, Cumberland School of Law with Steve Wells, President, AMIC, as the official paperwork formally establishing the Stephen Everett Wells Chair in Municipal Law is signed.*



business organizations, administrative law, legislation and local government. Following a stint in private practice in Washington, D.C., DeBow’s career includes a judicial clerkship with Judge Kenneth Starr of the U.S. Court of Appeals for the D.C. Circuit and service as an attorney-advisor to the Federal Trade Commission.

During DeBow’s February 8<sup>th</sup> Investiture Ceremony at Cumberland, Dean Strickland praised him saying: “Mike DeBow is both an outstanding law professor and an ideal choice for this chair and to preserve the purposes of this chair into the future. Universities expect professors to do three categories of things. One is scholarship, one is teaching and one is service. Professor DeBow does all three exceedingly well. Scholarship is the most easily accessed expectation of professors and Mike’s scholarship is particularly impressive. He’s published major articles in the nation’s legal and other journals, including the *Texas Law Review*, the *Harvard Journal of Law and Public Policy*, the *Delaware Journal of Corporate Law*, the *Vanderbilt Law Review* and many others. He’s written many chapters of major books. Mike is not afraid of taking on new things – new teaching methodology and subjects. He has taught local government law for over 15 years here at Cumberland as well as other courses that relate to and support local government law. His research

has included work on tort reform, jury verdicts, the role of government in tort and other litigation as well as various governmental issues related to the use of power at all levels of government. He cares very much about our state, our government and the people and the communities that we live in. He will be ideal to take on this new effort and to aid Alabama’s cities as we move forward.”

DeBow told Investiture guests it was a great honor to be selected as the Stephen Everett Wells Professor of Municipal Law. “Among other benefits, (this Chair) will equip students to follow the many Cumberland lawyers all through its history who have served their local communities,” he said. “Many Cumberland lawyers have been city or town attorneys, served on city councils, local school boards, have been active members of local chambers of commerce and other civic and charitable organizations in their hometowns. The Alabama Municipal Insurance Corporation’s generous gift is direct support to the spirit of liberty and the school of democracy and I am honored to have a part in what should be a long and productive collaboration between the law school, Steve Wells and others at AMIC.”

Speaking at DeBow’s Investiture, Samford University President Dr. Andrew Westmoreland emphasized the historic nature of AMIC’s endowment calling it a “truly significant moment in the arc of the history of Cumberland School of Law” and expressed deep appreciation to Wells and the Alabama Municipal Insurance Corporation for “extraordinary generosity in making possible this endowed chair of instruction.” He emphasized that the presence of this chair will ensure that future lawyers from Cumberland are prepared in municipal law and are ready and able to address the issues that affect Alabama’s communities with scholarship aimed at enhancing service to Alabama’s citizens. “Municipalities are the nearest form of government to each of us with direct impact on the citizens they serve,” he said. “The nation’s best universities take pride and they draw strength from endowed chairs that sustain and encourage creative and effective teaching. This chair will be an enduring legacy.” ■



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# The Legal Viewpoint

By Lori Lein, General Counsel



## Executive Sessions – Getting Them Right

**M**ore often than we'd like in the Legal Department, a call comes in that goes something like this: "This is Mayor Greene (or Council President Greene), I've just called for an executive session meeting for tomorrow night to discuss an employee's bad attitude. I really want the clerk to be in the meeting to take minutes, but he tells me that the League says he shouldn't attend and there should never be minutes of an executive session. Is that true? Also, the last time we had an executive session, one of my councilmembers went out and told everyone what we discussed. I want to prevent him from attending the meeting since he can't keep his mouth shut. As presiding officer, I can do that, right?"

While I wish the simple answers to these questions could be: "yes, your clerk is absolutely right (as they often are) and no, you can't bar a councilmember from an executive session," many troubling issues arise with the scenario presented above warranting further discussion beyond the actual question asked by the mayor.

Before we break down these hypothetical questions and discuss proper executive sessions under Alabama Law, it is important to start with the understanding that the Open Meetings Act (OMA) *specifically* states that executive sessions are not required for any reason. Section 36-25A-7(a). A city council is never, under any circumstances, required to hold an executive session. In fact, the OMA specifically states that members of the covered entity and any of its employees participating in a meeting complying with the law have an absolute privilege and immunity from suit for any statement made during a legally called open public meeting. This immunity is in addition to all others that may apply. See Section 36-25A-8, Code of Alabama 1975.

But let's face it, there are times when a closed-door discussion may be necessary and prudent. An executive session — sometimes called a closed meeting or an in-camera session — is a useful tool for handling issues that are best discussed in private and can foster robust, candid and, hopefully, confidential discourse. Thankfully, the OMA recognizes reasons why a city council can go into executive

session. However, before we get to that, let's get back to Mayor Greene calling for an executive session and the other issues his scenario raises.

First, the law does not allow for the mayor or presiding officer to call for an executive session meeting. A council can only go into an executive session from a legally convened regular or special called meeting which has been properly noticed to the public under the OMA. The OMA also spells out a specific procedure for entering into an executive session, other than one held for a quasi-judicial or contested case hearing. This procedure must be followed to comply with the OMA:

1. A quorum of the governmental body must first convene a meeting (regular or special-called) as defined in the OMA.
2. A majority of the governmental body present must adopt, by roll call 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. Both the vote of each member and the declaration, must be recorded in the minutes.
4. The presiding officer must state whether the governmental body will reconvene after the executive session and, if so, the approximate time the body expects to reconvene.

See Section 36-25A-7(b), Code of Alabama 1975.

The minutes might state something like the following:

"Attorney Lein advised the city council that it would be appropriate to go into executive session to discuss matters relating pending litigation. Councilmember Jones moved to go into executive session to consult with the city attorney. The motion was seconded by Councilmember Hill. There was no debate or

*continued page 45*

**#LiveLocallyAlabama is a recently launched grassroots campaign spearheaded by the Alabama League of Municipalities to encourage civic engagement, instill community pride and highlight the crucial role municipal government plays in the daily lives of Alabama's citizens.**



**[www.livelocallyalabama.org](http://www.livelocallyalabama.org)**

# Community Planning: An Indispensable Guide

*Communities Find Direction, Will of the People  
through Long-Range Planning*

By Brandon Bias, AICP, LEED Green Associate • Goodwyn Mills and Cawood



*Editor's note: The Alabama League of Municipalities launched #LiveLocallyAlabama in January 2018 – a grassroots campaign to encourage civic engagement, instill community pride and highlight the crucial role municipal government plays in the daily lives of Alabama's citizens. As part of this campaign, we will include a #LiveLocallyAlabama feature in each issue of the Journal highlighting important community topics and quality of life issues that will help municipal officials and employees improve their cities and towns for the people they serve. For additional information on this campaign, visit [livelocallyalabama.org](http://livelocallyalabama.org).*

Today's comprehensive long-range plans are not strictly limited to the large municipality equipped with an army of planners and a sizeable budget. On the contrary, they are proving just as valuable to small towns and counties across the country, as each seek to steer their community toward a vision that is a better match to core principles, needs and wants.

Back in the 1970s and 1980s, comprehensive plans were simpler and less inclusive, and would merely identify a number of tasks to accomplish over a designated time period. Today, they are more flexible documents that establish parameters for future decision making even as factors change. Placing the focus upon a strong vision and set of principles provides a community with the ability to alter or adapt the plan when

specific recommendations may no longer be relevant.

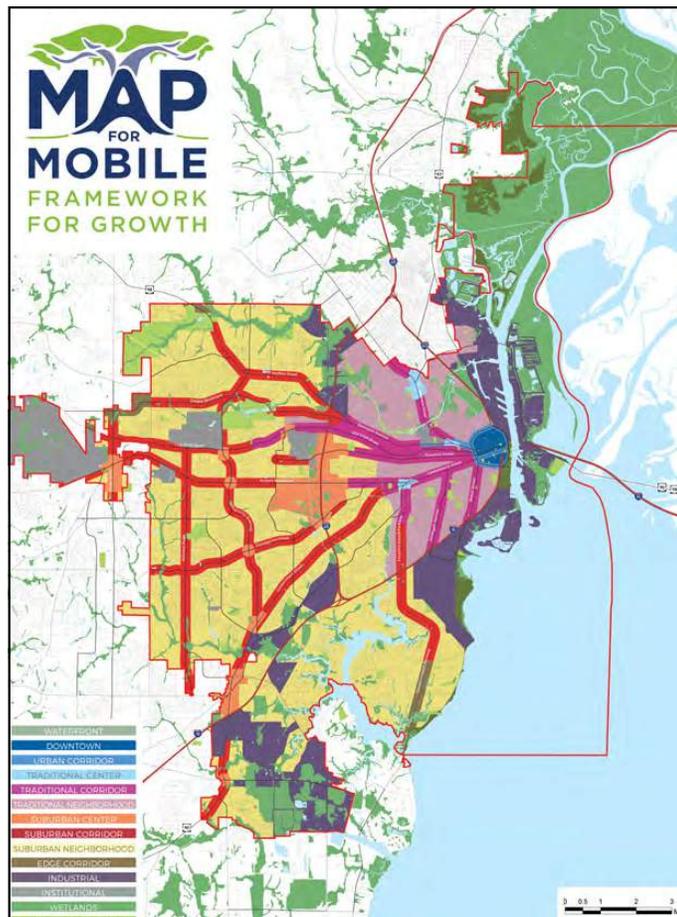
As a more recent trend, communities of all sizes have turned to long-range plans to more succinctly define a sense of place. Parks and public spaces are key locations for making that happen. Jefferson County and Birmingham, for example, had a unique opportunity to improve community health through a master plan that includes trails, bike lanes, sidewalks and greenways. Since the Red Rock Ridge and Valley Trail Plan's creation and adoption in 2012, nearly 60 miles of the park system have been completed.

While no comprehensive long-range plan can be pigeonholed into a particular template, most communities have one thing in common – limited financial resources. Therefore,

goals are often tempered by financial realities. In the end, the plan is meant to guide a community through a series of choices over a designated period, helping it realize its vision and follow their principles.

## The Process

No matter the intent of the plan or size of the client, planners take the critical first step of assessing current conditions by researching demographics, land use, prior city growth, transportation infrastructure, community facilities, current services and a host of other factors. In the process, they search for areas in need of improvement, as well as reasons for improvements in other areas – in other words, why one neighborhood has been more successful than





*Public engagement was critical during the development of the Red Rock Ridge and Valley Trail Plan. Over 50 meetings were held throughout Jefferson County to provide opportunities for the public to contribute their ideas.*

another. Planners examine previous plans to determine how successful, or unsuccessful, they've been, and create a reliable snapshot of the community in the process.

Beginning at this stage and throughout the process, participation and involvement is essential. It is recommended that a steering or advisory committee comprised of key stakeholders in the community be used to facilitate the process. Generally, these participants are engaged in the day-to-day business of the community. Along the way, planners ask some key questions: Is this right? Is something missing? Did we spend too much time on something that is not significant?

The next planning step is community engagement. Planners meet with citizens in the community across all geographies and demographics to gain a better understanding of who they are, who they think they are and who they think they want to be in the future. They subsequently record information that is later distilled to create a vision for the community, define community principles and determine important recommendations for the future.

The process begins with a general community meeting, or community workshop, where participants are assigned to small groups to facilitate conversations on various topics. During these exercises, planners utilize a large map to identify weak and strong areas in the community. Fundamentally, they want to understand the participants' vision of the future with a series of "foot in the door" questions: Why do they want to do these things? What do they want to improve?

Along the way, the preconceived notions of both planners and city leaders are put to the test. For example, a community center in the middle of a low-income neighborhood might be considered a strength by city leaders, but a poorly maintained eyesore by its residents. This is an important aspect of the community engagement process to challenge expectations with the realities "on the ground." As a result, planners hope to understand as many dynamics of the community as

possible to better plan for the future.

Next, planners organize a series of goals around various planning elements. These can address land use, transportation, community facilities and services, housing, economic development, etc., and are calibrated on a community-by-community basis. Citizens and the advisory committee are engaged at different following stages to ensure the planners have not veered away from the community vision or principles. Planners then summarize the information into a succinct final comprehensive plan document. The quality and appearance of the final document is an important part of the process, since it will likely be used as a marketing tool to attract potential investment.

### **Discovering the Will of the People: Brewton**

For the small town of Brewton, Alabama – population 5,500 – the overriding goal in developing its back-to-back five-year plans was to seek out and execute the will of the people. Mayor "Yank" Lovelace, a business owner with a penchant for planning, says the process brought a lot of new ideas to the table as well as helped achieve certain gains, such as attracting the 300-employee IT company Provalus to the town in 2017.

Lovelace says the dual long-range plans provided an operative way for him to do his job. "If the people say that's what they want and I'm working that plan, then I'm doing what I was elected to do," he said. Multiple open forums held at the beginning of the process proved to be an eye-opening experience. "We started to notice a pattern. At the end, we had developed a fairly comprehensive plan. For a mayor and city council, that gives us the authority to go forth and work on those problems."

Putting the projects from the first five-year plan on white



*This small group discussion during a meeting in Brewton allowed citizens to converse about the Strong Places and Weak Places in their community. Valuable insight can be gained by planners when citizens are working together to discuss their community.*

boards enabled the city to track its accomplishments, and even finish most of the projects within four years.

When tackling the city's second five-year plan shortly after his re-election in 2016, the planning team chose to engage more of the community. "We held two or three public hearings at City Hall, then set up public meetings in each district and made the councilmen responsible for getting people to attend. That way we received more input and more people were involved in the process," he said.

At the end of the hearings, an initial draft of the plan was created. "We said, 'OK, here are all the items that you're saying you want. Which of these items are more important?'" From there, it went to the planning board and the city council for approval."

If there is one common denominator in the Brewton plan, it is that all the projects seek to improve quality of life, whether through street improvements, parks, rodeo arena, landscaping or Christmas displays. "Quality of life includes your schools, your roads, your activities," Lovelace said. "We now have a full-time program manager that does nothing but schedule events, such as music or kite flying on the day before Easter. We try to have something every weekend. During Christmas, our sales tax went up 10 percent as people came out to see all the lights we've got up." Another offshoot of the plan was the creation of a natural gas district, which has become a vital funding mechanism for the city.

With so many changes, the rest of the state and country are beginning to take notice. In fact, Brewton has been ranked nationally by various groups for its favorable living environment. "The State of Alabama and the governor all went crazy over the fact that a little town like Brewton could get a computer tech company," Lovelace said. "That's a huge deal. Site selectors are looking for reasons to check you off the list, not for reasons to put you on it."

Undoubtedly, the city's commitment to long-range planning has been a contributing factor to its success.

### Mobile Transforms Itself

Earlier this decade, Mobile, Alabama, was facing a number of challenges, including limited mobility, sprawling conditions and declining neighborhoods. The city was continually losing population to both the west and east, a consequence of not having taken an introspective look at itself or its goals in nearly 50 years.

Shayla Beaco, executive director of Build Mobile, said the city was at a pivotal point. When its new mayor, Sandy Stimpson, took office in 2013, community leaders urged him to spearhead the creation of a long-range plan for the city.

The "Map for Mobile" is a shining example of how a long-range plan can literally transform a municipality's future. As such, Mobile's comprehensive plan lays out an exciting vision for the city's long-term preservation,



*This meeting was the first opportunity during Map for Mobile that citizens had been given in nearly 50 years to provide input on the future of the City. Attendance far exceeded expectations when more than 600 people showed up to be part of the process.*

revitalization and growth. The core values that guide the plan, defined through a robust public process, include a stronger, mixed-use downtown, supported by diverse and connected neighborhoods, businesses and open spaces. Most importantly, the plan includes realizable action steps to ensure that recommendations become reality.

"Because we'd gone so long without a plan, we really wanted to tie our city initiatives to a planning process," Beaco said. "Our mayor asked that it be the type of plan that we could utilize on a regular basis and had measurables associated with it. That way we could provide citizens with a sense of accountability."

The plan's early success can be attributed to one factor – Mobile did a stellar job in facilitating community engagement. The first public meeting far exceeded expectations when more than 600 people showed up. "Being a new administration, it was important to ensure that all Mobileans were given an opportunity to be heard," Beaco said. "We needed to make sure that all of the underserved areas of our city were at the table at the front end of the process."

Encouraged by the level of participation, the team realized

*continued page 44*



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If Darryl Coburn had any doubt that things were not as they should be in Hackleburg on that afternoon in April 2011, that doubt was now justifiably erased.

Out of precaution, Coburn and his wife, upon hearing that Marion County was under a tornado warning, had retreated to a shelter at his sister's house. Standing near the shelter, Coburn saw a black cloud approaching and then heard breaking and shattering sounds. He quickly joined other family members and friends inside the shelter.

Less than two minutes later, Coburn lifted the hatch off the shelter.

"It shocked me to not see anything but debris," Coburn recalled. "It was a very tragic and humbling feeling to come out and see everything we ever knew that was Hackleburg was gone – just like that."

Coburn and his family had just survived one of the deadliest outbreaks of tornadoes in Alabama's history. The rest of the town had not been so fortunate on that fateful day of April 27, 2011.

Eighteen people died, and more than 75 percent of the town had been destroyed, including the high school and the town's largest employer, Vanity Fair Corp.

But tragedy has a way of pulling communities together, and residents in Hackleburg and nearby areas focused on mending and restoration. Support also came at the state level with the governor urging assistance from state agencies.

The Alabama Department of Economic and Community Affairs was one agency to step in. The agency issued more than \$8.35 million in grants to help Hackleburg's recovery process. Those funds were part of \$73.9 million ADECA secured in emergency Community Development Block Grant funds from the U.S. Department of Housing and Urban Development to help nine cities and counties in Alabama that had suffered tornado damage on that same day.

For Hackleburg, the funds helped rebuild a town hall, grocery store and provide housing and infrastructure. CDBG support also went a long way in convincing the town's largest employer, Vanity Fair Corp., to rebuild its Wrangler warehouse instead of moving it to another location.

Coburn, who later served on the Hackleburg City Council and has since become Hackleburg's mayor, said ADECA was a vital component in the town's recovery.

"When you lose 80 percent of your town's businesses and virtually all your tax base, you are looking for help and the folks at ADECA were there when we needed it," Colburn said. "From everything I could see, I know ADECA was very committed

to doing everything they could do through the CDBG disaster grant program and other funding to make Hackleburg as whole as they possibly could. I feel very confident in saying without the help from funding through ADECA, Hackleburg would not be back where it is today."

While thankfully the need to obtain disaster funding is rare, CDBG funding is not, and it comes in many forms. It is also one of many programs conducted through ADECA's Community and Economic Development Division.

### Competitive

For nearly 40 years ADECA has annually awarded CDBG



*The Hackleburg tornado destroyed the Vanity Fair Wrangler plant, the town's largest employer, but assistance helped rebuild the plant.*



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grants on a competitive basis to help Alabama cities and counties improve infrastructure and quality of life and eliminate or reduce health hazards and blight. The funds are made available to Alabama from the U.S. Department of Housing and Urban Development.

Before ADECA's creation in the 1980s, CDBG awards were issued to cities and counties directly from HUD. The more recent method tends to benefit more Alabama communities, said Shabbir Olia, CED Division Chief.

"When we assumed the administration duties from HUD, only a handful of communities were being funded through the program," Olia said. "We made the program accessible to more cities and counties."

The competitive process was needed because of the limited funding issued to the state by HUD. Competitive funding also enables ADECA to issue a larger number of grants which are needed to complete many of the projects. Since taking over the program, ADECA has awarded more than \$1 billion dollars for more than 4,000 projects.

"It has made the program that much more effective in terms of making sure that communities are receiving grants to address local needs," Olia said. "Typically, we have been able to fund three or four projects out of every 10 that have been submitted to us."

Competitive grants are awarded in several categories including County, Large City, Small City and Community Enhancement. Main requirements for CDBG projects are that at least 51 percent of the beneficiaries are low- or moderate-income or that the project meets an emergency need. Most grants are awarded for infrastructure projects, including water, sewer and roads, or for projects that revitalize or rehabilitate community features. Community Enhancement CDBGs are geared toward improving quality of life in a community.

"While serving as the mayor of Enterprise, I witnessed how CDBGs awarded through ADECA enabled the city to accomplish projects that greatly benefitted our community and made a difference in lives," ADECA Director Kenneth Boswell said. "With Governor Kay Ivey's support, ADECA is pleased to continue its role in building better Alabama communities through the CDBG program."

One such project is Muscle Shoals' "miracle field" for special needs children and adults, which was awarded in early 2018. The city received a \$250,000 grant to build a "miracle field", a specialized baseball complex designed for special needs children and adults. The field will have widespread implications for the Shoals area and beyond, said Keith Jones, executive director of the Northwest Alabama Council of Local Governments, which submitted the grant application on behalf of the city.

"This is going to benefit families not just in Muscle Shoals and Colbert County, but you will have participation from people in Lauderdale, Franklin and Lawrence counties," Jones said. "We could not have done this without funding from a Community Enhancement grant."

Smaller planning grants, which enable local governments to map growth plans, prepare for the future and map out revitalization, are awarded during the same period.

### **Economic Development**

Less than three years ago, when a medical emergency arose in Chilton County, including a heavily travelled section of Interstate 65, the only options were to go to hospitals in Alabaster or Prattville – each 30 miles away in opposite directions. That was because the county's only hospital in Clanton had closed in 2012.

Chilton County residents, recognizing the consequences of not having a hospital, voted for a temporary 1-cent sales tax. ADECA also answered the area's request for funding with \$400,000 in grants. That funding included a \$200,000 Economic Development CDBG award and \$200,000 in another ADECA/CED administered program, the Appalachian Regional Commission. The two grants were used to supply public water services to the now completed \$46.5 million, 30-bed hospital operated by St.



*CDBG awards are often instrumental in helping towns and cities complete major projects like road resurfacing and sewer and water improvements.*

Vincent's Health System in Birmingham.

"It meant a great deal to us to be able to obtain that funding from ADECA. Without water, we didn't have anything," Clanton Mayor Billy Joe Driver said.

CDBG awards for economic development can be applied for year-round to help provide jobs, but the grants also carry the requirement that the projects primarily benefit low and moderate-income persons, which in most cases relates to jobs created.

As in the case of the Clanton hospital, Economic Development CDBGs are often combined with other grant programs like ARC and Delta Regional Authority grants, another CED program, to maximize impact. ARC and DRA grants are confined to specific areas in Alabama.

Driver said the CDBG grant not only meant improved health care and new jobs for the county, but it also opened a new road which intersects the interstate for future development.

"We've got a lot of things in the works," Driver said.

While Monroeville has been able to hold its own in terms of employment, the loss of Vanity Fair Corp. within the past several decades dealt the southwest Alabama city a hard blow in terms of jobs. That’s why the city was so excited last year when Sterling Packaging began considering a location in Monroeville’s industrial park for a manufacturing facility that would employ more than 60 people.

A \$175,000 Economic Development CDBG provided to the city for drainage and other improvements to help land Sterling Packaging. The plant, which produces packaging for customers in the food and beverage, pharmaceutical, hardware and cosmetic industries, opened in March and is expected to have a huge impact “both socially and economically” in Monroeville and Monroe County, said Mayor Joseph Oglesby.

Oglesby, a former City councilmember and local business owner, said Sterling fits the mode of what he envisioned when he ran for the mayor’s office with the goal of bringing more jobs to his hometown city.

“Sterling will allow people to stay in Monroe County to work. It gives people options for new employment, and that in turn creates vacancies in other areas,” Oglesby said. “These workers will live and shop in our community. We will feel the effects in our sales tax revenue, home sales, and general community morale.”

ADECA’s CED Division also houses many other programs to benefit Alabamians: **Recreation and Conservation** administers two federal recreation programs that assist government and non-profit organizations with funds for trails, playground and other recreational activities. The **Minority Business Enterprise** is a certification program identifying minority and women-owned businesses that can provide goods or services to government agencies and private companies. The **State Small Business Credit Initiative** is a loan guarantee program that works through local lending institutions to help start-up or expanding small businesses. The **Neighborhood Stabilization Program** works to help rehabilitate foreclosed or abandoned houses to renew neighborhoods. The **Emergency Solutions Grant and Housing Opportunities for Persons with AIDS** provides housing for homeless and near homeless people and low-income persons with HIV/AIDS.

“We are proud of the job that our Community and Economic Development Division does,” Boswell said. “We are helping people to improve their lives whether it is allowing them to turn on the tap and get clean water or assisting them with a loan to start a dream business. How can you not feel good about that?” ■

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# Citizenship is not a spectator sport.

## Encouraging Civic Engagement and Fostering Communication

By Cristin F. Brawner, Executive Director, David Mathews Center for Civic Life

Throughout U.S. History, Americans have been marked by a strong civic spirit. Our democracy was birthed by people who chafed under their position as subjects of a king, and who desired to be citizens able to exercise their “inalienable rights.” The United States grew to maturity fostered by pressure to expand the franchise and movements like the Civil Rights Movement, which spurred our nation to live up to its stated ideals of life, liberty, and the pursuit of happiness for all Americans. Throughout our history, active citizens have spurred the nation on by exercising their rights and responsibilities.

Since its inception, our democracy has relied on formal and informal active civic participation to thrive. We have voted, formed civic associations, organized to make our voices heard, and worked together to solve local, state, and national problems. Alexis de Tocqueville described the active civic participation of Americans in his 1835 treatise *Democracy in America*: “An American gains his knowledge of the laws from his participation in legislation; he becomes educated about the formalities of government from governing. The great work of society is performed daily beneath his gaze, and so to speak, in his grasp.”<sup>1</sup> Throughout our history, we have learned active citizenship by being active citizens.

So, what does this “great work of society” look like today? In other words, how do we define civic engagement for our 21st century context? Civic engagement extends far beyond the ballot box to include numerous formal and informal civic actions. Gottlieb and Robinson’s definition sums up a citizen’s civic responsibility as “Active participation in the public life of a community in an informed, committed and constructive manner with a focus on the common good.”<sup>2</sup> Active participation can take many forms: joining a civic club, discussing politics with family and friends, volunteering, exchanging favors with neighbors, attending public meetings, and working with neighbors to solve community problems.

Unfortunately, we have experienced a steady decline in active civic participation, social and community connectedness, and our trust in one another since the mid-1960s according to Dr. Robert Putnam’s groundbreaking work *Bowling Alone*.<sup>3</sup> Why should this decline worry us? Active citizenship not only ensures the survival of our democracy, but it also contributes to the economic health of communities and the physical and mental wellbeing of citizens. Broadly defined, disengaged individuals experience the ill effects of isolation and loneliness, like rising risks for stroke and heart disease, while communities with lower numbers of citizen volunteers experience higher rates of unemployment.<sup>4 5</sup>

Fortunately, the 2015 Alabama Civic Health Index shows that Alabamians have several civic strengths to build on to address civic deficits facing our state and nation. Alabamians, in general, have strong social ties compared to the rest of the United States. We talk with our neighbors regularly, exchange favors with one another, and generally trust each other. We can build on our strong social bonds to contact our elected officials at higher rates, attend a greater number of public meetings, and work together more often to solve community problems.<sup>6</sup>

*continued page 27*



*Roundtable discussions during the 2017 Civic Institute hosted by the David Mathews Center for Civic Life*

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# ALABAMA HISTORICAL COMMISSION:

## PRESERVING AND PROMOTING ALABAMA'S HISTORIC PLACES AND RESOURCES

BY JACQULYN KIRKLAND, MARKETING & PUBLIC RELATIONS MANAGER, AHC

The Alabama Historical Commission (AHC) was created on August 19, 1966 when Governor George Wallace signed Act Number 168 of the Special Session. Because of a report filed by Albert McKinley Rains, noted Alabama congressman who served in the U.S. House of Representatives from 1945 to 1965 and author of *With Heritage So Rich*, Congress passed the National Historic Preservation Act. The Commission is the agency designated to carry out the state's responsibilities under the National Historic Preservation Act of 1966 as amended and operates under the provisions of the Code of Alabama 1975.

### Mission and Preservation Programs

The AHC works to accomplish its mission through two fields of endeavor: preservation and promotion of state-owned historic sites as public attractions; and, statewide programs to assist people, groups, towns and cities with local preservation activities.

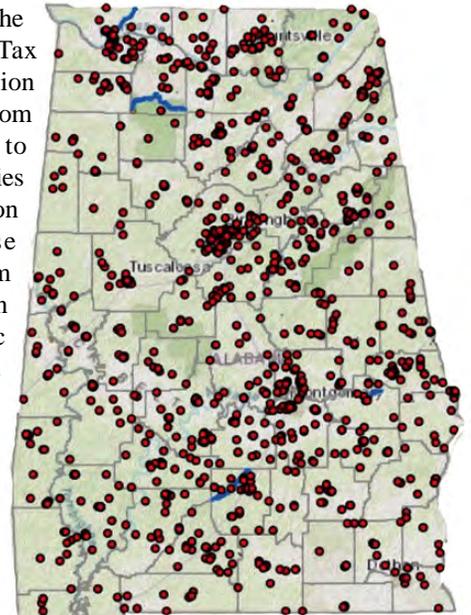
State law makes the Commission responsible for the acquisition and preservation of state-owned historic properties and education of the public on historic sites in Alabama. The Commission owns and manages 15 historic sites throughout Alabama as public attractions. The properties range from forts, battlefields, and archaeological sites to historic houses and museums. Each year the Commission welcomes more than 300,000 visitors to its historic sites. Educational events are held monthly to engage visitors.



Tours are presented year-round to Fort Morgan (Gulf Shores, AL) visitors.

The statewide preservation programs are based on the National Historic Preservation Act of 1966. Federal law makes the Commission responsible for the National Register of Historic Places, which is part of a nationwide program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archaeological places. State law makes the

Commission responsible for the Underwater Cultural Resources Act, promulgating rules and regulations for the preservation and/or relocation of human remains and funerary objects, and the Historic Rehabilitation Tax Credit Act. The Commission receives an appropriation from the federal government to support some of the activities which form the foundation of preservation. These include the survey program to record information about Alabama's historic places and the Alabama Register of Landmarks and Heritage, which recognizes buildings and sites that are important in telling the story of Alabama's history. We also administer a cemetery program which provides support to citizens, and the Alabama Cemetery Register to record and recognize these places.



*Mapping & Digitizing Records for Historic Architectural Properties, Cemeteries & Markers - The AHC continues to digitize these records and will offer online GIS maps to the public.*

### Certified Local Government Program

The Commission also provides local planning assistance for towns that want to develop and maintain local preservation ordinances. The Certified Local Government (CLG) program promotes development of local historic preservation commissions to guide city decisions on treatment of historic buildings and resources. A local commission can make requests to their city council to designate historic districts and buildings for protection from major redevelopment that might be harmful to the historic character. CLGs can compete annually for matching grants to fund development of National Register nominations, planning studies, local design guidelines, tourism materials based on historic properties, training for local historic preservation commission members and technical studies to assist in rehabilitation of public buildings.

The AHC supports the annual Your Town Alabama workshop, which educates leaders in rural communities on topics ranging from the importance of design and planning to community and economic development. The AHC serves on the Alabama Communities of Excellence board to provide historic preservation expertise to participating cities. Commission staff are also available to meet with city officials to discuss creating local preservation



commissions and as a resource for preservation tools and programs. In addition, Federal and State Tax incentives are available for the rehabilitation of income-producing properties which are listed on the National Register of Historic Places.

#### **Additional Services and Programs**

The National Historic Preservation Act mandates that the Commission reviews projects (Section 106) which use federal money or require licenses for their effects on Alabama's historic structures and archaeological sites.

The Commission created the Black Heritage Council (BHC) in 1984 to advocate and advise on the preservation of African-American historic places in Alabama. At the time of its founding, the BHC was the first African-American advisory council of a state historic preservation office created in the country. It is the only statewide organization whose sole mission is the preservation of African-American Historic Places. The Commission also created the Maritime Advisory Council and the Council on Alabama Archaeology to advise on the topics relating to maritime archaeology, archaeology, and history.

More information about the Alabama Historical Commission can be found at [ahc.alabama.gov/](http://ahc.alabama.gov/). See the Alabama State Historic Preservation Plan 2014-2019, By-Laws of the Alabama Historical Commission and Code of Alabama 1975. ■

*Old Cahawba hosted the University of Alabama 39th annual Museum Expedition. Participants focused on uncovering the original foundation of Alabama's first statehouse.*

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## Encouraging Civic Engagement and Fostering Communication

Throughout U.S. history, active citizenship has brought out our better selves and has ensured the continued survival of our “great experiment.” How can we work better together today to involve more citizens as actors rather than spectators or consumers of our democracy?

First, we can begin by looking for civic action and engagement in “unlikely” places. Do you have constituents or community members who are always griping about a particular issue? Rather than letting them frustrate you, consider empowering them to help the community work out solutions to that particular issue. You could appoint them to a committee, ask them to propose solutions, or include them in the action plan for the issue.

One of the most “unlikely” group of citizens to consider engaging is Alabama’s next generation. Young Alabamians must be prepared not only for college and career, but also for active citizenship beginning at a young age. Lisa Guilfoile and Brady Delander stress the importance of engaging youth in active civic learning in *Guidebook: Six Proven Practices for Effective Civic Learning*. Young people, they claim, “can only learn how to be civically engaged by being civically engaged.”<sup>7</sup> We can engage and equip young people by forming Junior City Councils, like the ones in Montevallo, Athens, Guntersville, and Alabaster. Furthermore, communities can partner with schools to encourage young people to take local field trips to familiarize themselves with their municipality, elected officials and community members who are making a difference.

Second, we can involve more citizens in decision making through community forums. Research has found that “face-to-face discussions [in community forums] of community issues have been found to produce good policies and the political will to support these policies, to educate the participants, and to enhance solidarity and social networks.”<sup>8</sup> If citizens have a chance to weigh the choices and tradeoffs, and voice their perspective on possible solutions, they are more likely to support the policies that emerge.

So, how can we foster productive “face-to-face” conversations among citizens without those forums devolving into shouting matches along partisan lines? Consider hosting community forums where citizens are truly given the opportunity to deliberate – to weigh choices and tradeoffs, look for common ground and make decisions. Giving citizens a venue to assist in defining key issues the community faces, proposing solutions to those problems, and being involved in follow-up action can be powerful for a community. Residents of a community may not be subject matter experts on a particular issue, but they are “experts”

on their community’s assets and challenges. Utilize their expertise and you’re more likely to see civic engagement in your community rise!

Third, we can work to engage citizens where they are most comfortable. Have you ever worked hard to engage citizens by inviting them to “come to the table” to solve a local problem? Perhaps, it is time for us to consider how we can take the table to the community. If we wait for citizens to come to City Hall, we may be waiting for a long time. Where do people gather in your community? Is it at the library or community center? Perhaps it’s at a house of worship or the local football field? We can reach more citizens by meeting them where they feel most comfortable. Engaging people where they are helps them build familiarity with civic engagement that leads to stronger habits of civic engagement.

“Citizenship,” as Dr. Robert Putnam exhorts, is, indeed, “not a spectator sport.”<sup>9</sup> Dr. David Mathews goes even further than Dr. Putnam: “The direction of a community’s movement, forward or backward, is determined by its patterns of interaction, by the habitual way that people respond to one another. Everyone, whether [they want to] or not, is a player. Even choosing not to participate affects the game.”<sup>10</sup>

So, let’s join the game and recruit more citizens to the team! ■

## David Mathews Center for Civic Life

The David Mathews Center for Civic Life is a nonprofit, nonpartisan organization that works every day to strengthen civic life in Alabama. We do this by partnering with schools, communities, nonprofit organizations, elected officials and concerned citizens to increase active citizenship and community collaboration through community forums, workshops and youth civic learning opportunities. We would love to come alongside and support you as you work to engage citizens in your community. Visit [mathewscenter.org](http://mathewscenter.org) to learn more.

## About the Author

*Cristin Brawner is the Executive Director of the David Mathews Center for Civic Life in Montevallo, Alabama. Cristin coordinates Mathews Center signature programming, moderates deliberative community forums across Alabama, and collaborates with K – 12 schools, higher education partners, and community organizations to facilitate active civic learning for young Alabamians. Cristin serves on the Board of Directors of the National Issues Forums Institute and the Alabama Communities of Excellence. A graduate of the University of Montevallo, Cristin has worked for the Mathews Center since 2011. Cristin can be reached at [cfoster@mathewscenter.org](mailto:cfoster@mathewscenter.org).*

continued page 40

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# Legal Clearinghouse

Rob Johnston, Assistant General Counsel



**NOTE:** Legal summaries are provided within this column; however, additional background and/or pertinent information will be added to some of the decisions, thus calling your attention to the summaries we think are particularly significant. When trying to determine what Alabama law applies in a particular area or on a particular subject, it is often not enough to look at a single opinion or at a single provision of the Code of Alabama. A review of the Alabama Constitution, statutory law, local acts, administrative law, local ordinances and any relevant case-law may be necessary. We caution you *not* to rely solely on a summary, or any other legal information, found in this column. You should read each case in its entirety for a better understanding.

## ALABAMA COURT DECISIONS

**Tort Liability:** No statute of limitations applied to bar declaratory judgement claims challenging the validity of a city's permitting ordinances when the ordinances presented a current and ongoing infringement of his property rights. *Breland v. City of Fairhope*, 229 So.3d 1078 (Ala. 2016).

**Boards:** City water board was an independent public corporation tasked with operating the city's waterworks system, and was not required to comply with city resolutions directing the board to fluoridate the city's water supply. *Water Works Bd. v. City of Arab*, 231 So.3d 265 (Ala. 2016).

**Tort Liability:** City police officers were immune from passenger's claims alleging that officers were negligent during their high-speed pursuit of a vehicle. *Ex parte City of Homewood*, 231 So.3d 1082 (Ala. 2017).

**Easements:** Notation indicating existence of "Private Walking Easement" on disputed property was not intended to create easement for public use. *The Dombrowski Living Trust v. Morgantown Property Owners Association, Inc.*, 229 So.3d 239 (Ala.Civ.App. 2016).

**Licenses:** Substantial evidence supported the city council's revocation of a nightclub's business license and rescission of its liquor license and dance permit. *Atlantis Entertainment Group, LLC v. City of Birmingham*, 231 So.3d 332 (Ala.Civ.App. 2017).

**Employees:** School board's termination of teacher's employment, because of the teacher's work at pawn shop during paid medical leave, was neither arbitrary or capricious. *Boaz City School Bd. v. Stewart*, 233 So.3d 986 (Ala.Civ.App. 2016).

## UNITED STATES COURT DECISIONS AFFECTING ALABAMA

**Elections:** Alabama law requiring voters to present valid photo identification did not discriminate on the bases of race and thus did not violate the Fourteenth and Fifteenth Amendments or the Voting Rights Act. *Greater Birmingham Ministries v. Merrill*, 2018WL348009 (N.D. Ala. 2018)

## DECISIONS FROM OTHER JURISDICTIONS

**First Amendment:** City ordinance requiring pregnancy center to post a sign stating it did not provide abortions violated free speech rights. *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City Council of Baltimore*, 879 F.3d 201 (C.A. 4 Md. 2018).

## ATTORNEY GENERAL'S OPINIONS

**Elections:** A part-time municipal judge is not required to resign or take a leave of absence to qualify and run for the office of probate judge. Section 17-1-4(b) is not applicable because a municipal judge is not an employee and the judge was not seeking office with the governmental entity where he was employed. Section 145 of article VI of the Recompiled Constitution excludes municipal judges from the prohibition in section 147(b) of judges seeking nonjudicial elective office. Section 147(b) is additionally not applicable because a probate judge exercises judicial power and is governed by the Canons of Judicial Ethics. AGO 2018-013.

**Open Meetings Act:** A general statement in the minutes of unanimous consent of board members on a roll call vote to enter executive session satisfies the requirement in section 36-25A-7(b) of the Code that the vote of each member be recorded if the minutes reflect the names of the members in attendance and that each voted yes. AGO 2018-014.

**Gasoline Tax:** A municipality, consistent with the limitations imposed by section 11-51-91(a) of the Code of Alabama, may increase the rate at which it levies a license tax at a per gallon rate on the business of selling or distributing gasoline and motor fuels, including diesel fuel. AGO 2018-018.

**Industrial Development Boards:** An industrial development board may contract with the city for the preparation of an Industrial Area Master Plan in an amount to be determined by the board. AGO 2018-021.

## ETHICS OPINIONS

**Conflicts of Interests – Boards:** An elected member of the Birmingham School Board may continue to be employed as a union organizer so long as she does not represent any school employees of the City of Birmingham. An elected member of the Birmingham School Board may not vote, attempt to influence or otherwise participate in any matter that comes before the School Board that involves the American Federation of Teachers, her employer, or in which AFT is involved. The elected board member may, however, participate in disciplinary matters, appeals, etc. that do not involve AFT clients and otherwise perform her duties as a School Board member. AO 2018-02 ■

# F.A.Q.

Your Frequently Asked (Legal) Questions Answered  
by Assistant General Counsel Teneé Frazier

## Business License Tax – Refund

**If a taxpayer seeks a refund for erroneously overpaying on a business license, how many years back does a city have to refund?**

Per Section 11-51-191 of the Code of Alabama, 1975 a taxpayer who erroneously overpaid business license taxes must file a petition for refund within three years from the date that the business license form was filed, or two years from the date of payment of the business license tax, whichever is later, or if no form was timely filed, two years from the date of payment of the business license tax. For example, if a taxpayer submitted a petition for refund in January 2018 claiming they had overpaid business license taxes for the years 2017, 2016, 2015, 2014 and 2013, that taxpayer would be entitled to receive a refund of the overpaid taxes for years 2017 and 2016 for sure, and possibly 2015 if the taxpayer filed their business license form in 2015. The municipality would not be allowed to refund any overpaid taxes for years 2014 and 2013.

So instead of panicking and yelling *You're going to bankrupt the City!* when someone submits a petition for refund of overpaid taxes for the past 10 years, keep calm and remember that the taxpayer is only entitled to up to three years of payments, depending on when they filed their business license form. Then smile and get ready to extinguish your next fire. ■



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Sunday, May 20 is  
**city Shirt Day**  
at the League  
Convention in Montgomery.  
Wear your city's logo  
shirts with pride!



**Opening Session:** Governor Kay Ivey will address delegates at the Saturday afternoon Opening Session, which runs from 2:00 – 3:30. Governor Ivey will discuss developments in her office and in state government affecting municipalities. We are honored to have her join us. League President Howard Rubenstein will also address delegates at this session and will provide a review of his term as League President.

**General Sessions:** Evaluations from past conventions indicate that the most popular reasons to attend the convention are for training and networking opportunities. This year’s event is packed with both. Perhaps the most popular sessions at the convention year after year are the population-based roundtable discussion groups. These sessions allow attendees from similar sized municipalities to sit down together and discuss solutions to problems facing them. This year, the roundtables will be held on Sunday afternoon from 2:15 – 5:00. If you attend these roundtables, chances are you will not leave disappointed. General and concurrent sessions provide you with an outstanding opportunity to learn and grow as a local government leader. This year’s presentations feature some of the most knowledgeable and important speakers on their subjects in Alabama and beyond. This year, our General Sessions include:

- Saturday from 3:45 - 4:45, our very own Greg Cochran, Director of Advocacy and Public Affairs, and Kayla Farnon, Advocacy Communications Coordinator, will review the League’s very successful 2018 Legislative Session.
- Monday, from 10:30 – 12:00, Thom Fladung, Managing Partner with Hennes Communications will speak on “Crisis Management: When it Hits the Fan.” How you communicate during an emergency can make the difference in whether a situation will end peacefully or escalate into a major catastrophe. Hennes Communications is a Cleveland, Ohio-based company that helps businesses, governmental leaders and others across the company manage and understand what the media and other stakeholders need and want when a crisis hits.
- Monday afternoon, from 1:30 – 3:00, the League’s attorneys will be joined by Alabama Association of Municipal Attorneys President Ben Goldman to answer your questions at the very popular Ask Your Attorney panel session.
- Tuesday morning, from 8:15 – 9:45, Randy Van Vleck, General Counsel with the New Mexico Municipal League, will speak on “Using Parliamentary Procedure to your Advantage.” Proper use of parliamentary procedure can make meetings more efficient and effective and may even help make them shorter. Mr. Van Vleck has spoken to our

members several times in the past and we are pleased that he was able to join us again. His presentations are always informative and popular.

- Also on Tuesday, at the Closing Session, Adam Brooks will conduct a session titled “Speaking and Leading with Meaning.” Mr. Brooks is the Director of the Speaking Studio at the University of Alabama, whose mission is to help clients clarify and craft effective messages, cultivate dynamic delivery, and calm public speaking anxiety. Over the course of his career, Mr. Brooks has coached numerous public speakers to national acclaim and is an expert in the areas of diversity and communication, public speaking delivery, popular culture, and mass communication. A nationally renowned public speaker himself, his main focus is on rhetoric in the areas of diversity, identity and cultural studies.

**Concurrent Sessions:** Concurrent sessions are also popular among our attendees. Concurrent sessions allow attendees to choose from a variety of topics that may interest them. Additionally, if your municipality sends more than one person to the convention, the best way to take advantage of these sessions is to split up and each attend a different session. This year’s convention schedule includes several of these. Sunday afternoon, from 12:45 – 1:45, concurrent sessions will be held on:

- “Stop the Bleed – Helping the Injured Before Professional Help Arrives.” We are honored to have Alabama Attorney General Steve Marshall join Jacob Fannin, Risk Management Coordinator, City of Troy, and members of the League staff, Terry Sanders, League Police Safety Consultant, and Aaron Reeves, Loss Control Representative, to discuss this national program that is intended to cultivate grassroots efforts that encourage bystanders to become trained, equipped, and empowered to help in a bleeding emergency before professional help arrives.
- “Common Barriers to Downtown Redevelopment: Ideas & Solutions from Around the Nation.” Mary Helmer, Main Street Alabama President/State Coordinator and Tripp Muldrow, Arnett Muldrow & Associates, will give you real life examples of how to handle common barriers to redeveloping your downtown. They will discuss issues like: What code should be used? How is it enforced? What type zoning will spur redevelopment in the downtown area? How do you deal with vacancy?
- Council/Manager Discussion Group. Jeff Downes, City Manager for Vestavia Hills, will conduct a lively and interesting discussion on issues of importance to council/manager governments and those interested in this form of government.

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Monday morning, from 8:30 – 10:00, concurrent sessions will be held on:

- “Fight the Blight: How to Get Rid of Dangerous Buildings and Other Nuisances.” Ben Goldman, attorney with Hand, Arendall, Harrison, Sale, LLC, will address an issue common to municipalities across Alabama – how to eliminate dangerous buildings and other nuisances. Mr. Goldman will provide advice he has used to help a number of Alabama communities better protect their citizens from blight conditions.
- “Social Media Legal Pitfalls and Best Practices.” Today, social media’s impact on our lives cannot be ignored. Recent revelations involving Facebook and other social media platforms continue to make us aware of the potential dangers often presented by these very popular programs. The League’s Communication Director, Carrie Banks, and Advocacy Communications Coordinator, Kayla Farnon, join an outstanding group of panelists to discuss issues and concerns surrounding the use of social media. Panelists include Mary Jackson, City Clerk, Monroeville; Cinnamon W. McCulley, Communications Specialist, City of Vestavia Hills; Holly Hollman, Grant Coordinator/Communications Specialist, City of Athens; and Marcus R. Chatterton, Partner, Balch & Bingham LLP.

Additionally, the Alabama Association of Municipal Clerks and Administrators (AAMCA) hold specialized training sessions for their members in association with the convention. AAMCA will meet on Monday during the convention and discuss topics such as grant opportunities available through the Alabama Department of Economic and Community Affairs, the duties of the Attorney General’s Office and how the Alabama Emergency Management Agency helps municipalities prepare for and manage disasters.

**Governance:** While the most popular reason cited among attendees is the training, please don’t overlook the opportunity you will have to take part in the governance and direction your League takes. The Resolution Committee will meet on Saturday from 10:00 – 11:00 to discuss League resolutions and policy statements. The resolutions and policy statements express the views of our members and guide League staff in the positions and decisions we make. The resolutions and policy statements at this meeting will be presented at the Business Session Monday afternoon, from 3:45 – 5:30. Additionally, voting delegates from each member municipality will elect League officers for the upcoming year.

**Networking Opportunities:** While the receptions, meals and entertainment offer a refreshing change of pace from the training provided at the convention, don’t miss the chance you have at these events to share information with other attendees. And I hope you will attend the President’s Banquet Monday

night starting at 7:00 and the entertainment that follows. We are excited to have recording artist and Broadway actress Jennifer Holliday, entertain attendees in the Montgomery Performing Arts Center following the Banquet. You will not want to miss her performance!

**The third way to take advantage of being at the convention is to get out of your comfort zone.** If you’re attending the convention with other officials from your municipality, split up and attend different concurrent sessions. If each of you attends a different session, your city or town gains broader coverage from your attendance. Spend time with people you don’t know. At meal functions, sit with groups from other municipalities. During breaks, make a point of introducing yourself to strangers. Nowhere else will you have this tremendous opportunity to meet so many individuals who share your interests and concerns. Take advantage of these chances to network and learn from others. Offer your input and advice to others. You may find a solution. Or you may be the solution someone else has been seeking. And if you do find yourself lost in conversation with someone who is able to answer a question facing your municipality, that alone may justify attending the convention.

**Next, visit the Municipal Marketplace.** Exhibitors bring tools and solutions that are designed to help your community. They are happy to discuss what they can do for you. Spending time talking to the exhibitors may bring a new perspective to your convention experience and open doors that you didn’t even realize existed. This year we are holding the Monday luncheon in the Marketplace to give you plenty of time to learn what the exhibitors have to offer. In the Marketplace, you will also find exhibitors from state and federal entities who want to share information from their departments or agencies. They have information on new laws and regulations you must know about. They also have information about the services they can provide your city or town and who to contact to request assistance. Often these services are available to you at no cost. Well worth the time it takes you to stroll through and expose yourself to the many offerings you will find there. You can also learn more about products and services available in the Municipal Marketplace at the Innovate Marketplace Solutions sessions that will be held Sunday morning, from 10:00-11:30.

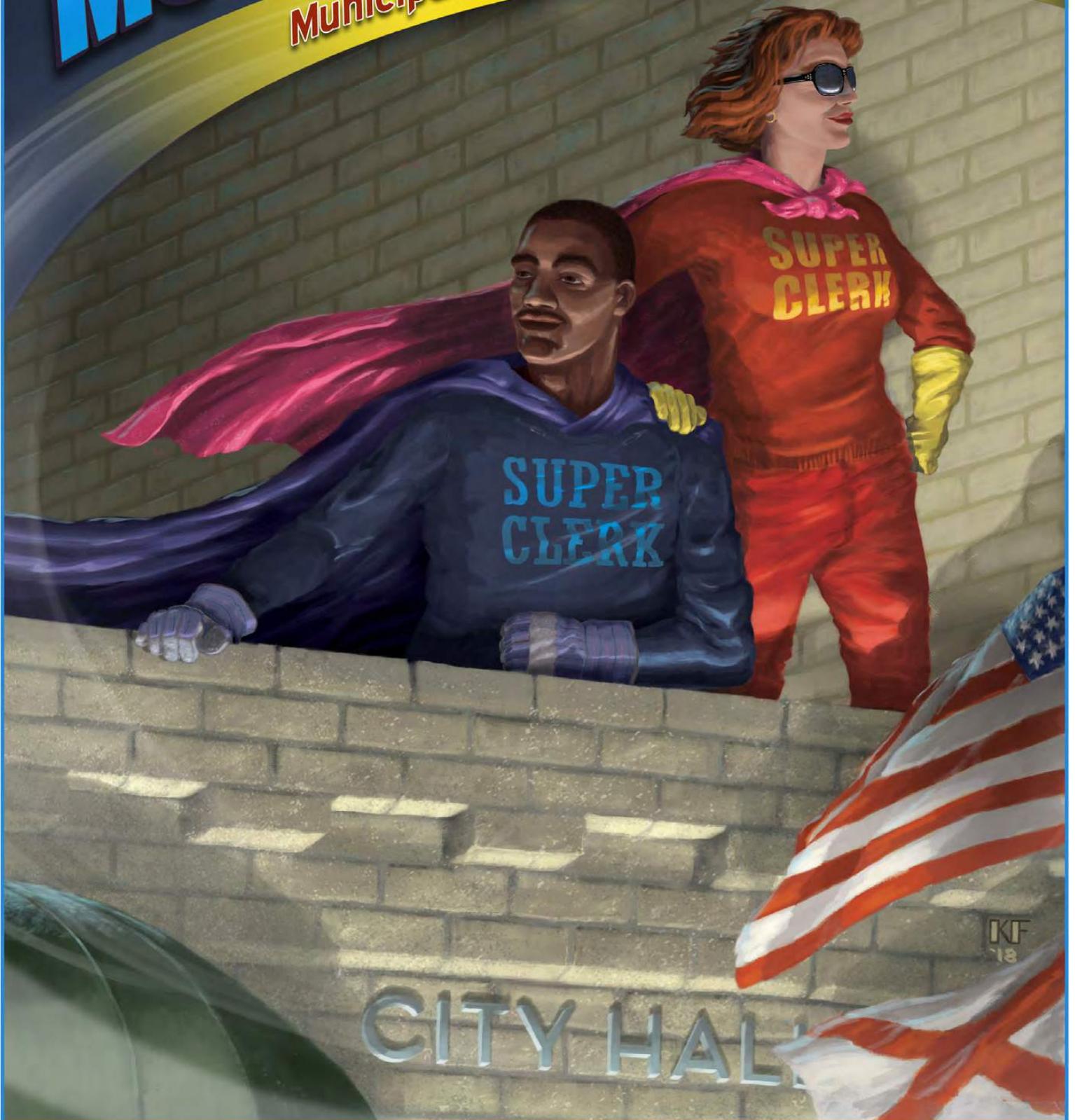
**A final way to take advantage of the convention is very basic – attend.** You can’t learn if you aren’t present. It’s just that simple. I hope that by the time you’re reading this, you have already registered to attend the convention. If not, I hope you will make plans to join us.

I look forward to seeing you in Montgomery May 19-22! ■

MANY THANKS  
TO OUR

# MUNICIPAL CLERKS

Municipal Clerks Week May 6-12, 2018



# 2018 Policy Committee Reports

Kayla Farnon • Advocacy and Communications Coordinator • ALM

This past January, February and March the League's five policy committees met to take a fresh look at the 2018 Proposed Policies and Goals and discuss additional updates. In the past, the policy committees met over the summer; however, this year it was decided to move to spring meetings in order to shorten the lag time between proposal and adoption of the Policies and Goals. Adoption of the Policies and Goals take place at the Annual Convention which, until this year, had been about 10 to 11 months after the Policies and Goals are proposed. Additionally, meeting in the spring gives committee members an opportunity to visit with their legislators while they are in Session. Spring meetings continue to satisfy the requirement in the League's Constitution that all policy committees must meet at least once a year.

This year, each committee meeting entailed a policy briefing and a legislative update. The policy briefings, conducted by Kayla Farnon, consisted of reviewing each committee's specific policies and goals to determine if any items needed to be updated, added or deleted. Any changes that were made were added to the 2018 Proposed Policies and Goals, which will be formally adopted during the Annual Business Session on May 21st at the 2018 Annual Convention in Montgomery. The updated version of the 2018 Proposed Policies and Goals can be accessed at [www.alalm.org](http://www.alalm.org). Policy briefings were followed by a legislative update from Greg Cochran, Director of Advocacy and Public Affairs.

## Legislative Update

The 2018 Legislative Session adjourned Sine Die on March 29. Overall, it was a successful legislative session for municipal governments. ALM defeated several bills that would have been harmful to our municipal members such as: civil forfeiture, pharmacy business license preemptions, workers' compensation coverage of occupational disease; ban the box and several other unfunded mandates. We were also successful in working for passage of several bills that will benefit our municipal members, including the Simplified Sellers Use Tax (SSUT), the child care safety act, dark stores criteria and several local bills.

## 2018 Spring Policy Committee Meeting Dates and Attendance

The **Committee on Finance, Administration and Intergovernmental Relations (FAIR)** met on Tuesday, January 16, 2018. The chair and vice chair of FAIR are Councilmember Veronica Hudson and Councilmember Ruthie Campbell, respectively. The staff liaison is Rob Johnston, Assistant General Counsel. The following committee members were present: Mayor Bob Bunting, Ozark; Councilmember Winston Jackson, Ozark; Councilmember Veronica Hudson, Saraland; Councilmember Carl S. Flemons, Somerville; Councilmember Turner Townsend, Enterprise; Mayor Louvenia Lumpkin, Orrville; Councilmember William Kenneth Lumpkin, Orrville; Mayor Elmo Robinson, Double Springs; Councilmember Walter Jones, Homewood and Councilmember Adam Bourne, Chickasaw.

The **Committee on Energy, Environment and Natural Resources (EENR)** met on Tuesday, January 30, 2018. The chair and vice chair of EENR are Mayor Leigh Dollar and Mayor Lawrence Haygood, Jr., respectively. The staff liaison is Greg Cochran, Director of Advocacy and Public Affairs. The following committee members were present: Councilmember Darrell Wilson, Tallassee; Councilmember Jerry Welch, Priceville; Councilmember Billy J. Pearson, Lincoln; Mayor Johnny L. Smith, Jacksonville; Mayor Leigh Dollar, Guntersville; Mayor Lawrence M. Haygood, Jr., Tuskegee; Councilmember Jill Oakley, Albertville and Mayor Rusty Jessup, Riverside.

*continued page 42*



# The **NEW** Municipal Marketplace

ALM EXPO 2018 • May 20-21 • Montgomery

The Alabama League of Municipalities trade show is going through an exciting makeover! This year we are *Celebrating Main Street* with a Market Square theme. On May 20, the 2018 Municipal Marketplace doors will open to more than 50,000 square feet of city solutions! This unique showcase offers an excellent opportunity for the League's 1,000+ delegates and guests to network and make valuable connections with more than 300 vendor representatives. The Marketplace will offer convention attendees several events and extended time for face-to-face interaction with exhibitors.

The Marketplace will open Sunday afternoon at 12:15 p.m. with a Break Service and opportunity to visit vendors until 4:00 p.m. The Marketplace will re-open from 5:30 p.m. to 7:00 p.m. for the *Marketplace Showcase and Reception* and to kick off the *Municipal Marketplace Prize Program*. The League's 41st annual EXPO will feature over 150 vendors in the Exhibitor's Showcase, the Municipal Marketplace Prize Program, a prize drawing and a casual reception with heavy finger foods and an open bar. Monday the doors will open from 8:00 a.m. to 1:30 p.m. for a half day of exhibiting, continued Municipal Marketplace Prize Program, break service with a prize drawing and a boxed lunch with plenty of seating.

The **Municipal Marketplace Prize Program** will offer delegates the opportunity to "shop" the Marketplace by visiting participating vendors' booths to receive tickets of a specific color for the day. Once the vendor has determined that the delegate has spent sufficient time speaking with him/her a ticket will be given. Delegates can then deposit his/her tickets in the raffle barrel located at the Market Square to be eligible for prize drawings. Prizes will be drawn based on the ticket color for that day. On Tuesday, ticket colors will be combined for the GRAND drawings.

A list of participating vendors (with booth numbers) will be distributed to convention delegates during registration. Participating vendors will also be listed in printed convention material. **NOTE: Only registered convention delegates – mayors, councilmembers, municipal clerks and personnel – are eligible to participate in this prize program.** (Spouses and guests are not eligible). Drawings will be held several times during the convention. **Delegates must be present to win.**

**ALM vendors are here for you!** This one-stop shopping opportunity only happens once a year. Take the time to experience the entire Municipal Marketplace and visit ALM's vendors to get answers to questions, learn solutions for problems and return home with key information for your municipality. **A vendor listing for this year's show can be previewed at [www.alalm.org](http://www.alalm.org) or by downloading the ALM convention app via iTunes or Google Play.**



# 2018 Convention Quick Guide

Montgomery, Alabama • May 19-22

[www.alalm.org](http://www.alalm.org)

All information subject to change.

CMO credits can be earned. See convention program for details.

## Saturday, May 19

8:30 a.m. - 5:00 p.m.  
9:00 a.m. - 9:30 a.m.  
10:00 a.m. - 11:00 a.m.  
1:00 p.m. - 1:45 p.m.  
2:00 p.m. - 3:30 p.m.  
3:45 p.m. - 4:45 p.m.  
6:00 p.m. - 8:00 p.m.

## Sunday, May 20

10:00 a.m.  
10:00 a.m. - 11:30 a.m.  
Noon  
12:15 p.m. - 12:45 p.m.  
12:45 p.m. - 1:45 p.m.

1:45 p.m. - 2:15 p.m.  
2:15 p.m. - 3:30 p.m.  
3:30 p.m. - 4:00 p.m.  
4:00 p.m. - 5:00 p.m.  
5:30 p.m. - 7:00 p.m.

## Monday, May 21

8:00 a.m. - 5:00 p.m.  
8:00 a.m. - 1:30 p.m.  
8:00 a.m. - 8:30 a.m.  
8:30 a.m. - 10:00 a.m.

10:00 a.m. - 10:30 a.m.  
10:30 a.m. - Noon  
Noon - 1:30 p.m.  
1:15 p.m. - 1:30 p.m.  
1:30 p.m. - 3:00 p.m.  
3:00 p.m.  
3:45 p.m. - 5:30 p.m.  
6:00 p.m.  
7:00 p.m.  
After the Banquet

## Tuesday, May 22

8:00 a.m. - 11:00 a.m.  
8:00 a.m. - 8:15 a.m.  
8:15 a.m. - 9:45 a.m.  
10:00 a.m. - 11:45 a.m.  
Noon - 7:30 p.m.

### Registration: Montgomery Renaissance

Orientation for New Attendees  
Resolutions Committee Meeting  
AMIC Annual Meeting

**OPENING SESSION:** Gov. Ivey

**General Session:** Review of the 2018 Legislative Session

**Capital of Dreams Welcome Reception at Court Square Fountain**

### CITY SHIRT DAY: Wear your city shirt today with pride!

Prayer Service  
Innovative Marketplace Solutions

### Registration Opens: Montgomery Renaissance

Municipal Marketplace Break Service: Exhibit Halls BC

**Concurrent Sessions:** Stop the Bleed – Helping the Injured Before Professional Help Arrives; Common Barriers to Downtown Redevelopment Ideas and Solutions from Around the Nation; Council Manager Discussion Group

Municipal Marketplace Break Service: Exhibit Halls BC

### Population Roundtables – Identifying Problems; Finding Solutions

Municipal Marketplace Break Service: Exhibit Halls BC

### Roundtables continued

Municipal Marketplace Reception: Exhibit Halls BC

### Registration: Montgomery Renaissance

### Municipal Marketplace Open: Exhibit Halls BC

Municipal Marketplace Break Service: Exhibit Halls BC

**Concurrent Sessions:** Fight the Blight: How to Get Rid of Dangerous Buildings and Other Nuisances OR Social Media Legal Pitfalls and Best Practices

Municipal Marketplace Break Service: Exhibit Halls BC

**General Session:** Crisis Management –When it Hits the Fan

Municipal Marketplace Luncheon (Boxed Lunches): Exhibit Halls BC  
Break Service

### Ask Your Attorney

Voting Delegate Check-In Desk Opens

### Annual Business Session

Reception

### President's Banquet

Entertainment: Jennifer Holliday (Montgomery Performing Arts Center - MPAC)

### Registration: Montgomery Renaissance

Break Service

**General Session:** Using Parliamentary Procedure to Your Advantage

**CLOSING GENERAL SESSION:** Speaking and Leading with Meaning

ALM Golf Tournament sponsored by VC3: Robert Trent Jones Capitol Hill, Prattville

# 2018 Municipal Marketplace Vendors

The Marketplace will open Sunday afternoon at 12:15 p.m. with a Break Service and opportunity to visit vendors until 4:00 p.m. The Marketplace will re-open from 5:30 p.m. to 7:00 p.m. for the **Marketplace Showcase and Reception** and to kick off the **Municipal Marketplace Prize Program**. The League's 41st annual EXPO will feature over 150 vendors in the Exhibitor's Showcase, the Municipal Marketplace Prize Program, a prize drawing and a casual reception with heavy finger foods and an open bar. Monday the doors will open from 8:00 a.m. to 1:30 p.m. with continued Marketplace Prize Program, break services and boxed lunch. Boxed lunches will be served in the Municipal Marketplace from Noon to 1:30 p.m. for all attendees and vendors. There will be plenty of seating available during lunch.

**NOTE:** Exhibitors listed below purchased exhibit space prior to the printing of this publication. A complete list of exhibitors will be included on the League's FREE convention app, which you can download from the iTunes App Store or Google Play.

## 2018 Exhibitors (\* indicates ALM 2018 Sponsors. See page 40 for a full list)

Advanced Disposal Services	524	High School on Main Street	428
Alabama 811*	411	Highland Technical Services, Inc.	722
Alabama Manufactured Housing Association	312	InCare Technologies	526
Alabama Mountain Lakes Tourist Association*	619	Information Transport Solutions, Inc.*	412
Alabama Power Company*	H	Ingram Equipment Company, LLC	B
American Fidelity*	203	J.A. Dawson & Co.	504
AMIC	301	Jackson Thornton	408
AMIC/MWCF Loss Control	303	Jacksonville State University's Center for Economic	
Applied Information, Inc.	621	Development & Business Research	730
Arrow Disposal Service, Inc.	601	Jerry Pate Turf and Irrigation	729
AT&T*	212	Jubilee Decor, LLC.	A
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## ALM Golf Tournament Sponsored by VC3 Tuesday • May 22 • 1:30 p.m. Shotgun Start

**Robert Trent Jones Capitol Hill • 2600 Constitution Avenue • Prattville, AL 36066**

- **12:00 p.m.** Registration opens
- **12:00 p.m. - 1:15 p.m.** Warm up and box lunches provided (range balls provided)
- **1:30 p.m.** Shotgun start
- **6:00 p.m.** Return to the clubhouse
- **6:30 p.m.-7:30 p.m.** Awards ceremony and cookout

The format for this year's tournament will be a Stableford format. Unlike traditional scoring methods, where the aim is to have the lowest score, the objective in a Stableford tournament is to have the highest score. Stableford awards points based on the number of strokes taken at each hole. The winner of a tournament is the team with the highest total points.

Same day registrations will be accepted on-site (boxed lunch and any pairing requests cannot be guaranteed at that time). **For any questions or additional information on the tournament please contact Elisabeth Anders, Event Coordinator - [elisabeth.anders@vc3.com](mailto:elisabeth.anders@vc3.com) or 1-803-978-2709.**

**(Endnotes)**

1. Alexis de Tocqueville, *Democracy in America*. Edited by Richard D. Hefner, (New York: New American Library, 1956).
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10. David Mathews, *Leaders or Leaderfulness? Lessons from High Achieving Communities*, (Dayton, OH: Kettering Foundation Press, 2016), Pg. 15.

## The League has expanded its social media platforms to include Facebook, Twitter and Instagram!



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Our social media platforms will provide you with timely information about ALM's legislative endeavors; League events such as upcoming CMO sessions, policy committee meetings, annual convention and national conferences; and articles of interest for municipal officials and employees. **This is also where the League posts photos from its events that you can download, share and save!**

**REMINDER! As you post photos during convention, be sure to use the hashtag:**

**#ALMCon18**

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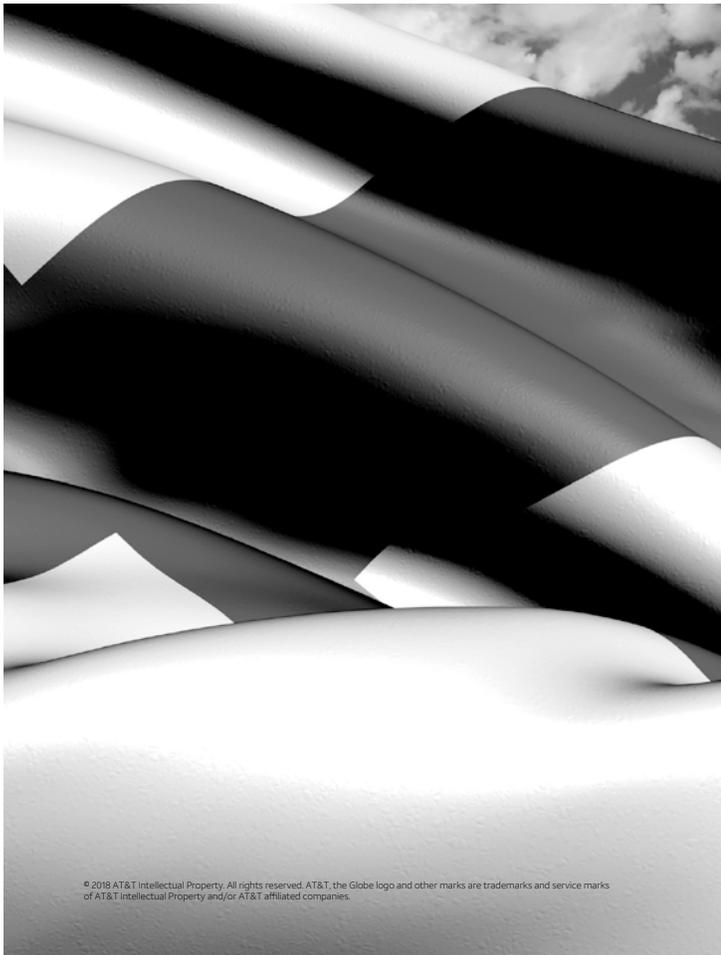
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The **Committee on Transportation, Public Safety and Communication (TPSC)** met on Tuesday, February 12, 2018. The chair of TPSC is currently vacant and the vice chair is Councilmember Jerry Parris. The staff liaison is Teneé Frazier, Assistant General Counsel. The following committee members were present: Councilmember Donald Livingston, Priceville; Councilmember Jerry Parris, Jacksonville; Mayor Melvin Duran, Priceville; Councilmember Tommy Perry, Priceville; Councilmember Fred Barton, Brewton; Mayor Gary Livingston, Eva; Councilmember Sammy Wilson, Clanton; Mayor Billy Joe Driver, Clanton; Mayor Tab Bowling, Decatur; Councilmember John Hatley, Southside; Councilmember Danny Garnett, Southside; Councilmember Bobby R. Hardrick, Daleville; Councilmember Jerry Starnes, Prattville; Councilmember Michael C. Ellis, LaFayette; Mayor David H. Bradford, Muscle Shoals; Councilmember Charlie Johnson, Luverne and Mayor Stan Hogeland, Gardendale.

The **Committee on Human Development (HD)** met on Tuesday, February 20, 2018. The chair and vice chair of HD are Councilmember Bridgette Jordan-Smith and Councilmember Jennifer Williams Smith, respectively. The following committee members were present: Mayor Howard Rubenstein, Saraland; Councilmember Sadie Britt, Lincoln; Councilmember

Carole Barfield, Ashford; Councilmember Jennifer W. Smith, Jasper; Mayor Jason Ward, Lisman; Councilmember Bridgette Jordan Smith, Vincent; Councilmember Mike Lockhart, Muscle Shoals; Councilmember Vera Quaites, Foley; Councilmember Cynthia Donald, Bessemer; Councilmember Stan Cooks, Union Springs; Councilmember Bilbo Johnson, Clay and Mayor Sheldon Day, Thomasville.

The **Committee on Community and Economic Development (CED)** met on March 5, 2018. The chair and vice chair of CED are Councilmember Jocelyn Tubbs-Turner and Mayor Charles Gilchrist, respectively. The staff liaison is Lori Lein, General Counsel. The following committee members were present: Councilmember Jef Freeman, Trussville; Councilmember Charles Z. Bailey, Albertville; Mayor Charles C. Gilchrist, Glencoe; Councilmember Jocelyn Tubbs-Turner, Marion; Councilmember Newton Cromer, Saraland; Mayor John Hammock, Tallassee; Mayor Darrio Melton, Selma; Councilmember Shelly L. Barnhart, Lincoln; Councilmember Terry Allums, Abbeville; Mayor Vivian Holt Covington, Hurtsboro; Mayor Mickey Murdock, Elba; Mayor Alberta McCrory, Hobson City; Councilmember Brenda Ramsey-Robinson, Sipse and Councilmember Penny Freeman, Sheffield. ■



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## JENNIFER HOLLIDAY Tony Award Winner Monday Night • May 21

Jennifer Holliday catapulted to stardom 35 years ago in the smash Broadway musical, *Dreamgirls* with her show-stopping performance as Effie "Melody" White, the iconic role which garnered her a Tony Award for Best Actress in A Musical.

She was discovered at age 17 while singing in her church choir in Houston, Texas, by dancer Jamie Patterson, who persuaded her to move to New York City, where she made her Broadway debut in Vinnette Carroll's "Your Arms Too Short To Box With God" as a featured soloist. Beyond Broadway, Ms. Holliday appeared as Lisa Knowles on the Fox TV dramedy, "Ally McBeal". She has also enjoyed a successful recording career, winning Grammy® Awards for her mesmerizing performances of "And I Am Telling You, I'm Not Going" (1982) and Duke Ellington's "Come Sunday" (1985). Ms. Holliday has also received rave reviews for her first album in two decades, *The Song Is You* (2014). ■



## Speaking and Leading with Meaning

Dr. Adam J. Brooks • Closing Keynote Speaker • Tuesday, May 22



As municipal leaders are asked to inform, persuade and interpret more complicated pieces of information to multiple publics, it is vital to consider how one's communication solve these problems. This interactive session asks participants to cut the crap and lead with meaning through considering the best practices and techniques when speaking to the public or the media. How do you make sure you reach your desired audience and reinforce powerful first impressions? How do you increase your perception as a professional?

Two time national champion speaker Dr. Adam Brooks will guide you through the tips and techniques that allow you to clarify and craft your message, cultivate dynamic delivery and calm anxiety to achieve your goals as a leader, and as an organization. Adam helps companies and leaders transform their message to get to the right people at the right time. With a Ph.D. in Communication and Information Sciences, an MA in Communication Studies, and a professional background in corporate public relations, he has coached numerous individuals to national acclaim by helping large organizations

like Southern Light, Regions Bank, & All State Insurance as well as small businesses seeking investment. As an assistant professor in communication studies, Adam is an expert in the areas of public speaking, strategic communication, rhetoric and delivery. ■

it needed to conduct additional neighborhood outreach efforts to more effectively target individualized needs. Ultimately, more than 50 neighborhood meetings were held over a year's time. "The common theme that we started to hear was that people wanted a greater emphasis on connectivity; they wanted to be able to utilize the pedestrian amenities that are symptomatic of good, strong neighborhoods," Beaco said. "People wanted to walk to school, walk to the corner grocery, and walk to their neighbor's houses in a safe and secure way. They also wanted to leverage our 300-year-old city's historic character to maintain a sense of identity throughout our neighborhoods. The conversation began to focus on ways to protect the design qualities of these neighborhoods."

Additionally, citizens wanted an environment that encouraged commercial development opportunities and enhanced quality of life. That meant re-zoning certain areas to boost investment potential.

The city initiated the plan's first phase by laying out its "vision" in November 2015, receiving a unanimous vote of approval from the Planning Commission.

"We started out at 10,000 feet; now we're slowly starting to land this plane," Beaco said.

"The next step for us was to introduce our general land use plan and major thoroughfare plan. Those two documents were adopted in 2016, and we are now toward the end of our zoning overhaul."

Beaco emphasized the plan is meant to be a living document that can adapt in response to changing market dynamics, demographics and needs. "This plan continues to live on," he said. "It has benchmarks within it that help us to know where we need to start and finish a new effort, but it's going to run, in our minds, for the life span of our city process."

Indeed, that is the essence of a dependable long-range plan. It is not merely a list of projects to check off a list, but is instead a flexible, malleable document that ultimately becomes a reflection of the very community it represents. ■

## About the Author

*Brandon Bias, AICP, LEED Green Associate is a Community and Regional Planner based in the Mobile, Alabama, office of Goodwyn Mills and Cawood. Bias has been with the firm since 2008 and had the opportunity to work on many long-range planning projects across the state and the Southeast, including the plans in Jefferson County, Alabama., Brewton, Alabama, and Mobile, Alabama in this article. A certified planner and LEED Green Associate, Bias graduated from Auburn University with master's degrees in Community Planning and Landscape Architecture and*

*a bachelor's degree in Environmental Design. Bias also worked for the City of Birmingham as a Planner in the Special Projects Division of the Community Development Department between 2014-2015. He assisted in managing the City's annual HUD allotment and overseeing the R.I.S.E. Initiative for neighborhood stabilization, including coordinating with the Birmingham Land Bank Authority to demolish tax-delinquent property and the revitalization of Pratt City following the 2011 tornadoes that swept through Alabama.*

*Bias is involved with multiple state-level organizations including as currently serving as the President of the Board for Alabama Communities of Excellence. He is a member of the American Planning Association (APA) Alabama Chapter Executive Committee, and a Board member of Design Alabama and Your Town Alabama. In 2017, ACE recognized Bias as the Outstanding ACE Ambassador. The award recognizes individuals who have performed above and beyond the call of duty and embody the principles of the ACE Program, a comprehensive development program designed to assist Alabama's smaller communities in their efforts to plan, grow and prosper.*



## SAVE THE DATE! Upcoming League Events

### 2018 Annual Convention\*

May 19-22

Renaissance Montgomery Hotel & Spa  
at the Convention Center

### Webinar - License Schedule Ordinance\*

June 26, 2018

Register online at [www.alalm.org](http://www.alalm.org)

### Webinar - Conducting Public Hearings\*

July 24, 2018

Register online at [www.alalm.org](http://www.alalm.org)

\*CMO Credit Available. For additional details and updates for the events, check the "League Calendar" at [www.alalm.org](http://www.alalm.org).

discussion. The council voted as follows to go into executive session:

Mayor Greene	yea
Councilmember Jones	yea
Councilmember Hill	yea
Councilmember Mims	yea
Councilmember Pratt	yea
Councilmember Speaks	nay

Before moving into executive session, the presiding officer notified those in attendance that they expected to be in executive session approximately 30 minutes. The executive session began at 10:15 a.m. and ended at approximately 10:45 a.m.”

### Circumstances for Executive Session

The next issue presented by my hypothetical scenario from Mayor Greene involves the reasons for going into executive session. Unlike the old Sunshine Law, the OMA provides multiple scenarios where a council may go into executive session. Arguably, an employee’s bad attitude, alone, is not one of them. The reasons for an executive session are listed in Section 36-25A-7(a), Code of Alabama 1975. A council can only go into executive session in the following circumstances:

#### 1. GOOD NAME & CHARACTER:

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.

The Attorney General (AG) has ruled that this exception permits governmental boards to convene an executive session to interview current public employees in connection with promoting these employees to fill vacant positions when those positions do not require the interviewee to file a Statement of Economic Interests with the Alabama Ethics Commission. Only the portions of the meeting involving the general reputation and character, physical condition, professional competence, mental health, and job performance of the employee may be discussed in executive session. The professional competence of a person may be discussed in executive session only when that person’s position qualifies

as a profession as specified in Section 36-25A-2(8) of the Code of Alabama. AGO 2006-088.

#### 2. DISCIPLINE OR DISMISSAL UNDER CERTAIN CIRCUMSTANCES:

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. CERTAIN DISCUSSIONS WITH LEGAL COUNSEL:

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. SECURITY ISSUES:

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. UNDERCOVER LAW ENFORCEMENT:

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 to file a criminal complaint.

Prior to entering an executive session for any of these purposes, the entity must obtain a written or oral declaration entered on the minutes from a law enforcement officer with authority to make an arrest or a district or assistant district attorney or the AG or an assistant AG that the discussions would imperil effective law enforcement if disclosed outside of an executive session.

#### **6. PRELIMINARY REAL ESTATE DISCUSSIONS:**

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 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. CERTAIN ECONOMIC DEVELOPMENT DISCUSSIONS:**

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.

A council may also go into executive session to discuss labor negotiations and for quasi judicial proceedings. See Section 36-25A-7(a)(8) and (9). The reasons listed above are the *only* legal reasons allowed for holding an executive session under Alabama Law.

The third point of discussion regarding Mayor Greene's hypothetical scenario is who can and should attend an executive session. The League advises that only those persons who are absolutely needed for the discussion held in the executive session should attend. Often this only includes the members of the governing body. If asked the question, we advise that the city clerk should not attend an executive session and there are no minutes for the executive session.

Finally, the second question asked by Mayor Greene regarding what, if anything, can be done about a councilmember who leaves an executive session and then goes and tells a reporter or citizen what took place in the executive session? Clearly one of the reasons for going into executive session is to foster candid discussions and there is a sense that what goes on in executive session is confidential in nature. But the law does not prohibit someone from sharing with others what went on behind closed doors. While it can be awkward, embarrassing, and in some cases demonstrate a lack of judgment, a council member in attendance at an executive session is not prohibited from coming out of the executive session and sharing what went on in the executive session. Mayors and councilmembers who attend an executive session need to keep in mind that if a claim is made relating to improper discussions during executive sessions, monetary penalties may 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*. See Section 36-25A-9(g), Code of Alabama 1975.

In conclusion, while there is little question that an executive session can be a useful tool for city councils to handle sensitive issues not warranting a full public discussion, they must be conducted properly and only when *absolutely necessary*. It is important that all members of the city council understand when executive sessions are proper and how they are legally conducted. This article should be kept on hand and used as a resource whenever the city council is considering the need for an executive session. For further issues or questions which may arrive, please contact the League Legal Department. ■

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