

# RICHLAND COUNTY COUNCIL

## SOUTH CAROLINA

### COUNCIL WORK SESSION

March 22, 2016  
3:00 PM  
4<sup>th</sup> Floor Conference Room

*In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, persons requesting notification, and was posted on the bulletin board located in the lobby of the County Administration Building*

#### CALL TO ORDER

Mr. Rush called the meeting to order at approximately 3:05 p.m.

#### TRANSPORTATION PENNY ADVISORY COMMITTEE RECOMMENDATIONS: DUTIES AND RESPONSIBILITIES

Mr. Farrar began his presentation with an overview of Richland County:

- Counties and County Government authorized in Article VII, SC Constitution
- Boundaries defined in SC Code Ann. Sec. 4-3-460, "Richland County."
- All of the duties, powers, authority and responsibilities as provided under Home Rule (Title 4), and elsewhere in State law.
- Council-Administrator form of government
- 11 member single district Council
- 2014 population (est.) = 400, 663 in unincorporated area; 799,670 in Columbia MSA

#### Operating Environment:

- October 2015 Flood (FEMA Major Disaster)
  - a. Multiple fatalities
  - b. Thousands of citizens without power and without potable water
  - c. Hundreds/thousand displaced
  - d. Unknown but substantial real and personal property damage
  - e. Uncertainty over the long term integrity of roads, dams, bridges and other infrastructure
  - f. Concern over the immediate and long range quality and safety of drinking water
  - g. Dam and other private property repairs?
- SC DOR Review/Audit? of Transportation Penny Sales Tax Program
  - a. Recommendations? Requests? Demands? Commands (i.e., Orders)?
  - b. Authority?



#### Council Members Present

Torrey Rush, Chair  
Greg Pearce  
Bill Malinowski  
Paul Livingston  
Julie-Ann Dixon  
Jim Manning

#### Others Present:

Tony McDonald  
Brad Farrar  
Michelle Onley  
Beverly Harris  
Tony Edwards  
Shawn Salley  
Chris Gossett  
Rob Perry

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- Leadership Turnover
  - a. Special election for vacant Council seat
  - b. November 2016 elections for 6 Council seats
  - c. Administrator retiring (Interim/New Administrator)
- Local Government Fund and Unfunded Mandates
  - a. Elections
  - b. Health Care

### **Transportation Penny Program:**

- November 2012 Referendum
- "...to determine whether a majority of qualified electors of the County are in favor of imposing a one percent sales and use tax in the County and issuing general obligation bonds not to exceed \$450,000,000."
- 3 Project Categories:
  - a. Improvements to highways, roads, streets, intersections, bridges, related drainage systems
  - b. Continued operation of mass transit by CMRTA
  - c. Improvements to pedestrian sidewalks, bike paths, intersections and greenways

### **"Oversight/Accountability/Watchdog Committee":**

- "An oversight/accountability/watchdog" committee was approved. Membership/duties of this Committee TBD.
  - a. Is such a committee a..."Have to have?" (Required by law or authority); "Need to have?" (Meets a gap or need); or "Nice to have?" (Neither required nor essential, but desirable)
- Watchdog Committee "Have to have?"
  - a. Is there a Penny Program requirement to have an oversight/accountability/watchdog committee?
    - 1. Is such a group a "Have to have" (required by law/authority)?
      - a. If so, where is the authority imposing this requirement?
      - b. Federal law? State law? County ordinance? Other?

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2. Requirement for certain size or composition?
3. Requirement for the number or frequency of meetings?
4. Requirement to have such a committee for a certain period? (For the length of the program?)

■ Watchdog Committee “Need to have?”

- a. Is there a Penny Program need to have an oversight/accountability/watchdog committee?
  1. Is such a group a “Need to have” (meets a gap or need)?
- b. If so, what is the need?
- c. Does an appointed group typically oversee those who do the appointing?
- d. Are there any other instances where Council has appointed a citizens group to oversee its programs? If so, what other programs does Council have overseen by non-County personnel?

■ Watchdog Committee “Nice to have?”

- a. If there is no requirement to have such a committee, and no need either, is it still nice to have an oversight group? Why?
  1. What Richland County government benefit is there to a Transportation Penny Program oversight committee?
  2. What is the “value added?”
  3. Does such a committee fill a gap or a need not met by County Council, County departments such as Administration and the Transportation Department, internal auditing processes, external audits and South Carolina Department of Revenue audits?
  4. “Nice to have” is something that is neither required nor essential. Critical to understand this for operational issues, resource constraints, morale, etc.

*The TPAC should be in the “Need to have” category.*

**Transportation Penny Advisory Committee (TPAC):**

■ 15 members

- a. Richland County – 7 members
- b. City of Columbia – 3 members
- c. Town of Arcadia Lakes, Town of Blythewood, Town of Eastover, City of Forest Acres, and Town of Irmo – 1 member each

■ RC Council Chair appoints 2 Council honorary members

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- TPAC Officers: Chair, Vice Chair, and Secretary
- "...with a goal of having the '3 modes of transportation' represented"

### **TPAC Assessment as of March 2016:**

- Council's overall assessment of the Transportation Advisory Committee since its creation up to today.
  - a. How's it going?
- Programmatic review.
  - a. Does not have to be formal, official or detailed.
  - b. Does not have to cost anything.
  - c. "Eyeball" test; how's it looking?

### **TPAC Rules of Procedure:**

- "Functions, Duties and Power"
  - a. "The Committee shall provide a recommendation on any modification to the projects list not consistent with the generic description of the project..."
  - b. "...recommend any reordering of the prioritization of the project list."
  - c. "...provide quarterly reports to each respective jurisdiction from which they are appointed."
  - d. "...review the proposed Scope of Services for the Request for Proposals (RFP) for the Program Management Team and make recommendations as needed."
  - e. "...make recommendations for a financial review of the Transportation Penny as needed." (Note: A financial audit will be undertaken annually).
  - f. "...is authorized to make recommendations to the CMRTA Board, and to any other governing body with regards to the Transportation Penny."
  - g. "...perform all other additional duties as assigned by the Richland County Council."

There are four questions that need to be answered in reference to each function, duty or power:

- a. Has TPAC had an opportunity to perform this function, duty or power?
- b. Council/Staff evaluate that performance as....
- c. This function, duty or power furthers Richland County's strategic and operational goals for the Transportation Penny Program by....
- d. This function, duty or power will be necessary throughout the life of the Penny Program? (Y/N) If yes, why?

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- What else, if anything, does County Council want the TPAC to do?
  - a. Not “what does the TPAC want the TPAC to do.”
  - b. Not “what does staff want the TPAC to do.”
  - c. Not “what does the South Carolina Department of Revenue want the TPAC to do.”
  - d. All other input can be considered and given the weight it is due, but the TPAC is a County Council entity and should further Council’s vision, intent and goals.
  
- As of March 2016, Council determines overall the TPAC?
  - a. Has furthered Richland County’s strategic vision and operational goals.
  - b. Had had no impact on Richland County’s strategic vision and operational goals.
  - c. Has been detrimental to Richland County’s strategic vision and operational goals.

*If the answer is (b) or (c) that constitutes a problem.*

### **TPAC or TPOC?**

- Has Council sufficiently assessed the TPAC to date to be in a position to consider changes to it, including the fundamental move from an “advisory” committee to an “oversight” body? *(Note: If not, may want to STOP here until assessment of TPAC to date is completed.)*

### **Planning Considerations:**

- Does Council want an independent Advisory group relative to the Penny Program?
- Does Council want an independent Oversight group relative to the Penny Program?
- Does Council want either an Advisory or an Oversight group?
- What benefit does/would County Council derive from either group?
- Why was the TPAC established?
- Council’s vision for the TPAC?
- Purpose of the TPAC?
- What benefit does County Council derive from TPAC?
- Any costs or downside to the TPAC?
- Do TPAC members have any particular expertise in transportation and other areas related to their current duties and functions? What?
- Does providing support to the TPAC further the Penny’s mission and purposes? Take away from them? Have no impact?
- Do TPAC members have a clear understanding of their mission?

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- If SC DOR is willing to audit the Penny Program free of charge, is further oversight by TPAC or any other non-County entity or personnel needed?
- How would the Penny Program be any different if there were no TPAC?
- Is the TPAC appropriately sized/composed? Too big? Too small? Just right?
- Meetings—how often does the TPAC meet? Why? How often should it meet? Why not meet as needed (if needed)?
- What are the TPACs “due outs?” Reports (regular, interim, final?)
- Does TPAC have the subject matter expertise to conduct or to direct a financial or other audit?
- How will TPAC/TPOC “ensure transparency of Transportation Penny implementation, and inform the public of implementation progress and problems?”
- How does TPAC/TPOC intend to “ensure fiscal and programmatic integrity, ethical and equitable implementation, and accountability of the Transportation Penny?”
- Regarding non-voting liaison members, does County Council have any other non-Council members serving on Council committees?
- What benefit does County Council derive from TPAC?
- List TPAC accomplishments.
- Staff resources needed to support?
- Is the TPAC self-sufficient? If not, what are its needs? What impact do those needs and requests have on County staff, resources and finances?
- Does TPAC need to meet more often, less often, or at about the same frequency?
- What are the TPAC’s contributions to the Penny Program to date?
- What personnel, resources and time demands are there in supporting the TPAC?
  - a. Would those demands increase, decrease or stay about the same if the TPAC’s vision for the TPOC were approved?
- Can TPAC’s recommendations be accomplished under the County’s current ordinances, policies and procedures?
- How could TPAC/TPOC “retain” staff or consultant(s)?
  - a. Pay
  - b. Taxes, withholding
  - c. Health insurance
  - d. Independent contractor(s)
  - e. Exempt or non-exempt (Fair Labor Standards Act)
  - f. Budget to pay staff or consultant(s)
  - g. Who is responsible for the budget?
  - h. Workers’ Comp
  - i. Liability?
  - j. Offices, equipment, etc.?

*This request is not recommended by legal staff.*

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### TPAC Email to Ad Hoc Transportation Committee Chair – February 18, 2016

- TPAC's comments on Council's motions "to restructure and strengthen the TPAC."
  - a. "The motions had the effect of prompting a broader TPAC discussion about the need for a comprehensive and coherent framework for transforming the TPAC so it has the mandate and capacity to provide for effective citizen oversight of the Richland County Transportation Penny Program. As a result, the TPAC developed and unanimously adopted the recommendations set forth in the attachment to this email."

### TPAC Recommendation #1

- "The Transportation Penny Advisory Committee recommends that Richland County Council authorize, execute, and fund the following:"
  - a. Change the name of the current "Transportation Penny Advisory Committee" (TPAC) to the "Transportation Penny Oversight Committee" (TPOC)

**Decision Point:** Does Council want to change TPAC's name to TPOC and have an oversight committee instead of an advisory committee?

### TPAC Recommendation #2

- "The Transportation Penny Advisory Committee recommends that Richland County Council authorize, execute, and fund the following:"
  - a. Establish that the broad purpose of the TPOC is to:
    - 1. Provide independent, citizens-based oversight of Transportation Penny implementation;

**Decision Point:** Does Council want the TPAC to provide independent, citizens-based oversight of Transportation Penny implementation?

- 2. Ensure fiscal and programmatic integrity, ethical and equitable implementation, and accountability of the Transportation Penny; [NOTE: It is stipulated that Council will consult with the County Attorney to determine if the above creates potential liability for TPOC members.] – *Legal suggests members contact their personal attorney for legal advice.*

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**Decision Point:** Does Council want the TPAC to be responsible for ensuring fiscal and programmatic integrity, ethical and equitable implementation, and accountability of the Transportation Penny? – *Not sure how this would be accomplished.*

3. Review, comment on, and make recommendations to Richland County Council on Transportation Penny matters before they are considered by Council;

**Decision Point:** Does Council want the TPAC to review, comment on, and make recommendations to Richland County Council on Transportation Penny matters before they are considered by Council? – *This recommendation may hamstring Council.*

4. Ensure transparency of Transportation Penny implementation, and inform the public of implementation progress and problems.

**Decision Point:** Does Council want the TPAC to ensure transparency of Transportation Penny implementation, and inform the public of implementation progress and problems? – *All meetings and votes are in open sessions; Ombudsman's Office receives 600 calls per day; numerous FOIA requests received*

### TPAC Recommendation #3

- Describe, and provide an organization chart that illustrates the independent role of the TPOC in relation to the Transportation Penny Program. Require TPOC to review and comment on recommendations from the Department of Transportation/Program Development Team to County Council, before the recommendations are presented to Council.

**Decision Point:** Does Council want to describe, and provide an organization chart that illustrates the independent role of the TPOC in relation to the Transportation Penny Program, and require TPOC to review and comment on recommendations from the Department of Transportation/Program Development Team to County Council, before the recommendations are presented to Council? – *The TPAC is not a County department.*

### TPAC Recommendation #4

- Establish that the process for appointing and removing TPOC members, and the structure and organization of the TPOC, will be the same as for the TPAC.

**Decision Point:** Assuming Council changes the TPAC to the TPOC, does Council want to establish that the process for appointing and



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removing TPOC members, and the structure and organization of the TPOC, will be the same as for the TPAC? – *There is no reason to change the process.*

### TPAC Recommendation #5

- Appoint future TPOC members who have either transportation mode, business, community, or professional experience that enables them to assist the TPOC in fulfilling its purposes and executing its responsibilities. Ensure that persons seeking appointment to the TPOC have the commitment and time to serve diligently. Require persons seeking appointment to sign a no-conflict of interest statement.

**Decision Point:** Assuming Council changes the TPAC to the TPOC, is Council interested in adopting the recommendation? – *It is a problem if the members do not currently have that expertise on the committee.*

### TPAC Recommendation #6

- Establish that the person serving as Chair of the TPOC, or a TPOC member designated by the Chair, will be a non-voting member of Richland County Council's Ad Hoc Transportation Committee. Delineate the Chair's role and responsibilities as the liaison between the TPOC and the Ad Hoc Transportation Committee.

**Decision Point:** Assuming Council changes the TPAC to the TPOC, does Council want to establish that the person serving as Chair of the TPOC, or a TPOC member designated by the Chair, will be a non-voting member of Richland County Council's Ad Hoc Transportation Committee? – *Does Council have any other committee Chairs and/or members that serve on Council committees.*

### TPAC Recommendation #7

- Delineate specific responsibilities of the TPOC Chair and Vice-Chair.

**Decision Point:** Assuming Council changes the TPAC to the TPOC, what responsibilities does Council want that Committee's Chair and Vice-Chair to have? – *This recommendation is recommended.*

### TPAC Recommendation #8

- Provide that the TPOC has the authority and funding to retain an independent staff person or consultant, and other technical assistance necessary for the TPOC to function effectively. Individuals and/or private organizations the TPOC retains will be solely accountable to the TPOC and serve at its pleasure.

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[Note: It is stipulated that before the TPOC retains each staff/consultant, it will draft a work plan for each position. This plan will guide the development of a statement of qualifications the TPOC and the County Office of Procurement will use in the recruitment and selection of staff/consultant.]

[Note: It is stipulated that the TPOC will collaborate with the County Office of Procurement to ensure that the process of seeking, selecting, and employing or terminating persons for staff/consultant positions complies with the County procurement ordinances/processes.]

[Note: It is stipulated that the TPOC Chair will appoint a committee of TPOC members to select and interview persons applying for staff/consultant positions, and to recommend one or more applicants for the TPOC's consideration.]

[Note: It is stipulated that the County will provide adequate office, telephone, internet, copying capability, stationery, etc., necessary for the TPOC and any staff/consultant it retains to function effectively.]

**Decision Points:** Assuming Council changes the TPAC to the TPOC, does Council want to provide that the TPOC has the authority and funding to retain an independent staff person or consultant, and other technical assistance necessary for the TPOC to function effectively? – *How would this be implemented? Independent contractor? Will they be allowed to go through the County's grievance process if they're terminated?*

Does Council want individuals and/or private organizations the TPOC retains to be solely accountable to the TPOC and to serve at its pleasure? – *This would be a new paradigm. The staff member would be hired by a committee appointed by Council.*

### TPAC Recommendation #9

- Direct the County Administrator and/or County Director of Transportation to serve as liaison and ensure cooperation between the TPOC (including any staff/consultants the TPOC retains) and staff of County departments/offices; also the Program Development Team. Such cooperation shall include overall financial reporting, procurement, and audit of the entire Penny program.

[Note: It is stipulated that the purpose of the above is to provide for the orderly and effective working relationship between the TPOC, including any TPOC staff/consultant, and staff of County departments/offices; also the Program Development Team.]

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Decision Points: Assuming Council changes the TPAC to the TPOC, does Council want to direct the County Administrator and/or County Director of Transportation to serve as liaison between the TPOC (including any staff/consultants the TPOC retains) and staff of County departments/offices; also the Program Development Team? – *This is not a core function of their job descriptions.*

Assuming Council changes the TPAC to the TPOC, what role, if any, does Council want the TPOC to have with respect to overall financial reporting, procurement, and audit of the entire Penny program?

### TPAC Recommendation #10

- Delineate the responsibilities of the TPOC to include:
  - a. Meet at least once each month and as often as necessary to fulfill the TPOC's purpose and execute its responsibilities;
  - b. Conduct public meetings and hearings to obtain information and perspectives necessary for the TPOC to fulfill its purpose and execute its responsibilities;
  - c. Recommend any modification to the Transportation Penny projects list not consistent with the generic description of the project(s);
  - d. Recommend and reordering of the prioritization (if applicable) of the Transportation Penny projects list;
  - e. Annually review and make recommendations regarding the Comprehensive County Transportation Improvement Program;
  - f. At the TPOC's discretion, inquire about and review any contracts or sub-contracts paid from Transportation Penny revenue. Report any problems, issues, or discrepancies to the Richland County Internal Audit Committee or Council, as applicable.
  - g. At the TPOC's discretion, review monthly expenditure reports provided by the County and/or the Program Development Team to ensure compliance with the Transportation Penny ordinance. At any time, request copies of all monthly invoices for Penny expenditures. Refer any potential discrepancies to the Richland County Internal Audit Committee for review and report;
  - h. Retain an independent auditor who is a certified public accountant to conduct an annual financial compliance and performance audit of expenditures from Penny revenue. If the County has conducted an independent audit, review such audit and present the TPOC's comments to Council;
  - i. Review and comment on drafts of proposed major County and Program Development Team public information documents intended to communicate to the public the plans, status, and results of Transportation Penny implementation, including financial reports;

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- j. Establish and maintain a telephone number with recorded message capability, and an email address, to receive unsolicited information about suspected financial, conflict-of-interest, or other serious irregularities regarding implementation of the Richland Penny Program.

[Note: It is stipulated that the TPOC will approve any TPOC-related text posted on the [www.rcgov.us](http://www.rcgov.us) or [www.richlandpenny.com](http://www.richlandpenny.com) websites.]

**Decision Point:** Assuming Council changes the TPAC to the TPOC, is Council interested in adopting the duties set forth in TPAC's above recommendation? – *Council's discretion on which of these recommendations they would like to see given to the committee members.*

*Staying the current course is not benefitting the County or the TPAC members. The committee is not sure of their role and responsibilities and the expectations created are not helpful to anyone.*

Ms. Dixon inquired if the TPAC members were given a work session to instruct them on their duties and responsibilities.

Mr. Farrar responded the Legal Department attended a TPAC meeting and instructed them on ethical issues.

Ms. Dixon inquired if there are any County appointed boards, commissions, or committee members that are paid for their service.

Mr. Farrar stated there are reimbursement of expenses for the Board of Zoning and Appeals and the Planning Commission. The Association of Counties would be able to tell you if there are any boards, commissions or committees that pay their members in the State.

Ms. Dixon inquired if any boards, commission, or committees have an employee that was hired by them.

Mr. Farrar stated he was not aware of any board, commission or committee that has hired an employee.

Mr. Livingston inquired how you would categorize the difference between the functions of an oversight committee versus an advisory committee.

Mr. Farrar stated an oversight committee would be a little more in depth (DOR); whereas an advisory committee would offer advice (Planning Commission).

Mr. Pearce inquired how the projects passed on the referendum were prioritized.

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Mr. Perry stated Council established prioritization criteria in April 2013. The projects were ranked utilizing the criteria. Those projects were presented to the TPAC and Transportation Ad Hoc Committee. Council approved the projects in November 2014.

Mr. Manning stated before the referendum was approved the projects were ranked as high, medium and low priority projects. The approved referendum only included the high priority projects.

Mr. Pearce stated the Transportation Department and the Project Development Team utilized the criteria to rank the projects. Then the projects were bid out. At what point were the projects presented to the TPAC.

Mr. Perry stated the rankings were presented to the TPAC. Once the project is ranked and bid out it goes straight to Council for approval.

Mr. Pearce inquired if it is Council's authority to decide if the project was bid correctly.

Mr. Farrar stated Council has contractual authority unless Council delegates it to the County Administrator.

Mr. Pearce stated he is hung up on the have to have, need to have and nice to have.

Mr. Manning stated there was a referendum on the 2010 ballot that failed. During the campaign for the referendum, it was stated the citizens did not trust County Council (i.e. ... going to line their own pockets, ... take the Penny money and use it for other "stuff" not related to the penny, ... the projects were going to be moved around.) Due to these concerns, the majority of Council decided to establish a committee. If these are the reasons the concept of a committee was approved this may be the point to go back to and see if the committee is functioning as it was intended.

Mr. Farrar stated he believes the first thing that needs to be done is to ask staff, "Is the County better off for knowing TPAC or not?" And the staff does not need to do a decision matrix (i.e. different answers for different Council members). This would be an overall assessment of the committee.

Mr. Rush stated the work session was requested by the Transportation Ad Hoc Committee; therefore the ad hoc committee will forward recommendations to Council at the appropriate time.

Ms. Virginia Sanders stated Mr. Manning's recollection of why the TPAC was created was partially correct. The citizens of Richland County were promised that minority contractors, when possible, within the city and/or State would be utilized. Another thing that was promised was the unemployed citizens, especially African-American, would be hired for the projects. She stated she has requested where citizens can go to sign up for these jobs and how the contractors go about posting for these positions.

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Mr. Rush stated from a Council standpoint, the question is, "What were the parameters established?" There were contradictory reports given in the community, so the baseline needs to be established before moving forward.

Mr. Livingston stated there was a strong push for small, local businesses and to include the minorities, as much as possible. It would be disingenuous to say the County did not make a strong effort to do that by formulating the ordinance that was approved. The County is now being challenged on that ordinance.

### **ADJOURNMENT**

The meeting adjourned at approximately 4:30 PM.

The Minutes were transcribed by Michelle M. Onley, Deputy Clerk of Council