


## ORDINANCES & RESOLUTIONS

S.C. Municipal Clerks & Treasurers  
Institute  
Session 3A

September 2024

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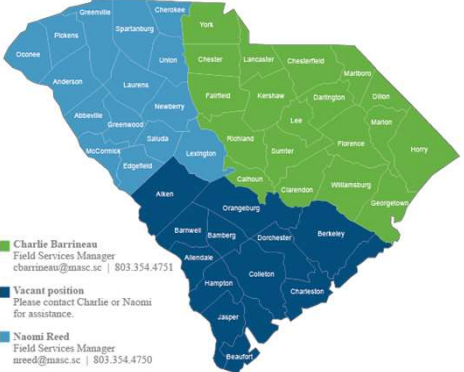
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■ Vacant position  
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### Methods of Official Council Action

- Municipal councils may act by ordinances or by resolutions, see Sections 5-7-30 and 5-7-160.
- A frequent question for cities is deciding whether to use an ordinance or a resolution.
- Basic Rule: If state law does not require use of an ordinance, then council can choose to use either.
- In general, the decision should be based on the intended duration and expected impact of the proposed action.
- Permanent actions, as well as the passage of laws or regulations, generally require an ordinance.




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### Primary Differences

**Ordinance:** A law or binding regulation made by a municipality or other local authority.

- Ordinances can be used to enact laws, adopt policies and rules with broad applicability, or take actions with significant impact and extended duration.

**Resolution:** A formal expression of the opinion, will, or intent of the governing body.

- Resolutions are usually adopted in written form to preserve documentation of Council's opinion, will, or intent.




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### Codification and Consistency

- Ordinances must be codified, indexed, printed, and maintained in a current form; reflect all amendments or repeals; and be available for public inspection at reasonable times. See Section 5-7-290.
- Ordinances and resolutions must be consistent with the constitutions and the general laws of South Carolina and the United States.




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### Adoption of Resolutions

- Adoption of a resolution requires a single vote of council.
- In substance, there is little or no difference in effect between a written resolution and a verbal motion approved by council.
- But, a written resolution helps clarify the action taken and avoids confusion on the motion.
- The policy or position expressed in a resolution is generally considered to have a limited duration because it can be changed at any time by a single vote of council.




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### Enactment of Ordinance

- Ordinances must be introduced in writing and “in the form required” for final enactment. This requirement is not as clear as it seems and may require reference to local laws.
- Ordinances must be read at least twice on two separate days with at least six days between each reading.
- Local rules of procedure may call for three readings or for other additional steps (e.g., public hearings). If so, council must follow the local requirements.




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### Equal Dignity Rule

- Any changes to an ordinance – amendment, moratorium, repeal – must be accompanied by the same “dignity” of procedure.
- Thus, amending an ordinance or adopting a moratorium that suspends application of an ordinance requires a new ordinance, with two readings.
- Public hearing and notice requirements for the original action present a difficult question. For example, what about amending the budget?




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### Acts that Always Require an Ordinance

- Under the general law, Section 5-7-260, an ordinance is required to:
- Adopt or amend an administrative code.
  - Establish, alter, or abolish any municipal department, office, or agency.
  - Provide for a fine or other penalty or establish a rule or regulation in which a fine or other penalty is imposed for violations.
  - Adopt budgets or levy taxes.
  - Grant, renew, or extend franchises.
  - Authorize the borrowing of money.
  - Sell, lease, or contract to sell or lease any lands of the municipality.




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## Acts that Always Require an Ordinance

Other specific laws also may require an ordinance, for example to:

- Annex property, Sections 5-3-150 and § 5-7-300.
- Set salaries for council, Section 5-7-170.
- Conduct municipal elections, Section 5-15-20.
- Adopt a comprehensive plan, zoning ordinance, or land development regulations, Sections 6-29-310 *et seq.*
- Adopt standard codes, Sections 5-7-280 and 6-9-60.
- Adopt council rules of procedure, Section 5-7-270.
- Adopt procurement ordinances, Section 11-35-50.




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## Elements of an Ordinance

- Numbering according to a consistent and convenient scheme.
- Title or caption.
- Preamble, which usually contains the “whereas” clauses.
- Ordination clause, the language actually ordaining the substantive provisions.
- Substantive provisions.
- Severability clause, if desired.
- Effective date, if necessary.
- “Approval as to form” by local attorney, if required.
- Signatures; local law often has requirements for the signing of ordinances. Some municipalities require all members of council; some require Mayor and Clerk only. What if someone refuses to sign?




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## Drafting Ordinances

- Today’s technology and the Internet makes research and drafting easier
- But be careful – internet topic searches will produce national results.
- You must consider differences in state laws that may invalidate use of out-of-state ordinances in South Carolina.
- Ordinarily, the better approach is to look at similar municipalities in South Carolina.




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## On-Line Municipal Codes

A helpful tool is to access online municipal codes, which will allow you to research and use all or portions of ordinances from peers to incorporate within your draft ordinance.

Examples of online code libraries are:

- Municipal Code Corporation, which lists the codes of over 80 municipal and county clients in South Carolina (<http://www.municode.com/Library/SC>)
- American Legal Publishing, which lists the codes of approximately 20 municipal and county clients in South Carolina (<http://www.amlegal.com/library/sc/index.shtml>)




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## Drafting Tips

- **Understand the Legal Authority.** Ensure the ordinance falls within your legal authority. Cite any state laws pursuant to which the ordinance is enacted (e.g., planning act, stormwater act).
- **Define the Purpose and Scope.** Clearly state the purpose of the ordinance at the outset, explaining the problem it seeks to address and the goals to be achieved.
- **Use Clear and Precise Language.** Avoid jargon or overly complex language. Write in plain, straightforward terms to ensure that both the public and enforcement officials can easily understand the ordinance's provisions.




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## Drafting Tips

- **Include Definitions.** Provide clear definitions for key terms used in the ordinance to avoid ambiguity.
- **Structure Logically.** Organize the ordinance in a logical structure with clear sections, such as title, authority, definitions, general provisions, enforcement, penalties, and effective date.
- **Incorporate Penalties and Remedies.** Define the penalties or remedies for violations, such as fines, fees, or other legal consequences. Ensure penalties are reasonable and appropriate for the nature of the violation.




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### Note: “Whereas” Clauses

- Why have one or more whereas clauses? Isn't this just legalese?
- The preamble is the key to understanding the ordinance and can explain the Council's purposes.
- The whereas clauses can contain factual information supporting Council's actions – studies, data, investigations, reports.
- Most importantly, the whereas clauses create the “legislative record” – the findings of fact to which a court will almost always defer. Consider public purpose, fair value, adequate notice, etc.



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### Validity of Ordinances

A local ordinance is a legislative enactment and is presumed constitutional. The burden of proving the invalidity of a local ordinance rests with the party who is challenging it.

Only a court may declare an ordinance invalid.

For an ordinance to be found valid:

- It must have been enacted by a local governing body with the authority to do so.
- It must not conflict with state or federal law.



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