

The information provided here is for informational and educational purposes and current as of the date of publication. The information is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

**State Law (and Beyond)**

SC Municipal Clerks and Treasurers Institute  
January 30, 2025

Presented by Sara Weathers, Associate General Counsel

**MASO** Municipal Association of South Carolina

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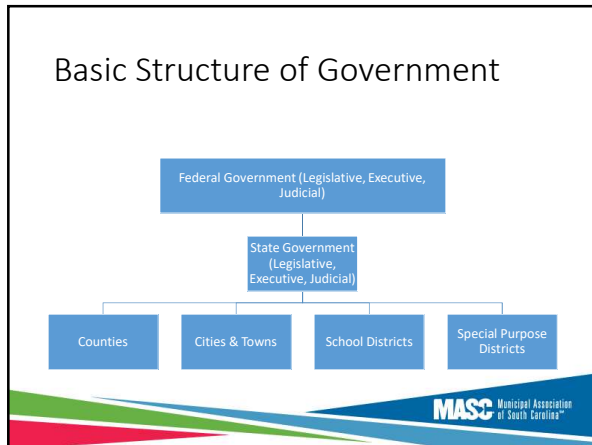
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**Separation of Powers**

- Government powers are separated both horizontally (among legislative, executive, and judicial branches) and vertically (among federal, state, and local governments).
- Remember that even cities and towns have a horizontal separation of powers between executive (mayor or manager), legislative (council), and judicial (court system).
- The council form of government is unusual in not having a separate executive.

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### Federal Government: Enumerated Powers

- U.S. Constitution, Tenth Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
- What does this mean? The Federal Government has only “enumerated powers,” meaning those powers that are explicitly given by the U.S. Constitution. For example, to regulate commerce, coin money, establish post offices, declare war, and raise and support an Army and Navy.
- All other powers belong to the states.



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### State Government: Plenary Power

- This means that the South Carolina state government has “plenary power,” or power to do all things appropriate for a government.
- Of course, the state government cannot do things that would violate the U.S. Constitution or valid laws of the United States. See Article VI, Paragraph 2 of the U.S. Constitution (the “Supremacy Clause”): “This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land ... anything in the Constitution or laws of any State to the contrary notwithstanding.”



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### Local Government: Dillon’s Rule

- For many years, local governments in South Carolina were subject to Dillon’s Rule: Local government may exercise only (1) powers expressly granted by the state, (2) powers necessarily and fairly implied from the grant of power, and (3) powers crucial to the existence of local government.
- Does this sound familiar? Remind you of anything?
- Result was local government rule by the legislative delegation.



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## Local Government: Home Rule

- In 1973, the General Assembly passed substantial revisions to the 1895 South Carolina Constitution, including a new local government article, Article VIII.
- The Local Government Act, passed in 1975, is popularly known as The Home Rule Act. It is a framework of laws to implement the 1973 constitutional changes.
- Now, **general law** establishes the structure, organization, powers, duties, functions and responsibilities of municipalities.
- See S.C. Code § 5-7-30 for the basic powers of cities and towns.



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## Limits on Home Rule

- In theory, Home Rule means that cities and towns have significant local authority. But there are limits.
- **Preemption** (discussed further below). The State can always pass laws that override or prevent local action.
- **Setting Aside**. Article VIII, Section 14 of the State Constitution says that local governments "shall not set aside ... criminal laws and the penalties and sanctions for the transgression thereof."
- **Public Purpose**. All local acts and expenditures must serve a public purpose.
- **Municipal Purpose**. All local acts and expenditures must be consistent with the purposes of municipal government – which, for example, does not include public education.



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## Constitutional Limitations

- **Due Process**. The government cannot deprive of a person of life, liberty, or property without due process – which almost always requires notice and an opportunity to be heard.
- **Equal Protection**. The government cannot deny equal protection of the laws to all people. When a government makes a distinction between people, the court will use strict scrutiny for suspect classes (race, religion, national origin, and alienage); intermediate scrutiny for quasi-suspect classes (gender, legitimacy); and ordinary scrutiny for everything else.



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### Constitutional Limitations

- **First Amendment.** The government cannot make a law establishing a religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble ....
- Religious Establishment and Free Exercise. For example, can a city or town make a grant to a church?
- First Amendment Audits.



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### Federal and State Preemption

- Federal law may preempt both state and local law; the standards are well established.
- State law may preempt local law; in recent years, the South Carolina Supreme Court said that the analysis for state preemption is the same as it is for federal preemption.



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### Single Standard for Preemption

- Federal law may preempt a state law as follows: (1) Congress may explicitly define the extent to which it intends to preempt state law (**express preemption**), (2) Congress may indicate an intent to occupy an entire field of regulation (**implied field preemption**), or (3) federal law may preempt state law to the extent the state law actually conflicts with the federal law, such that compliance with both is impossible or the state law hinders the accomplishment of the federal law's purpose (**implied conflict preemption**).
- After *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 629 S.E.2d 624 (2006), this is also the standard for state preemption.



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### Express Preemption

- Express preemption occurs when the General Assembly declares in express terms its intention to preclude local action in a given area.
- For example, see **SECTION 23-31-510**, “No governing body of any county, municipality, or other political subdivision in the State may enact or promulgate any regulation or ordinance that regulates or attempts to regulate ... the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of these things ....”




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### Implied Field Preemption

- Implied field preemption arises when the law at issue does not expressly preempt action by subordinate lawmaking authorities, but expresses a clear intent that the law fully occupy the field of permissible legal action.
- “An ordinance is preempted under implied field preemption when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity.”




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### Implied Field Preemption Example

*Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 694 S.E.2d 213 (2010). The City of Myrtle Beach passed a helmet ordinance that required approved helmets and eyewear for motorcyclists. The Court found that the state regulation of motorcycle helmets in S.C. Code §§ 56-5-3660 and 56-5-3670 (only riders under age twenty-one must wear a protective helmet and eyewear) preempted the ordinance. “[T]he ordinance may not stand as the need for uniformity is plainly evident ... Were local authorities allowed to enforce individual helmet ordinances, riders would need to familiarize themselves with the various ordinances in advance of a trip ... Riders opting not to wear helmets or eyewear in other areas of the state would be obliged to carry the equipment with them if they intended to pass through a city with a helmet ordinance. Moreover, local authorities might enact ordinances imposing additional and even conflicting equipment requirements. Such burdens would unduly limit a citizen’s freedom of movement throughout the State.”




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### Implied Conflict Preemption

- “Implied conflict preemption occurs in one of two ways – either where compliance with both federal and state regulations is physically impossible or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Priester v. Cromer*, 401 S.C. 38, 44, 736 S.E.2d 249, 252 (2012).
- Sometimes called “obstacle” or “frustration-of-purpose” preemption.




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### Implied Conflict Preemption Example

- *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 462 (2021). Budget proviso 1.108 provided: “No school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask at any of its education facilities. This prohibition extends to the announcement or enforcement of any such policy.” City of Columbia passed an ordinance requiring facemasks in all K-12 public schools. Attorney General brought declaratory judgment action. “Proviso 1.108 preempts the ordinances because compliance with both is impossible. Moreover, even in the absence of an express conflict, the ordinances cannot stand, for the ordinances frustrate the purpose of the proviso and are therefore preempted.”




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### Summary: Valid Acts and Expenditures of Local Government

- Does your city or town have the Home Rule power to take the act or make the expenditure in question?
- Does it serve a public purpose?
- Does it serve a municipal purpose?
- Does it violate the United States or South Carolina Constitutions?
- Has it been preempted by federal or state law?




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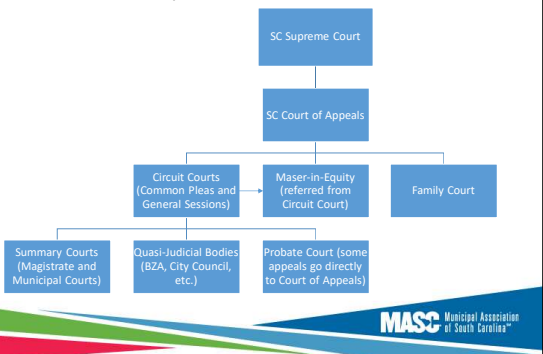
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## The Court System




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## Unified Judicial System

- Around the same time as the Home Rule amendments, the General Assembly standardized the court system
- Previously, there were dozens of separate courts within the counties, each created by special legislation.
- In the late 1970s, the court system was combined into a “unified judicial system” under general law, with all courts having standard duties, powers, and structures.
- The summary courts are where we operate – these are the Magistrate Court and the Municipal Court.




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## Municipal Courts

- **SECTION 14-25-5. Establishment of municipal courts by ordinance; facilities for courts; use of magistrates court by municipality.** (a) The council of each municipality in this State may, by ordinance, establish a municipal court, which shall be a part of the unified judicial system of this State, for the trial and determination of all cases within its jurisdiction.... (c) Any municipality may prosecute any of its cases in any magistrate court in the county in which such municipality is situate upon approval by the governing body of the county.
- **SECTION 14-25-45. Powers, duties, and jurisdiction of municipal courts.** Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.




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## Ensuring Consistency with State and Federal Laws

- There are a wide array of resources available today to make finding and interpreting federal law, state law, and court opinions a much easier task.
- These resources also make preparing recommendations for council and writing ordinances, policies, and new business practices much easier.



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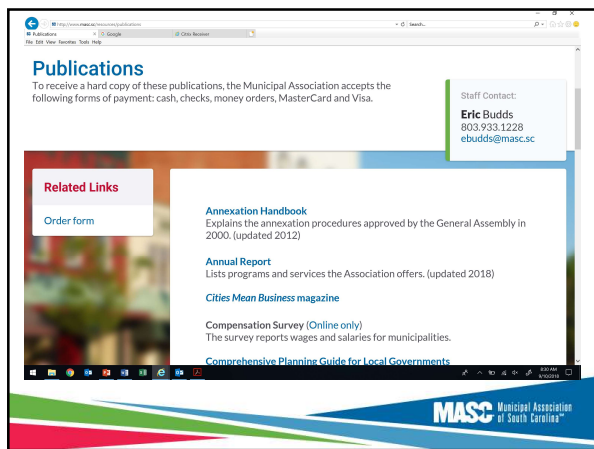
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## Handbook for Municipal Officials

- We recommend that this be your first stop when researching a municipal issue.
- It is a user-friendly guide organized into subject matter chapters, with a comprehensive index.
- The .pdf copy features a table of contents with clickable links.




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## Where to Find the Law: SC General Assembly Webpage

- Current versions of the South Carolina Constitution and South Carolina Code of Laws.
- State regulations.
- Pending legislation (by number, sponsor, subject, etc., or by full-text search).
- Archives of Act lists going back to 1980.
- Information on legislators.
- [www.scstatehouse.gov](http://www.scstatehouse.gov)




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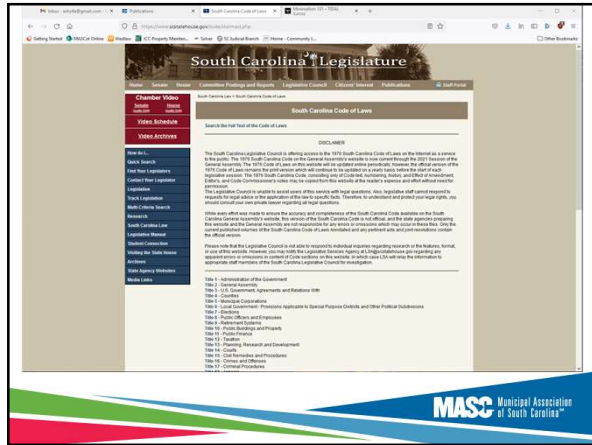
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## Important Titles of the S.C. Code

- Title 5 – Municipal Corporations. This title includes most of the provisions directly relating to cities and towns, particularly in Chapter 7 (General Structure, Organization, Powers, Duties, Functions, and Responsibilities of All Municipalities) and Chapter 15 (Nominations and Elections for Municipal Officers).
- Title 6 – Local Government - Provisions Applicable to Special Purpose Districts and Other Political Subdivisions. Mostly about SPDs, but has a number of provisions relevant to cities and towns.
- Title 7 – Elections.
- Title 8 – Public Officers and Employees. This title includes the South Carolina Ethics Act, in Chapter 13.




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## Where to Find the Law: Court Opinions and Orders

- When the facts are in dispute or the parties cannot agree on the interpretation of the law, the matter will usually end up in court.
- Recall the court system diagram above; lawsuits normally start in the Circuit Court. Rulings at the Circuit Court are not published and do not establish precedent.
- Only decisions of the Court of Appeals and Supreme Court are published and establish mandatory precedent.




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## Where to Find Court Opinions

- Opinions and Orders of the Court of Appeals and the Supreme Court can be found on the website of the S.C. Judicial Branch, [www.sccourts.org](http://www.sccourts.org).
- Select the Opinion/Order tab, then the Published Opinions tab, and then the court where the case was heard.
- You can also use FindLaw, which has state-specific resources: <https://caselaw.findlaw.com/south-carolina.html>.




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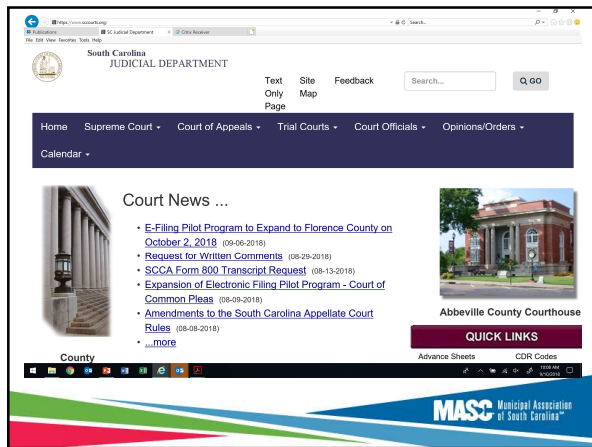
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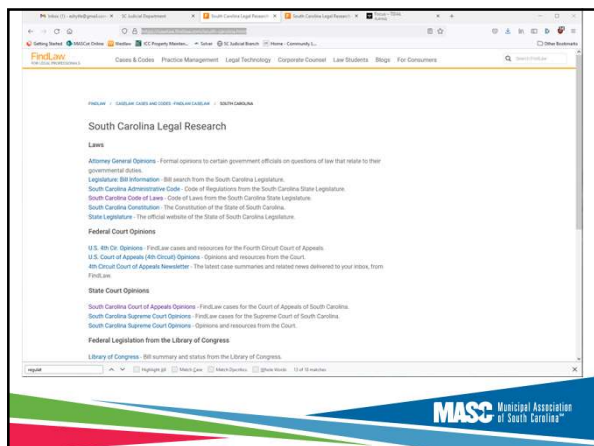
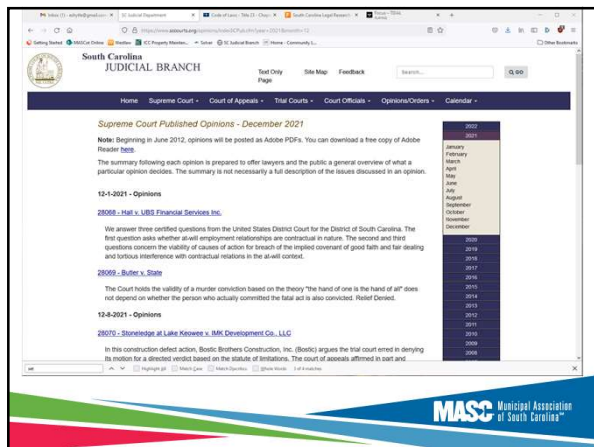
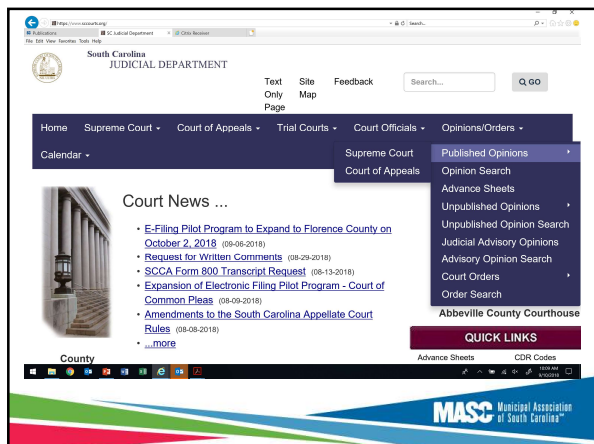
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## Interpreting State Law

- To comply with State Law, you must understand the requirements of the law.
- The city or town attorney can help. The council can appoint a city or town attorney, as well as a city or town judge. "The city council may elect or appoint a municipal attorney and a judge or judges of the municipal court, whose duties shall be as prescribed by law. No mayor or councilman shall be so elected or appointed to serve as municipal judge during his term of office." S.C. Code § 5-7-230.
- By statute, the Governor, members of the General Assembly, and other public officials are entitled to legal advice from the S.C. Attorney General's Office




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## S.C. Attorney General Opinions

- The Attorney General's office frequently issues opinions on matters of state and local government law.
- For example, on January 14, 2025, the Attorney General issued an "Opinion addressing a mayor's authority to hire persons for administrative positions without council approval and council's authority to amend the municipality's budget in response in a mayor-council form of municipal government."
- These opinions are useful, but they are *persuasive* rather than *mandatory* authority. This means they are not binding on the parties or the courts, but they are given deference in interpreting the laws.




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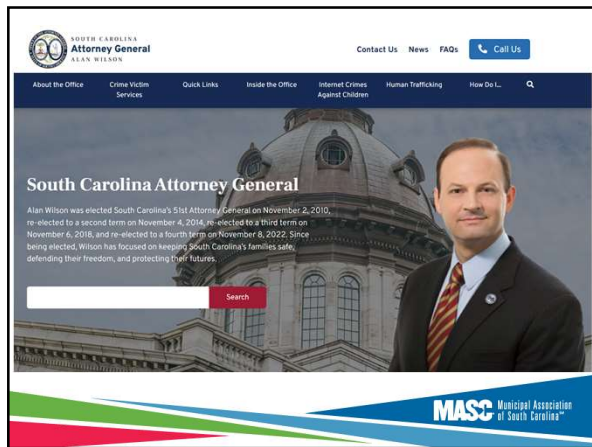
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The screenshot shows the website for the South Carolina Attorney General, Alan Wilson. The page is titled "Opinions Archive" and includes a search bar, filters for topic and year, and a MASCO logo at the bottom.

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The screenshot shows an official letter dated January 14, 2023, addressed to Mayor M. Balhasson. The letter discusses municipal government structure and includes a list of questions for the mayor to answer regarding town administrator appointments and budget approval.

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### Methods of Official Council Action

- State law empowers municipal councils to act by ordinances and 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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## 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 5-15-10.
- 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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## Drafting Ordinances

- Today's technology and the Internet makes research and drafting easier
- But be careful – internet topic searches and AI 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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