

Forms and Powers of Municipal Government

**An Elected Official's Guide from the
Municipal Association of South Carolina**

All municipal governments in South Carolina operate under one of three forms of government: mayor-council, council or council-manager.

This handbook outlines the roles and responsibilities of council, mayor and manager/administrator according to the form of government. It also outlines the powers entrusted to municipal governments regardless of their form of government.



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April 2010

Cost: \$5/Municipal officials; \$10/others

Home Rule

South Carolina took its first step toward Home Rule for local government in 1967 with the appointment by the legislature of a constitutional study committee. Lt. Governor John C. West, chair of the committee, addressed the 1967 Annual Meeting of the Municipal Association of South Carolina. West said the state constitution of 1895 was ten times longer than the US Constitution and had been amended more than 300 times. However, the state constitution had basically omitted any reference to local government. He reported the study committee was making a thorough review of the entire constitution and would recommend necessary changes and the best method to make them.

In 1972, the legislature adopted the committee's recommendations and put the proposed constitutional revisions to a vote of the people in the 1972 General Election. Among the revisions suggested was the addition of a new article on local government, Article VIII.

South Carolina voters approved the revisions, and the legislature approved the Home Rule Act, Act 283 of 1975. The Act was codified for municipal government in Title 5 of the South Carolina Code of Law.

Incorporation

The new constitution called for the General Assembly to provide the criteria and the procedures for municipal incorporations. Chapter 1 of Title 5 sets of the state's incorporation procedures.

Once incorporated, the secretary of state sends the municipality a certificate of incorporation. S.C. Code 5-1-10.

The municipality automatically forfeits the certificate if its population falls below 50 residents. In addition, the secretary of state will cancel the certificate if a municipality neither performs municipal services nor collects taxes or other revenue. The certificate will also be cancelled if the municipality fails to hold an election for four years. S.C. Code 5-1-100.

Consolidation

After 1973, the state constitution authorized consolidation of counties, municipalities and other political subdivisions, S.C. Constitution Article VIII, Section 12. The first legislation attempting to implement this provision was in 1992. Because the law contains conflicts and provisions of questionable validity, no consolidations have been accomplished. S.C. Code 4-8-10, et. seq. The consolidation of two or more municipalities is authorized in S.C. Code 5-3-30 and S.C. Code 5-3-40.

Forms of Government

Although the revised constitution allowed the legislature to approve by general law up to five forms of government for municipalities, the General Assembly authorized just three in the Home Rule Act. S.C. Code 5-5-10.

- mayor-council form
- council form
- council-manager form

In addition, the Home Rule amendments required the General Assembly to provide two or more optional procedures for framing and adopting a municipal charter setting forth the organization, powers and functions of a particular municipality, S.C. Constitution Article VIII, Section 11. The General Assembly has never adopted a statute implementing this true Home Rule provision.

All South Carolina municipalities must operate under one of these three forms. When Home Rule passed in 1975, municipalities had to select one of the specified three forms of government "most nearly corresponding to the form in effect in the particular municipality on March 1, 1974" unless they adopted a new form by referendum after March 1, 1974 but before June 1, 1975.

While council's legislative functions are the same for all three forms, state law or council policy specifically authorizes who performs the executive and administrative functions under each form.

Changing form

An election to change the form of municipal government can be called for by a certified petition of 15 percent of the qualified electors or by an ordinance of council. S.C.

Code 5-5-20. A municipality may hold an election to change its form of government only every four years. Under the Voting Rights Act, the US Department of Justice must pre-clear implementation of an election result in favor of changing the form of government. Following the election, the municipality must notify the secretary of state's office if the form of government changes. S.C. Code 5-5-30.

Requirements for all Forms of Government

The General Assembly provides for the powers, duties, functions and responsibilities of municipalities by general law. S.C. Constitution Article VIII, Sections 8, 9. The state constitution prohibits local and special laws. S.C. Constitution Article VIII, Sections 7, 10.

Council must meet at least once in every month. It may hold special meetings on the call of the mayor or a majority of council. S.C. Code 5-7-250.

Council must adopt rules of procedure by ordinance. S.C. Code 5-7-250 and S.C. Code 270. Meeting procedures must not conflict with the Freedom of Information Act.

The Freedom of Information Act requires written public notice of regular council meetings at the beginning of each calendar year, requires posting of a 24-hour notice for all special and rescheduled meetings, and requires giving notice to the media and other parties who request notice. Council may only take formal actions during a public meeting. S.C. Code 30-4-60 and S.C. Code 70. The municipality must take minutes of all public meetings and preserve them as public records. Minutes of executive sessions are not required. S.C. Code 30-4-90.

Council must follow all statutory requirements for form, method of introduction, and adoption of ordinances and resolutions. S.C. Code 5-7-260 and S.C. Code 270.

Statutory Powers of the Mayor

Council Form

This form of government has five, seven or nine members, including a mayor. The mayor presides over meetings (by tradition), performs ceremonial duties, calls special meetings, designates a temporary judge, performs administrative duties (only if authorized by council), and acts and votes as a member of council. The mayor has no additional statutory authority beyond that of other councilmembers.

Mayor-Council Form

This form of government includes a mayor and no less than four councilmembers. The mayor presides over meetings. S.C. Code 5-9-30(3), and calls special meetings. He designates a temporary judge, acts as chief administrative officer, and appoints and removes employees subject to personnel rules adopted by council.

The mayor supervises departments, acts and votes as a member of council, and ensures the faithful execution of laws. In addition, the mayor prepares and submits a budget and capital program to council, makes an annual financial report to the public and council, and reports to the council on the operation of departments.

Council-Manager Form

This form of government is comprised of a mayor and four, six or eight councilmembers. The mayor presides over meetings (by tradition), calls special meetings, designates a temporary judge, and acts and votes as a member of council. The mayor has no administrative powers and has no additional statutory authority beyond that of other councilmembers.

Statutory Powers of Council

Council Form

In the council form of government, the council has all legislative, policy and administrative power. Council establishes departments and prescribes functions, may hire an administrator to assist council, may appoint an officer to administer departments subject to council direction, investigates departments, appoints a clerk, attorney and judge, elects the mayor pro tempore (S.C. Code 5-7-190) and prepares and adopts a balanced budget.

Mayor-Council Form

In the mayor-council form of government, the council establishes departments, prescribes functions and may employ an administrator to assist the mayor. The council also investigates departments, appoints a clerk, attorney and judge, elects the mayor pro tempore and adopts a balanced budget.

Council-Manager Form

In the council-manager form of government, the council has all legislative and policy powers. Council employs a manager, attorney and judge, elects the mayor pro tempore, establishes departments and functions, and adopts a balanced budget. Also, the council authorizes bond issues, investigates departments, adopts plats and the official map, provides for an annual audit, exercises general police powers, appoints boards and commissions with advice of the manager, appoints a temporary manager (if necessary) and may require surety bonds.

The specific statutory powers listed for each form of municipal government primarily reflect the administrative differences between the forms. General powers applicable to all forms exist as well.

Figure 1 Statutory Powers of the Mayor

Council Form	Mayor-Council Form	Council-Manager Form
<p>Structure</p> <ul style="list-style-type: none"> Five, seven or nine members, including mayor <p>Mayor</p> <ul style="list-style-type: none"> Presides over meetings (by tradition) Calls special meetings. S.C. Code 5-7-250 Designates temporary judge. S.C. Code 14-25-25 Performs administrative duties only if authorized by council. S.C. Code 5-11-40(b) Acts and votes as member of council. S.C. Code 5-11-30 Mayor has no additional statutory authority beyond other council members 	<p>Structure</p> <ul style="list-style-type: none"> Mayor and four or more council members <p>Mayor</p> <ul style="list-style-type: none"> Presides over meetings. S.C. Code 5-9-30(3) Calls special meetings. S.C. Code 5-7-250 Designates temporary judge. S.C. Code 14-25-25 Acts as chief administrative officer. S.C. Code 5-9-30 Appoints and removes employees subject to personnel rules adopted by council. S.C. Code 5-9-30(1) Supervises departments. S.C. Code 5-9-30(2) Acts and votes as member of council. S.C. Code 5-9-30(3) Insures faithful execution of laws. S.C. Code 5-9-30(4) Prepares and submits budget and capital program to council. S.C. Code 5-9-30(5) Makes annual financial report to public and council. S.C. Code 5-9-30(6) Reports to council on operations of departments. S.C. Code 5-9-3(7) 	<p>Structure</p> <ul style="list-style-type: none"> Mayor and 4, 6 or 8 members <p>Mayor</p> <ul style="list-style-type: none"> Presides over meetings (by tradition) Calls special meetings. S.C. Code 5-7-250 Designates temporary judge. S.C. Code 14-25-25 Acts and votes as member of council. S.C. Code 5-11-30 Mayor has no administrative powers. S.C. Code 5-13-90 Mayor has no additional statutory authority beyond other council members

Powers of Administrator or Manager

Council Form

Council may appoint an administrator to assist council. The administrator only has the authority delegated by council. Council may appoint an officer of the city, other than a member of council (S.C. Code 5-7-180) to administer departments.

Mayor-Council Form

Council may appoint an administrator to assist the mayor. The administrator has only the authority delegated by the mayor and the council.

Council-Manager Form

The manager is the chief executive and head of the administrative branch. He appoints, sets salaries and removes employees at will, including the clerk. The manager also prepares and administers the annual budget, makes financial reports, advises council on

departments and appointments, and designates a manager during temporary absence. See Figure 3, on page 6.

Powers for All Forms of Government

Municipalities are not sovereign bodies with inherent powers. They are political subdivisions of the state with those powers delegated by state law, fairly implied from state law and not inconsistent with the state constitution and state law.

The Home Rule Act did not change all prior statutes dealing with municipal and county governments, but it extensively broadened the powers of counties and mandated that local government powers be construed liberally rather than strictly. A general grant of power is now construed to include those powers fairly

Figure 2 Statutory Powers of the Council

Council Form	Mayor-Council Form	Council-Manager Form
<ul style="list-style-type: none"> • Has all legislative, policy and administrative power. S.C. Code 5-11-30, S.C. Code 5-7-160 • Establishes departments and prescribes functions. S.C. Code 5-11-40(a) • May hire administrator to assist council. S.C. Code 5-11-40(a) • May appoint officer to administer departments subject to council direction. S.C. Code 5-11-40(b) • Investigates departments. S.C. Code 5-7-100 • Appoints clerk, attorney and judge. S.C. Code 5-7-220, S.C. Code 230 • Elects mayor pro tempore. S.C. Code 5-7-190 • Prepares and adopts a balanced budget. S.C. Code 5-7-260, S.C. Code 5-11-40(c), S.C. Code 12-43-296, S.C. Const. Art. X, Sec. 7 	<ul style="list-style-type: none"> • Has all powers not otherwise provided by law. S.C. Code 5-7-160 • Establishes departments and prescribes functions. S.C. Code 5-9-40 • May employ administrator to assist mayor. S.C. Code 5-9-40 • Investigates departments. S.C. Code 5-7-100 • Appoints clerk, attorney and judge. S.C. Code 5-7-220, 230 • Elects mayor pro tempore. S.C. Code 5-7-190 • Adopts a balanced budget. S.C. Code 5-7-260, S.C. Code 5-9-40, S.C. Code 12-43-296, S.C. Const. Art. X, Sec. 7 	<ul style="list-style-type: none"> • Has all legislative and policy powers. S.C. Code 5-11-30 • Employs manager, attorney and judge. S.C. Code 5-7-220, S.C. Code 230, S.C. Code 5-13-30(1) • Elects mayor pro tempore. S.C. Code 5-7-190 • Establishes departments and functions. S.C. Code 5-13-31(2) • Adopts a balanced budget. S.C. Code 5-13-30(3), S.C. Code 12-43-296, S.C. Const. Art. X, Sec. 7 • Authorizes bond issues; investigates departments, adopts plats and official map; provides for annual audit; exercises general police powers; appoints boards. S.C. Code 5-13-30 • Appoints temporary manager. S.C. Code 5-13-80 • May require surety bonds. S.C. Code 5-13-60

Note: The specific statutory powers listed for each form of municipal government primarily reflect the administrative differences between the forms. General powers applicable to all forms exist as well.

Powers for All Forms of Government

implied and not prohibited by the Constitution or in conflict with general law. S.C. Constitution Article VIII, Section 17; S.C. Code 5-7-10.

All powers of a municipality are vested in the council, except as otherwise provided by law. S.C. Code 5-7-160. The council is the municipality for purposes of exercising the powers granted by state law. *Mason v. Williams*, 194 S.C. 290, 9 S.E.2d 537 (1940).

Municipal powers are referred to in various ways according to the nature of the authority and procedure for exercising them.

Legislative

The municipal council is a legislative body and is the only municipal body authorized to enact ordinances, adopt resolutions and establish policies. Only council can exercise legislative power. Council may not delegate or contract away this power.

Executive

The exercise of executive functions and general control of municipal operation varies with the form of government. In the council form, council exercises executive functions, unless the functions are delegated to the mayor or an administrator employed by council to assist the council. S.C. Code 5-11-40. In the mayor-council form, the mayor is the chief executive with powers granted by statute. S.C. Code 5-9-30. In

the council-manager form, the manager is the chief executive officer and head of the administrative branch of the municipal government. The manager has specific powers granted by statute which council cannot change or abolish. S.C. Code 5-13-90.

Judicial

Only municipal courts can exercise judicial powers. The courts are in the unified court system under the administrative control of the chief justice of the South Carolina Supreme Court. In all forms of municipal government, council appoints judges of municipal courts. The council may contract with county council to provide a magistrate as judge in the municipal court.

Quasi-Judicial

Building and zoning boards of appeals have powers authorized by statute. The boards are quasi-judicial in that they involve the conduct of a hearing, introduction and consideration of evidence and application of law to the evidence to reach a decision. This process is similar to the judicial functions of courts. An appeal from a board decision is filed in circuit court.

Administrative

Day-to-day implementation of policies of council involves administrative duties that vary with the form of government in the same manner as executive functions (council, mayor, manager or administrator).

Figure 3 Statutory Powers of Administrator or Manager

Council Form	Mayor-Council Form	Council-Manager Form
<ul style="list-style-type: none"> • May be appointed by council to assist council. S.C. Code 5-11-40(a) • Has only authority delegated by council. S.C. Code 5-11-40 • Council may appoint an officer of the city, other than member of council to administer departments. S.C. Code 5-7-180, S.C. Code 5-11-40(b) 	<ul style="list-style-type: none"> • May be appointed by council to assist mayor. S.C. Code 5-9-40 • Has only authority delegated by mayor and council. S.C. Code 5-9-40 	<ul style="list-style-type: none"> • Is chief executive and head of administrative branch. S.C. Code 5-13-90 • Appoints, sets salaries and removes employees at will, including clerk. S.C. Code 5-13-90(1), S.C. Code 5-7-220 • Prepares and administers annual budget. S.C. Code 5-13-90(2) • Makes financial reports. S.C. Code 5-190(3), (4) • Advises council on departments and appointments. S.C. Code 5-13-30 • Designates manager during temporary absence. S.C. Code 5-13-80

Discretionary

Discretionary powers involve the exercise of judgment by the council, manager, administrator or public employee with delegated authority. An appointment or discharge of an at-will employee is a discretionary function.

Ministerial

Duties performed as required by law without exercise of independent judgment are referred to as ministerial duties. Issuing a license or permit to an applicant who meets all requirements of the applicable law is an example of a ministerial duty.

Contractual

A municipality and another party may be bound by agreement under contract laws in matters such as purchasing goods and services; buying, selling or leasing land; contracting for construction projects; providing services and franchises. Council may delegate the power to contract unless approval is required to be given by ordinance (e.g., sale or lease of property and franchise for use of streets).

Police

This term refers to all powers to protect and promote health, safety, morals and welfare. Adopting and enforcing health and safety codes; zoning and land use regulations; licensing; and adopting ordinances that provide penalties for offenses are done under general and specific statutory grants of police powers.

General and specific grants of power are contained in the Home Rule Act (Title 5, Chs. 1-17) and other statutes in the South Carolina Code of Laws. Most municipal powers predate the 1975 Home Rule Act (e.g., Title 5, Chs. 19-39). Although the Constitution is generally construed as a document limiting powers of the General Assembly, rather than granting powers, it does contain self-executing authority for municipalities to own and operate public utility systems - a power which the General Assembly cannot take away. S.C. Constitution, Article VIII, Section 16.

General and specific statutory municipal powers applicable to all forms of municipal government include the following powers.

Elections

Regular and Special Elections

S.C. Code 5-15-10, et seq., and Title 7 govern municipal elections. At large and district methods of election may be changed by referendum. S.C. Code 5-15-30. The mayor is always elected at large. The terms of office (two or four years), type of election (partisan or non-partisan), the times for filing and times for primaries, elections and runoff elections are set by ordinance. A three-member election commission appointed for six-year terms conducts elections. S.C. Code 5-15-90. With the consent of the county, a municipality may transfer authority to conduct all or part of the municipal election to the county elections commission. S.C. Code 5-15-145. Before implementation, changes affecting voting rights must be submitted for clearance by the U.S. Department of Justice under Section 5 of the Voting Rights Act and 28 CFR §51.26, et seq.

Referendum

A referendum is a special election to vote on a particular question. The Constitution and statutes require a referendum for certain actions, such as incurring general obligation debt exceeding the 8 percent limit, changing the form of government, changing the number or method of election of councilmembers, purchasing or selling a utility system and granting an exclusive franchise. S.C. Code 5-7-30 authorizes advisory referenda in which council may obtain the nonbinding expression of the will of the electorate. Electors may initiate adoption of certain types of ordinances, except for the appropriation of money and the levy of taxes, by petition and referendum procedures authorized by S.C. Code 5-17-10, et seq. By case law, zoning is not a proper subject for the initiative and referendum procedure. *POn, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E. 2d 716 (2000). There is no provision in state law for a referendum to recall an elected official.

Enforcement

Law Enforcement

A municipality may appoint regular, special and reserve police officers. Municipal police officers have the powers of constables with additional duties imposed by the municipality. Police officers may exercise their powers on all public and private property within municipal boundaries and on all property owned or controlled by the municipality wherever situated. Council may contract to provide police services to any private business or public agency beyond the corporate limits and may give emergency law enforcement assistance to other municipalities. Police jurisdiction of coastal municipalities extends one mile into the water. S.C. Code 5-7-110, 120, 140 and 150; S.C. Code 23-28-20.

Fines and Penalties

Council may establish, by ordinance, fines and penalties for violating municipal ordinances not exceeding \$500 and/or 30 days imprisonment. S.C. Code 5-7-30, 5-7-260. Charges for violating ordinances may be made by arrest warrant, uniform traffic ticket or uniform ordinance summons pursuant to S.C. Code 56-7-80. Charges for violating traffic laws are made only on a uniform traffic ticket. Civil penalties for delinquent business license and property taxes may be set by ordinance. S.C. Code 5-7-300. A civil penalty not to exceed \$2000 may be imposed by a hearing officer appointed by council for violating municipal regulations for operating water treatment and wastewater facilities. S.C. Code 6-11-285.

Liens

A lien may be placed on real property for the costs of demolishing a structure pursuant to standard building and housing codes adopted by reference as authorized by S.C. Code 6-9-60. S.C. Code 5-7-80 authorizes a municipality to adopt an ordinance establishing a procedure for clearing property of unhealthy and unsightly material or conditions and provides that the cost shall become a lien collectable in the same manner as municipal taxes. Liens for sewer service charges may be enforced if procedures in S.C. Code 5-31-2040 or S.C. Code 6-15-100 are followed. However, there is no statutory authority for a municipal lien for unpaid water service charges. Assessments for street improvements or construction

of utilities constitute a lien on the property assessed. S.C. Code 5-27-340, 5-31-1560.

Municipal Court

Council may establish by ordinance a municipal court which is a part of the unified judicial system under control of the chief justice of the South Carolina Supreme Court. S.C. Code 14-25-5. Council appoints municipal judges to serve two to four-year terms with compensation fixed by council. A judge is not required to be a resident of the municipality and is not required to be a lawyer. A municipal court has the same criminal jurisdiction as a magistrate court, but it has no civil jurisdiction. S.C. Code 14-25-45. A criminal defendant may demand a trial by a jury of six people. Maximum penalties imposed for violation of municipal ordinance or state law cannot exceed \$500, imprisonment for 30 days or both. Sentences may be suspended upon conditions, including restitution or public service. Appeals go to circuit civil court. Council may appoint ministerial recorders to set bonds and to issue summonses, subpoenas, arrest warrants and search warrants. A municipal judge must certify that the ministerial recorders have received instruction in proper procedures. Ministerial recorders have no other judicial power. S.C. Code 14-25-115. A municipal judge or ministerial recorder, not council, set bonds for offenses. Council may act as jury commissioners. The State Election Commission will furnish the municipal court with a jury list comprised of the registered voters plus persons 18 years or older holding a valid driver's licenses or identification card. S.C. Code 14-25-30.

Finance

New Local Taxes and Fees

S.C. Code 6-1-310 prohibits imposing new types of local taxes after December 31, 1996, unless specifically authorized by the General Assembly. S.C. Code 6-1-70 prohibits imposing a fee or tax on the transfer of real property unless expressly authorized by the General Assembly. A municipality that enacted a real estate transfer fee prior to January 1, 1991, can continue collecting the fee and expend the funds for the intended purposes. The Budget and Control Board

is required by S.C. Code 6-1-85 to monitor the tax burden borne by each class of property and prepare a tax incidence statement to be attached to any bill or resolution that has potential to cause a shift in tax incidence to the ultimate taxpayer.

Property Taxes

S.C. Code 5-7-30 authorizes municipal taxes on real and personal property. The S.C. Constitution Article X, Section 1 requires ad valorem taxation of property to be equal and uniform in the classifications set forth in Section 1. The law provides exemptions for certain property, including property used for public, education, charitable and religious purposes [S.C. Constitution Article X, Section 3]. A municipality may adopt an ordinance exempting new manufacturing establishments, corporate headquarters, research and development facilities from all or part of the municipal taxation for not more than five years [S.C. Constitution Article X, Section 3]. A municipality may not allow exemptions from property taxes not specifically authorized by state law. Council may levy taxes for the general fund or for a specific purpose to which the revenues must be applied. S.C. Code 5-21-130. A municipality may authorize by contract for the county to assess and collect municipal taxes on motor vehicles. The taxes must be paid for a tax year determined by the date of issuance of the vehicle license tag. S.C. Code 12-37-2690. A municipality may, by ordinance, provide a procedure for collecting delinquent real and personal property taxes, adopt the statutory procedure used by counties or contract with the county or a firm to collect taxes. S.C. Code 5-7-300.

A municipality may increase its property tax millage rate for operating purposes above the previous year's rate by the average of the 12-month consumer price indices for the most recent 12-month period consisting of January through December of the preceding calendar year. In addition to this increase, the millage rate may be increased by an additional amount equal to the percentage increase in population in the previous year's population of the municipality. S.C. Code 6-1-320 (A).

Once every five years, the county or state must appraise and equalize those properties under its jurisdiction. S.C. Code 12-43-217, Supp. 1997. In the year in which a reassessment program is implemented, the new rollback millage is calculated by dividing the

prior year property tax revenues by the adjusted total assessed value applicable in the year the values derived from a countywide equalization and area assessment program. This value must be adjusted by deducting assessments added for property or improvements not previously taxed for new construction and for renovation of existing structures. S.C. Code 12-37-251(E), Supp 1997.

A 2006 amendment to the state constitution limits the increase in value of properties to a maximum of 15 percent over a five-year period. The five-year period coincides with the reassessment program.

Business License Taxes

S.C. Code 5-7-30 authorizes business license taxes on gross income. A business license fee is an excise tax on the privilege of conducting business in a municipality. It is not a sales or income tax. The municipality may charge different rates to different classes of businesses, provided it makes the classifications on a rational basis. State statutes affect some business license rates, and some businesses are exempt under state or federal law. The municipality can impose civil and criminal penalties for failure to pay when required. A municipality may revoke a license for reasons specified in the ordinance; however, revoking a license does not allow a municipality to physically close a business. S.C. Code 6-1-315 requires a positive majority vote of council to adopt an ordinance imposing a business license tax or increasing the rate of a business license tax.

State Accommodations Tax

The state imposes a 2 percent local accommodations tax and credits it to the municipality or county in which the tax was collected. S.C. Code 12-36-2630(3). The municipality must allocate the first \$25,000 and 5 percent of the balance to its general fund. Council must allocate 30 percent of the remaining balance to a special fund used for advertising and tourism promotion. The remainder must be used for tourism-related activities. S.C. Code 6-4-10. The municipal council must appoint an advisory committee to make recommendations on expenditures if more than \$50,000 is received. S.C. Code 6-4-25. This tax is not the same as the hospitality fee imposed by some municipalities under general Home Rule powers prior to December 31, 1996.

Local Accommodations Tax

The Local Accommodations Tax Act, effective July 1, 1997, S.C. Code 6-1-500, et seq. authorizes, by positive majority vote, imposing a cumulative maximum 3 percent accommodations tax in a municipality and the county. If a municipality has not imposed the maximum 3 percent, a county may not impose more than 1.5 percent within a municipality without consent by resolution of the municipal council. The tax is levied on gross proceeds from rental or charges for accommodations furnished to transients for consideration as provided in S.C. Code 12-36-920(A). The municipality must keep revenue from the tax in a separate fund and use it for tourism-related buildings, cultural, recreational or historic facilities, beach access and renourishment, roads and bridges, for access to tourist destinations, advertisement and promotions related to tourism or water and sewer infrastructure to serve tourism-related demand. In a county in which at least \$900,000 in accommodations taxes are collected annually, the municipality may use the funds for operating and maintaining the allowed uses, including police, fire protection, emergency medical services and emergency preparedness operations. S.C. Code 6-1-530. All other municipalities may use up to 20 percent of the revenue for operating and maintaining facilities that are eligible to be built with local accommodation tax funds.

Taxes exceeding 3 percent imposed prior to December 31, 1996 are not subject to the 3 percent limitation but may not be increased. S.C. Code 6-1-540. If a municipality with a local accommodations tax annexes an area of a county that had imposed a local accommodations tax, the municipality receives only the tax revenue in excess of the amount of county tax revenue for the area the 12 months preceding annexation. S.C. Code 6-1-550.

Local Hospitality Tax

The Local Hospitality Tax Act, effective July 1, 1997, S.C. Code 6-1-700, et seq. authorizes, by positive majority vote, imposing a cumulative maximum 2 percent hospitality tax in a municipality and the county. If a municipality has not imposed the maximum 2 percent, a county may not impose more than 1 percent within a municipality without consent by resolution of the municipal council. Depending on the ordinance adopted, the municipality levies

the tax on gross proceeds from the sale of prepared meals and beverages sold in establishments or sold in establishments licensed for on-premises consumption of alcoholic beverages, beer or wine. The municipality must keep revenue from the tax in a separate fund and use it for tourism-related purposes in the same manner as the local accommodations tax. The same exemption for taxes imposed prior to December 31, 1996, and annexation applies. S.C. Code 6-1-710 through S.C. Code 6-1-750.

Municipalities in counties that collect more than \$900,000 in statewide accommodations tax may use the revenue for operating and maintaining capital facilities eligible to be built with the local hospitality funds. All other municipalities may use up to 20 percent of the revenue for operating and maintaining facilities that are eligible to be built with local hospitality funds.

Capital Project Sales Tax

The Capital Project Sales Tax Act, effective July 1, 1997, S.C. Code 4-10-310, et seq., authorizes the levy of a countywide 1 percent sales and use tax by referendum. The local government must use the revenue for specific capital projects within or without the boundaries of the county, municipalities and special purpose districts in the county for a specified time not to exceed seven years. The tax applies to gross proceeds of local sales in the same manner as state sales taxes under S.C. Code Title 12. The state Department of Revenue administers and collects tax. A six-member commission (three appointed by municipalities) frames the referendum question. The tax is in addition to all other local sales and use taxes, including the 1 percent tax authorized by the Local Option Sales Tax Act, S.C. Code 4-10-10, et seq., which is also imposed countywide by referendum.

Service Charges and Fees

Municipalities are authorized to establish service charges. S.C. Code 5-7-30, 5-7-60, 6-1-330. Utility fees are often referred to as service charges computed on the quantity of service received. Some municipalities impose fire protection and solid waste service charges. The South Carolina Supreme Court has upheld road maintenance fees, property transfer fees and hospitality fees on accommodations rentals, food and beverage sales as valid service charges under Home

Rule powers. A service charge is imposed based on the theory that the payer receives some special benefit for a particular government service or program. S.C. Code 6-1-300(6).

S.C. Code 6-1-330 requires a positive majority of council to approve, after a public hearing, any new service or user fee to be imposed by ordinance. Fees imposed prior to December 31, 1996, remain in force until repealed by council. The municipality must use the fees for the services for which the fees are paid. If the revenue generated by a fee is 5 percent or more of the prior fiscal year total budget, the municipality must keep the proceeds in a fund separate from its general fund.

Development Impact Fees

The Development Impact Fee Act of 1999, S.C. Code 6-1-910, et. seq., authorizes municipalities to charge development fees to defray the capital cost of maintaining a level of public services affected by new development. The municipality must impose impact fees in accordance with this detailed Act.. S.C. Code 6-1-930(A)(1).

Franchises and Fees

The power to grant franchises for the use of public streets and public beaches and make charges for them is contained in S.C. Code 5-7-30. A franchise is the extension of a privilege for use of public property for a purpose for which the franchisee does not have a legal right in the absence of the governing body's consent.

A franchise creates a contractual relationship that either party may enforce and that cannot be altered unilaterally. The franchise fee is akin to rental for use of the public property and is not a tax. Therefore, it may be negotiated and may be at a higher rate than a business license tax.

The municipality can base the franchise fee on gross income, the linear feet of line in the streets or any other reasonable basis. A franchise must be granted by ordinance. S.C. Code 5-7-260. S.C. Constitution Article VIII, Section 15 prohibits the General Assembly from passing laws granting rights to construct or operate utility lines or facilities in public streets or property without consent of the governing body. That consent is customarily given by franchise.

Typical franchises for use of public streets include those for electric power and gas lines. They should have a fixed term of years. A franchise cannot be required for use of private property. Franchises are nonexclusive, unless approved by referendum. S.C. Code 5-31-50, 58-27-410. Council may not grant more than one franchise for the same purpose in the same territory.

Federal and state legislation restrict the right to franchise certain communication operations.

The Telecommunications Act of 1999 established the franchise authority of municipalities regarding telecommunications companies. The Act allows municipalities to charge a franchise fee based on population. The municipality retains police powers, but the fee is the only revenue generated by the franchise.

Act 288 of 2006 implemented a new process by which cable and video service providers seek and are granted approval for providing services. S.C. Code 58-12-5 through 58-12-400. Existing cable service franchise agreements (incumbent service provider) will continue in force until they expire or a competitive cable service provider is granted a statewide Certificate of Franchise Authority and begins to offer service in the incumbent's area. At that time, the incumbent cable service provider may opt out of the existing franchise agreement and apply for a Certification of Franchise Authority.

Municipalities can charge the certificate holder the same franchise fee rate charged the incumbent service provider, if it is no more than 5 percent. A municipality may increase the franchise fee to no more than 5 percent for all service providers 45 days after the Secretary of State notifies the certificate holder of the rate change.

The definition of gross revenues includes all revenues received from subscribers for providing cable services, including franchise fees and all revenues received from non-subscriber services for advertising and home shopping services. The statute defines items not included in the definition of gross revenues.

Debt

The ability to borrow in anticipation of taxes and pledge revenues to be collected and the full faith

Property

and credit of the municipality against its note are granted by S.C. Code 5-7-30. The borrowing of money must be authorized by ordinance, S.C. Code 5-7-260. S.C. Constitution Article X, Section 14, grants municipalities the power to incur bonded indebtedness, as well as general obligation debt by tax anticipation and bond anticipation notes.

General obligation debt exceeding 8 percent of the assessed value of all taxable property in the municipality must be approved by referendum. Indebtedness not involving a pledge of full faith and credit, payable only from a revenue-producing project such as water and sewer service or a special source such as tax increments, may be incurred without referendum.

Industrial development bonds issued pursuant to S.C. Code 4-29-10, et seq., are not considered general obligation debt. Lease-purchase agreements for real property are subject to the 8 percent constitutional debt limit which may not be exceeded without referendum. S.C. Code 11-27-110.

A municipality may incur debt only for public purposes. Credit of a municipality may not be pledged or loaned for the benefit of an individual or private entity. S.C. Constitution Article X, Sections 11 and 14. Tax revenues may not be used to support local non-profit corporations, Op. Atty. Gen. 77-49. Council may not incur debt indirectly by a planned budget deficit. Annual budgets must provide for sufficient income to meet estimated expenses for each year. The state constitution mandates municipalities adopt a balanced budget. S.C. Constitution Article X, Section 7(b); S.C. Code 12-43-296.

Procurement

A municipality must adopt ordinances or procedures embodying sound principles of appropriately competitive procurement of goods and services. S.C. Code 11-35-50. Municipalities are not required to follow state purchasing policies. Municipalities have broad powers to contract with public entities and private parties to provide goods and services; however, contracts involving legislative functions and governmental powers may not bind a future council [*City of Beaufort v. Beaufort-Jasper Water and Sewer Authority*, 325 S. C. 174, 480 S.E. 2d 728 (1997)].

Investments

The governing body of a municipality is authorized to invest public money only in specified obligations of the United States and its agencies, obligations of the State of South Carolina and its political units, insured savings accounts, secured certificates of deposit, bank deposit accounts, repurchase agreements, investment trusts, and the S.C. Pooled Investment Fund. S.C. Code 6-5-10, 6-6-10. Council may delegate the investment authority to the municipality's financial officer or a corporate trustee. S.C. Code 6-5-20. The state treasurer is authorized to assist local governments in investing funds. S.C. Code 6-5-30.

Bankruptcy

Municipalities and other taxing or governmental units can proceed under bankruptcy laws enacted by Congress. S.C. Code 6-1-10.

Property

Property and Easements

A municipality may own property (real, personal) within or outside its corporate limits without limitation. Council may sell or lease personal property by passing a resolution; however, council must pass an ordinance to sell or lease real property. S.C. Code 5-7-40, 260. The municipality may sell property by negotiated contract without public bidding for such value council deems appropriate. Council may discuss contract negotiations in executive session but must approve contracts by vote in a public session. S.C. Code 30-4-70. Council may acquire property or easements for public purposes inside or outside municipal limits, in any adjoining county or by condemnation and payment of just compensation to the owner pursuant to the Eminent Domain Procedure Act. S.C. Code 5-7-50, 28-2-10, et seq.

Cemeteries

Municipalities may own cemeteries in or near the corporate limits. All municipal police powers extend to municipal cemeteries outside the corporate limits. S.C. Code 5-39-10. Some municipalities have cemetery commissions created by ordinance. Funds may be accepted in trust for maintenance pursuant

to S.C. Code 5-39-410. Municipalities are specifically authorized to expend public funds to preserve and protect abandoned or unmaintained cemeteries within their jurisdiction. S.C. Code 6-1-35.

Annexation and Boundary Adjustment

Council may expand municipal boundaries by annexation of unincorporated areas or consolidation of two or more municipalities. The three methods of annexation of private property are the 75 percent freeholder petition and ordinance method, 100 percent owner petition and ordinance method provided in S.C. Code 5-3-150 (1) and (3), and the 25 percent elector petition and election method provided in S.C. Code 5-3-300. When two or more municipalities want to consolidate in whole or in part, the governing bodies may, after a public hearing, stipulate and agree upon the terms of consolidation or boundary adjustment by ordinance adopted by each municipality. S.C. Code 5-3-40. A municipality may annex property owned by a municipality, county, school district, airport district, church, state or federal government by ordinance with consent of the governing body of the owner. S.C. Code 5-3-15, 5-3-100 through 140, 5-3-260.

Reduction of corporate limits requires approval in an election initiated by petition of a majority of resident freeholders in the municipality. S.C. Code 5-3-280. A freeholder is defined as an adult owner of a present possessory interest in real estate equal to a life estate or greater and who owns at least an undivided one-tenth interest in a single tract. S.C. Code 5-3-240.

A challenge to an annexation must be initiated by notice within 60 days and an action brought within 90 days after publication of the result. S.C. Code 5-3-270.

Regulatory Powers

Health

A municipality may establish a board of health and prescribe its duties; however, the board must function under supervisory control and rules of the South Carolina Department of Health and Environmental Control. S.C. Code 44-3-10. Municipalities often adopt insect, rodent and animal control regulations. A municipality may adopt an ordinance providing

for removal by the municipality of unhealthy and unsightly material or conditions that constitute a public nuisance, after notice to the owner. The municipality may collect removal costs in the same manner as taxes. S.C. Code 5-7-801.

Peace, Order and Security

The general grant of power in S.C. Code 5-7-30 includes the power to enact ordinances and regulations to maintain peace, order and security so long as the municipal ordinance or regulation does not conflict with state law. A municipality may not prohibit conduct which is not unlawful under a state law addressing the subject [*Diamonds v. Greenville County*, 325 S.C. 154, 480 SE. 2d 718 (1997)]. Ordinances dealing with noise, disorderly conduct, loitering, curfews, parades and conduct not regulated by preemptive state laws are commonly found in municipal codes. Emergency ordinances are authorized to meet public emergencies affecting life, health, safety or property. S.C. Code 5-7-250. Council may adopt standard fire and building codes by reference. S.C. Code 5-7-280, 6-9-60.

General Welfare, Convenience and Good Government

The purpose of the “general welfare” clause in S.C. Code 5-7-30 is to extend the police powers of municipalities beyond those specifically enumerated to those which are necessary to accomplish the purposes of municipal government. Municipalities may adopt any laws necessary for promoting health, safety and welfare that are within a general grant of power and not prohibited by the Constitution or conflict with state law. The Home Rule Act mandates liberal construction of such provisions in favor of local governments. S.C. Constitution Article VIII, Section 17; S.C. Code 5-7-10. Municipalities may not enact ordinances dealing with subjects that the state has preempted, such as the sale of alcoholic beverages [S.C. Constitution Article VIII-A, Section 1].

Public Nuisances

Nuisance abatement is specifically authorized by S.C. Code 5-7-30. However, the nuisance must be a “public nuisance.” The power does not extend to nuisances that do not affect a substantial segment of the public. Private nuisances are matters between the parties affected and must be resolved by private action.

Planning, Zoning, Land Use and Architectural Regulations

Municipalities are authorized to adopt comprehensive plans, which are then implemented by zoning ordinances, land development (subdivision) regulations, official maps and capital improvement programs. Architectural review (historic preservation) regulations and landscape requirements may be included in the zoning ordinance.

All comprehensive plans and implementing regulations must conform to the Comprehensive Planning Enabling Act of 1994. S.C. Code 6-29-310 et. Seq. Under the 1994 Act and subsequent amendments, the planning commission must revise and recommend to council for adoption by ordinance a comprehensive plan developed by a process including inventory of existing conditions, a statement of needs and goals, and proposal of implementation strategies and time frames. The comprehensive plan must contain at least nine elements: population, natural resources, cultural resources, community facilities, housing, land use, economic development, priority investment and transportation.

A zoning ordinance and district map may be adopted only after the local planning commission and the local governing body has adopted at least the community facilities element, the housing element and the priority investment element of the comprehensive plan. S.C. Code 6-29-1130(A). Council must properly establish a planning commission and a board of zoning appeals to administer the regulations. Council may establish a board of architectural review (historic preservation commission, landmarks commission, design review board, etc.) in the zoning ordinance, but it is not required.

Municipalities must update their comprehensive plan every ten years.

The municipal council is involved only in the legislative functions of adopting planning and zoning ordinances and amendments. S.C. Code §6-29-760, and approving mediated settlements of appeals from decisions of board of zoning appeals, the board of architectural review or the planning commission. S.C. Code 6-29-825, 6-29-915, 6-29-1155. The council does not administer the ordinances or hear appeals.

The planning commission does not administer zoning regulations. Zoning is administered by a zoning administrator and the board of zoning appeals that also hears applications for variances and special exceptions. Appeals from the board of zoning appeals go to circuit court. Local zoning ordinances may regulate property of all agencies and subdivisions of the state, except homes for handicapped people. These homes have special exemptions under state and federal laws. S.C. Code 6-29-770; 42 U.S.C. 3604.

Emergencies

A municipal council may hold a meeting to deal with an emergency without meeting the notice requirements of the Freedom of Information Act. S.C. Code 30-4-80. Council may adopt emergency ordinances to protect life, health, safety or property by two-thirds vote of councilmembers present on one reading. Emergency ordinances expire automatically on the 61st day after adoption. S.C. Code 3-7-250(d).

Services

Community Development

A municipality may, by resolution or ordinance, implement the provisions of the federal Housing and Community Development Act of 1974 and engage in community development activities. Local governments may enter into mutual contracts to accomplish community development purposes. S.C. Code 6-1-30.

The South Carolina Textiles Communities Revitalization Act, S.C. Code 6-32-10 et seq., effective May 11, 2004, authorizes municipalities to approve by ordinance certain tax credits against local property taxes for rehabilitation, improvement or renovation costs by owners of abandoned textile mills and factory sites. Municipalities can grant special property tax assessments to qualified rehabilitated historic properties and low and moderate income rental properties as defined in S.C. Code 4-9-195, S.C. Code 4-9-195, 5-21-140.

Utilities

S.C. Constitution Article VIII, Section 16 provides that, upon majority vote of electors, a municipality may own and operate gas, water, sewer, electric, transportation or other public utility systems. Cable television is not a utility, and municipalities are not authorized to operate CATV systems. Municipalities may furnish utility services to nonresidents by contract. S.C. Code 5-7-60. Municipalities can construct utility facilities inside or outside municipal limits and may acquire existing waterworks by condemnation. S.C. Code 5-31-610. Municipalities may acquire property and easements for utilities by eminent domain. S.C. Code 5-7-50, 5-31-420 through 440.

The Home Rule Act authorizes the sale of a town's water and sewer system pursuant to an ordinance [See *Sojourner v. Town of St. George*, 383 S.C. 171; 679 S.E. 2nd 182 (2009).] Some municipalities have elected commissioners of public works which operate one or more utility systems. S.C. Code 5-31-210, 5-31-820.

The commission has complete operating control of the utilities. It may be abolished by following the procedure set out in S.C. Code 5-31-235.

Council has the authority to designate the providers of utility services within the municipality, except a provider in a newly annexed area may not be prohibited from serving existing customers. Political subdivisions of the state may provide telecommunications services pursuant to S.C. Code 58-9-2600, et. seq. Except for such telecommunications services, municipal utilities and rates are not subject to the Public Service Commission's jurisdiction. S.C. Code 58-5-30.

Service to Nonresidents

A municipality may perform any of its functions, furnish any of its services and make charges for them in areas outside the municipality by contract (except for police services). If the area to be served is in the designated service area of another municipality or political subdivision, the municipality may only serve with the consent of the designated provider. S.C. Code 5-7-60. Special purpose districts with Farmers Home Administration financing for utilities and services have federal protection from competition under 7 U.S.C. 1926(b).

A municipality owes no duty to serve nonresidents and may charge nonresidents higher rates than resident rates for a service. See *Sloan v. City of Conway*, 347 S. C. 324, 555, S. E. 2d 684 (2001). Many municipalities condition service to outside areas on agreement to annex when contiguous. Some service contracts are limited in duration by statute (e.g., water and sewer service). S.C. Code 5-31- 890, 1710, 1910.

Improvement Districts

The Municipal Improvement Act of 1999, S.C. Code 5-37-10, et seq., authorizes establishment of a municipal improvement district by ordinance after public hearing or upon petition of a majority of owners of real property in the district. Authorized improvements include malls, parkways, parks and playgrounds, recreation and athletic facilities, pedestrian facilities, parking facilities, facade redevelopment, widening and dredging of recreational waterways, street improvements, public buildings and facilities, and underground utilities. S.C. Code 5-37-20(2). Municipalities may finance improvements made pursuant to an overall plan for prevention of deterioration, preservation of property values and tax base, and promotion of development. S.C. Code 5-37-20(4). Improvements may be financed by assessments, special district bonds, general obligation bonds, general revenues or revenues from any unrestricted source. S.C. Code 5-37-30.

Recreation

Authority to engage in the recreation function is included in the general grant of Home Rule powers. S.C. Code 5-7-30. S.C. Code 51-15-10 authorizes municipal golf courses. A municipality may own recreational property within or outside the municipal limits. The municipal court has jurisdiction over any offenses against municipal rules and regulations occurring on the property, even if it is located outside of the municipal limits. Municipal regulations for use of the property may be enforced by charges in municipal court. S.C. Code 51-15-20 and 30. Private property owners who lease land to a political subdivision or allow land to be used for public recreational purposes without charge are afforded limited liability by S.C. Code 27-3-10, et seq.

Joint Facilities

S.C. Constitution Article VIII, Section 13, implemented by S.C. Code 4-9-41, authorizes political subdivisions to provide for the joint administration of any function and exercise of powers. Local governments, including counties, municipalities and special service districts, may enter into contractual agreements to provide joint public facilities and services when considered mutually desirable. S.C. Code 6-1-20.

Housing Authority

The municipal council may create a housing authority by adopting a resolution declaring there is a need for one and appointing five to seven persons as commissioners. S.C. Code 31-3-310, et seq. A housing authority is a political subdivision, exercising public powers granted by statute, including eminent domain. It is not subject to supervision or control by the municipal council. Projects of a housing authority are subject to local zoning and building regulations. S.C. Code 31-3-580. Property of a housing authority is exempt from taxation and special assessments, but a housing authority may agree to make a payment in lieu of taxes for municipal services pursuant to S.C. Code 31-3-570.

for new streets or widening existing streets by eminent domain. The planning commission approves street names and name changes. S.C. Code 6-29-1200. Streets are held in trust for public use. The General Assembly cannot grant rights to bury utilities or place facilities for any purpose in municipal streets without consent of the municipal governing body in control of the streets. S.C. Constitution Article VIII, Section 15; S.C. Code 5-7-30, 5-27-10, et seq.

Street Encroachments

Both council and the SCDOT must approve an encroachment into a street in the state highway system. A municipality may construct or authorize construction of a building or parking facility which encroaches upon or projects over a public sidewalk. S.C. Code 5-27-510, 520.

Streets

Streets and Parking Facilities

A municipal council may open, close, alter, maintain, control the use of streets. S.C. Code 5-27-150, and establish off-street parking facilities, S.C. Code 5-27-10 et seq. A court may close a street upon finding that it is in the best interest of all concerned. S.C. Code 57-9-10, et seq. Financing by assessments, bonds or other revenues are at the governing body's discretion. The assessments rates within the improvement district do not have to be uniform. They can vary in proportion to improvements made immediately adjacent or abutting upon the property. S.C. Code 5-37-80. Streets in the state highway system are subject to joint control of council and the South Carolina Department of Transportation. While the county may maintain some municipal streets, the municipal council controls use of those streets. A municipality may acquire property

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