Ordinance vs. Resolution
Conundrum

Eric Budds, Deputy Executive Director, Municipal Association of South Carolina
Ordinance vs. Resolution

- A frequent dilemma, particularly for new councilmembers and staff, is deciding when it is appropriate to use a resolution versus an ordinance.

- Formal definition - An ordinance is a law made by a municipality or other local authority.
Ordinance vs. Resolution

• Use of ordinances not restricted to adopting laws

• Ordinances also used when adopting a rule or policy with broad applicability, significant impact and an extended duration
Ordinance vs. Resolution

• A resolution is a formal expression of opinion, will or intent voted on by an official body or assembled group. Source: Miriam-Webster.

• Municipal resolutions are generally adopted in written form to document the opinion, will or intent of a municipal council.
Ordinance vs. Resolution

• Adoption of a resolution requires a single vote of a municipal council

• 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
Ordinance vs. Resolution

• State law requires the following actions to be accomplished by ordinance.
  – annexing property (Sections 5-3-150, 5-7-300)
  – setting salaries for council (Section 5-7-170)
  – conducting municipal elections (Section 5-15-10)
  – adopting standard codes (Sections 5-7-280, 6-9-60)
Ordinance vs. Resolution

• State law requires the following actions to be accomplished by ordinance (continued)

  – adopting council rules of procedure (Section 5-7-270)
  – adopting procurement ordinances (Section 11-35-50)
  – adopting a comprehensive plan, zoning and land development regulations. (Section 6-29-310, et seq.)
Ordinance vs. Resolution

• Additionally, state law requires council use an ordinance to take any action covered under the categories listed below:
  – Adopt or amend an administrative code or 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;
Ordinance vs. Resolution

– Adopt budgets, levy taxes, except as otherwise provided with respect to the property tax;

– Grant, renew or extend franchises;

– Authorize the borrowing of money; and

– Sell, lease or contract to sell or lease any lands of the municipality.
Ordinance vs. Resolution

• Authority to Adopt Ordinances - Civics 101

  – South Carolina municipalities are subordinate units of state government

  – Municipalities derive their power from the state constitution and laws adopted by the General Assembly.
Ordinance vs. Resolution

• **Authority to Adopt Ordinances - Civics 101**

  – 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 of 1975, popularly known as the Home Rule Act, is the framework of laws to implement the 1973 constitutional changes
Ordinance vs. Resolution

• Civics 101 (continued)

– The Local Government Act provides
  • municipalities with greater uniformity as well as expanded freedom and flexibility to control local affairs.

  • Municipal powers are to be liberally construed in favor of municipalities
Ordinance vs. Resolution

- Contrary to popular belief the Home Rule Act does not grant municipalities autonomy in making laws

- Municipal ordinances, resolutions or regulations must be consistent with the federal and state constitutions and with general laws of South Carolina and the United States
Ordinance vs. Resolution

• Civics 101 (continued)
  – South Carolina Code of Law defines municipal powers
  – These powers are explained in Title 5 - Municipal Corporations
  – Easiest way to locate these codes is to go to the South Carolina Legislature Online

http://www.scstatehouse.gov/code/statmast.php
Ordinance vs. Resolution

• If state law does not require use of an ordinance, council can choose to use an ordinance or a resolution

• Decision should be based on the intended duration and impact of the proposed action
Ordinance vs. Resolution

• Procedural Requirements for Ordinances in SC
  – Must be introduced in writing and in the format required for final adoption
  
  – Must have at least two readings on two separate days with at least six days between each reading
  
  – If local rules of procedure call for three readings or any other additional step, council must follow the requirement
Ordinance vs. Resolution

• Elements of an Ordinance
  – Numbering (Part #1)
    • All ordinances should be numbered
    • A number facilitates record keeping and provides a relationship in time of one ordinance to another
    • Generally numbering systems have two components
      » The year of adoption
      » The ordinance number
      » i.e. 2012-001 or 12-001

• Numbering systems differ
Ordinance vs. Resolution

• Numbering (continued)

  • Ordinance numbers in some systems are continual from year to year, others are reset each year

  • Numbers should not be assigned until ordinance adopted
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– Caption, or “title” (Part #2)
  • Optional unless required by local ordinance or rules of procedure

– Preamble, or “whereas” clauses (Part #3)
  • Explanation or a finding of facts
  • Include “whereas” clauses or a preamble to provide history, legal authority, intent or purpose of the ordinance
Ordinance vs. Resolution

– Ordination clause (Part #4)

• States action taken by council to adopt the controlling language of the document as an ordinance of the municipality

• The usual form is “Be it ordained by the mayor and council of the Town (or City) of ______________.”

• Municipal Code of Ordinances usually establishes standard ordination language to be used for all ordinances
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– Controlling provisions (Part #5)
  • Language which follows the ordination clause
  • Defines the law, policy, procedure or other action implemented by adoption of the ordinance
  • To be a valid ordinance, the legislative action must be lawful
Ordinance vs. Resolution

– Severability clause (Part #6)

• Language which generally follows the controlling provisions of the ordinance

• The severability clause provides that if parts of the ordinance are ruled to be invalid it does not prevent other valid provisions from being enforced
Ordinance vs. Resolution

– Effective Date (Part #7)

• Municipal ordinances are generally considered effective upon adoption by the governing body unless otherwise specified

• It is common in the administrative section of the municipal code to provide such language

• To avoid confusion or legal questions regarding the effective date, it is recommended that an ordinance include an effective date provision
Ordinance vs. Resolution

– Effective Date (continued)
  • Examples of effective date provisions:
    – Effective date______, 20__
    – Effective upon adoption.

– Signatures (Part #8)
  • Ordinances are generally signed by the mayor as part of his/her ministerial duties and attested by the municipal clerk
  • The signature does not represent support of the ordinance, but rather a certification of an official action of the municipal council
Ordinance vs. Resolution

• How to Amend an Ordinance
  – An adopted ordinance may only be amended by another ordinance

  – The amending ordinance must follow all legal requirements for a new ordinance
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• How Do You Determine if an Ordinance Is valid?
  – SC courts have ruled “A local ordinance is a legislative enactment and presumed constitutional”
  
  – “The burden of proving the invalidity of a local ordinance rests with the party attacking it”
  
  – “Only a court may declare an ordinance invalid”
Ordinance vs. Resolution

• For an ordinance to be valid,
  – It must have been enacted by a local governing body with the authority to do so and
  – it must not conflict with state or federal law.

• As stated by the Supreme Court of South Carolina:
  – Determining if a local ordinance is valid is essentially a two-step process
Ordinance vs. Resolution

• Step 1. Ascertain whether the county or municipality that enacted the ordinance had the power to do so. If no such power existed, the ordinance is invalid and the inquiry ends.

• Step 2. If the local government had the power to enact the ordinance, the next step is to ascertain whether the ordinance is inconsistent with the constitution and/or general law of this State.
The 2nd regular session of the 119th South Carolina General Assembly has adjourned Sine Die under the provisions of H. 5410, the Sine Die Resolution.
Ordinance vs. Resolution
Ordinance vs. Resolution

• Interpreting State law
  – To comply with state law it is essential that you understand the requirements of the law.

  – By statute, the Governor, members of the General Assembly, and other public officials are entitled to legal advice from the Attorney General’s Office.
Ordinance vs. Resolution

By statute, the Governor, members of the General Assembly, and other public officials are entitled to legal advice from the Attorney General's Office. An Attorney General's opinion is thus a written public document responding to a specific legal question asked by a public official. All opinions have been reviewed by the Opinions Section and represent the highest standards of research. An Attorney General's opinion attempts to resolve questions of law as the author believes a court would decide the issue. Unlike a court, however, Attorney General opinions cannot decide factual disputes.

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LATEST NEWS
October 3, 2012

The Honorable Bill Taylor
Representative, District 86
P.O. Box 2646
Aiken, South Carolina 29802

Dear Representative Taylor,

We received your letter requesting an opinion of this Office concerning dual office holding. Specifically, your question concerns Edward Giobbe's dual service as Vice Chairman of the South Carolina Retirement System Investment Commission (“RSIC”) and as a member of the City of Aiken Planning and Zoning Commission.

Article XVII, § 1A of the South Carolina Constitution provides that “[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public.” For a violation of this provision to occur, an individual must concurrently hold two public offices which have duties “involving an exercise of some part of the sovereign power” of the State. Sanders v. Belue, 78 S.C. 171, 174, 58 S.E.2d 762, 763 (1907). A public officer is “[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either great or small, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.” State v. Black, 135 S.C. 581, 138 S.E. 641, 642 (1926). Whether the position was created by the legislature, whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the occupying the position is a representative of the sovereign; among others. State v. Smith, 10 S.C. 475, 478,
Ordinance vs. Resolution

• When facts are in dispute or the parties involved do not agree as to the interpretation of the law – law suites arise
• Rulings at a circuit court level do not establish statewide precedent or a requirement to comply with the court’s orders or findings.
Ordinance vs. Resolution

• However, when a court case is decided by the State Court of Appeals and is not heard by the Supreme Court or a decision is rendered by the Supreme Court, the order of the court or findings apply statewide to similar cases.

• Knowing how to find court rulings is also important to be effective in some municipal positions.
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South Carolina
JUDICIAL DEPARTMENT

Court News ...

- South Carolina Commission on Women Honors Justice Kaye Hearn with 2012 Woman of Achievement Award (09-28-2012)
- Rule 608, SCACR Contract Attorney Appointments (09-13-2012)
- Interim Appointment of Chief Magistrate and Associate Chief Magistrate in Horry County (08-29-2012)
- Proposed Parenting Plan (08-29-2012)
- ...more
Ordinance vs. Resolution

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• General internet search by topic will produce national results

• National results can be helpful but you need to be careful
State Law and Beyond

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State Law and Beyond

• Must consider differences in state laws that may invalidate use of out of state ordinances in SC

• Best bet is to look at similar municipalities in South Carolina

• Look to see how your peer cities are dealing with similar situations
State Law and Beyond

• This process used to be difficult and time consuming. Not any more

• An easy way to do this is to access online municipal codes
State Law and Beyond

• Accessing sample codes allows you to pick and choose the best parts of peer city ordinances and incorporate them into your draft ordinance.
State Law and Beyond

• Examples of online code libraries are:
  – Municipal Code Corporation which lists the codes of approximately 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
# MUNCICODE LIBRARY: South Carolina

Select a different state: South Carolina  
**GO**  
OR  
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Code of Ordinances for South Carolina

American Legal Publishing provides you with a number of different ways to search the code(s) in the Online Library. Choose the option that best fits your needs:

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To browse by municipality, please select the Code of Ordinances you would like to view from the list below:

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South Congaree
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