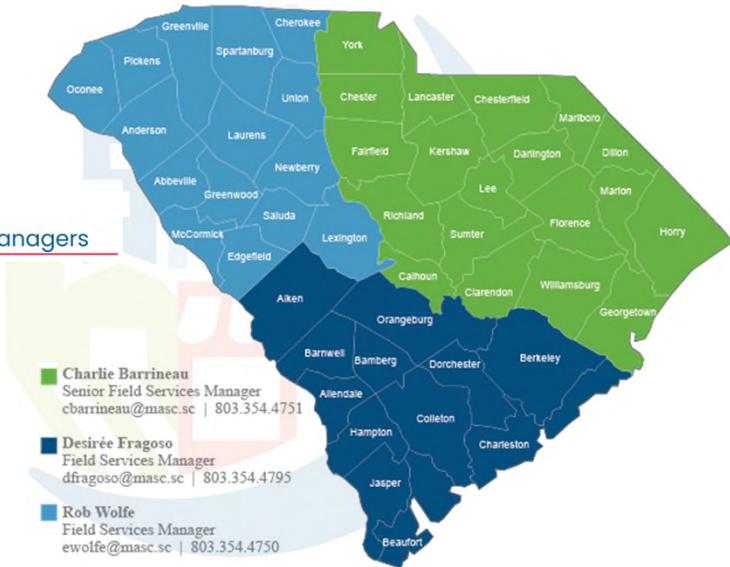


The information provided here is for informational and educational purposes and current as of the date of publication. The information is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.



# Forms and Powers of Municipal Government in S.C.

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## Home Rule in S.C.

- 1967 Constitutional Study Committee
- Legislature approved recommendations of committee
- Proposed constitutional revisions approved by voters in 1972
- Among changes, Article VIII on local government added
- General Assembly approved Local Government Act of 1975
- “Home Rule Act” codified in Title 5 of S.C. Code of Laws



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## Home Rule in S.C.

- Municipalities are not sovereign bodies with inherent powers.
- The Home Rule Act established that cities and counties are political subdivisions of the state
- The General Assembly provides for the powers, duties, functions and responsibilities of municipalities by general law
- The state constitution prohibits local and special laws.
- The Act extensively broadened the powers of counties



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## Home Rule in S.C.

- The Act mandated that local government powers be construed liberally rather than strictly
- Municipalities exercise those powers:
  - Delegated by state law
  - Fairly implied from state law
  - Not prohibited by state law
  - Not inconsistent with the state constitution and state law.



## Home Rule in S.C.

- All powers of a municipality are vested in the council, except as otherwise provided by law
- The council is the municipality for purposes of exercising the powers granted by state law (*Mason v. Williams*)



## Establishment of FOGs

- The 1972 constitutional amendments allowed the General Assembly to approve five forms of municipal government
- However, the Home Rule Act only authorizes three forms:
  - Mayor-Council
  - Council
  - Council-Manager



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## What Distinguishes The FOGs

The major difference is where the executive and administrative powers and responsibilities of the local government are vested.

- The legislative function resides with the council under all forms of municipal government
- The performance of executive / administrative functions pursuant to state law or local ordinance is what differs between the forms.



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## Policy vs. Administration

Two distinct areas of functional responsibility in local governments regardless of the form:

1. Policy = “What” and “Why”
  - Policy = Council
  - Sets direction, priorities and values
2. Administration = “How” and the “Who”
  - Administration / Operations = Staff
  - Implements policy decisions



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## Municipal Government In S.C.

### General Information

- 271 municipalities
- Most are very small (124 less than 1,000, 209 less than 5,000 and 233 less than 10,000 in population)
- Great variation in population and complexity of municipal governments

### Three Authorized Forms

- Mayor-Council - 132
- Council - 103
- Council-Manager – 36



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# Mayor – Council Form

## General Information

- Most utilized form of municipal government in S.C. (132 of 271)
- Structure: Consists of the mayor and no fewer than 4 council members
- Often called the strong mayor form because the Mayor is granted by state law the right to exercise legislative as well as executive and administrative authority



# Mayor – Council Form

## Council Powers

- Serves as legislative body and makes policy
- Approves annual budget, which must be balanced
- Elects Mayor Pro-Tem
- Majority may call special meetings
- Appoints:
  - City Attorney
  - City Judge
  - Municipal Clerk



# Mayor – Council Form

## Council Powers

- May appoint an administrator to assist the mayor
- Establishes departments and prescribes functions
- May investigate departments
- Establishes personnel policies
- Has all powers not otherwise provided by law



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# Mayor – Council Form

## Mayor's Powers

- Presides over council meetings by state statute
- Acts and votes as member of council
- Calls special meetings
- Designates temporary judge
- Prepares, reviews, administers annual budget to council
- Makes financial reports to public and council



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# Mayor – Council Form

## Mayor's Powers

- Acts as Chief Executive Officer
- Responsible for the day-to-day operations
- Hire and fires employees subject to city's HR policies
- Supervises departments
- Reports to council on operations of departments
- Ensures faithful execution of laws



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# Council Form

## General Information

- Second most used form of municipal government in S.C.
- Structure: 5, 7 or 9 members including mayor
- Sometimes called the weak mayor form which refers to the Mayor's lack of formal executive authority
- No separation of powers between the executive and the legislative functions
- Often called governance by committee because of shared powers



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# Council Form

## Council Powers

- Exercises all legislative and administrative power
- Prepares and adopts a balanced annual budget
- Elects Mayor Pro-Tem
- Majority may call special meetings
- Appoints:
  - City Attorney
  - City Judge
  - Municipal Clerk
  - All Employees



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# Council Form

## Council Powers

- Establishes all municipal policies
- May hire an administrator to assist council (define duties by ordinance)
- Establishes departments and prescribes functions
- May appoint officers to administer departments subject to council direction
- May investigate departments



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# Council Form

## Mayor's Powers

- Presides at meetings of council by tradition not statute
- Calls special meetings
- Acts and votes as a member of council
- Designates temporary judge



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# Council Form

## Mayor's Powers

- No formal authority under state law beyond that of serving as a member of council
- Performs administrative duties only if authorized by council
- May exercise "informal" authority as leader of council/staff and as spokesperson for the council
- Council may grant "emergency powers" to Mayor by ordinance



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# Council Form

## CAO's Powers

- The chief administrative officer, if appointed by council, is called a City or Town Administrator
- The Administrator's powers are limited to those specifically delegated and prescribed by council
- The Administrator's authority may vary from city to city
- Council may appoint officers of the city, other than members of council, to administer departments.



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# Council – Manager Form

## General Information

- Third most used form of municipal government in S.C.
- Structure: Mayor and 4, 6 or 7 council members
- Most utilized form nationally
- Conceived by the progressive movement
- Modeled after corporate management structure



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# Council – Manager Form

## General Information

- The Council and Mayor are forbidden by law from interfering with the operation of the departments, offices and agencies under the direction of the manager
- No direct involvement in the hiring and firing of employees under the manager or directly dealing with or giving orders to those employees



# Council – Manager Form

## Council Powers

- Has all legislative and policy making authority
- Elects a Mayor Pro-Tem
- Must employ a manager - selected based on qualifications
- Appoints:
  - City Attorney
  - City Judge
- Appoints a temporary manager when necessary



# Council – Manager Form

## Council Powers

- Adopts a balanced annual budget
- Provides for annual audit
- Authorizes the issuance of debt
- Appoints boards
- Establishes departments and functions
- Investigates departments



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# Council – Manager Form

## Mayor's Powers

- Presides at meetings of council by tradition not statute
- Calls special meetings
- Acts and votes as a member of council
- Designates temporary judge



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## Council – Manager Form

### Mayor's Powers

- No formal authority under state law beyond that of serving as a member of council
- Has no formal administrative powers
- May exercise "informal" authority as leader of council/staff and as spokesperson for the council
- Council may grant "emergency powers" to Mayor by ordinance



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## Council – Manager Form

### City Manager's Powers

- The City Manager serves at the pleasure of council
- State statute defines the powers of the city manager
- The city manager serves as the chief executive officer and head of the administrative branch
- Empowered to appoint, remove and fix the salary of all employees



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# Council – Manager Form

## City Manager’s Powers

- Prepares, submits to council and, once approved, administers a balanced budget
- Prepares an annual financial report to council and advises council of the financial condition of the municipality
- Implements policies through administrative control of all departments, offices and agencies



# Council-Manager Form

## City Manager’s Powers

- Appoints municipal clerk
- Recommends appointment to boards
- Advises council on the creation, change or abolition of departments
- Designates a temporary manager in his or her absence
- Performs any other duties prescribed by law or required by council



## Change in Form of Government

May only be implemented with approval of the voters via referendum

- **Ordinance Method**
  - The municipal council calls for referendum by ordinance
- **Petition Method**
  - Requires the signatures of at least 15% of the municipality's qualified electors

Another referendum to consider a change in FOG may not be held for another 4-years following the vote



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## Appointment of Clerk

- “The council under the council and mayor-council forms of government or city manager under the council-manager form shall appoint an officer of the municipality who shall have the title of municipal clerk.” S.C. Code 5-7-220.
- Note that there are only a few municipal offices that are specifically addressed by state law – managers / administrators, judges, attorneys, clerks.



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## Who Does The Clerk Work For?

- “The council under the council and mayor-council forms of government or city manager under the council-manager form shall appoint an officer of the municipality who shall have the title of municipal clerk.” S.C. Code 5-7-220.
- AG Opinion: In a Mayor-Council form of government, “[s]ince a municipal clerk would be appointed by the municipal council ... the power to hire is the power to fire, or put in this context, the power to appoint is the power to remove.” 2013 WL 1695514, at \*6 (S.C.A.G. Mar. 28, 2013).
- So in Mayor-Council and Council forms of government, the municipal clerk works for the Council, while in the Council-Manager form of government the clerk works for the Manager.



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## Resources



**Forms and Powers of  
Municipal Government**

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

**S.C. Code of Laws Title 5  
Chapters 5,9,11,13**

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**Keyword: forms of government**



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