

# Forms and Powers of Municipal Government

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AN ELECTED OFFICIAL'S GUIDE FROM THE  
MUNICIPAL ASSOCIATION OF SOUTH CAROLINA



Municipal Association  
of South Carolina



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## **Foreword**

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 the manager or administrator according to the form of government. It also outlines the powers entrusted to municipal governments regardless of their form of government.

Unless the context clearly indicates otherwise, wherever a masculine pronoun is used in this publication, the same is intended, and shall be understood and interpreted to include all individuals, of any gender, or those who do not identify with any gender.

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# Home Rule

South Carolina took its first step toward Home Rule for local government in 1967 with a constitutional study committee appointed by the legislature. 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 10 times longer than the U.S. Constitution and had been amended more than 300 times. Nevertheless, the state constitution had basically omitted any reference to local government. West 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 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 Laws.

# Incorporation

The new constitution called for the General Assembly to provide the criteria and the procedures for municipal incorporations. Chapter 1 of Title 5 provides the state's incorporation procedures. Once the municipality is incorporated, the Secretary of State issues it a certificate of incorporation. *SC Code 5-1-70*.

A municipality may forfeit its certificate of incorporation if its population falls below 50 residents. In addition, the Secretary of State may cancel the certificate of a municipality that is not performing municipal services, is not collecting taxes or other revenues, and has not held an election during the past four years. *SC Code 5-1-100*. A 2020 Legislative Oversight Committee Report noted that, as of the date of the Report, "the Secretary of State's Office does not perform any regular reviews of municipalities to determine if they are providing services, or have met the criteria for forfeiture or cancellation." *South Carolina House Legislative Oversight Committee, Full Committee Report [PDF] (October 21, 2020, p.26)*.<sup>1</sup> The Committee recommended that the Secretary of State in the future "review both the population, as well as the services the municipality provides, with every census." *Id.*

Following the Report, the Secretary of State initiated an incorporation review process with municipalities whose population had fallen below 50 residents according to the 2020 Census. These municipalities demonstrated to the Secretary of State's satisfaction that they had at least 50 residents and the Secretary of State did not revoke any certificates of incorporation as a result of this review.

Current law provides no clear process to dispose of a dissolved municipality's assets. A county may, but is not required to, assume ownership of a dissolved municipality's assets. *SC Code 4-9-80*. If the county declines to accept the assets, South Carolina law provides no other guidance. The Committee Report therefore further recommended that "the Secretary of State's Office work with the Municipal Association and other stakeholders to propose statutory changes that may provide a clear and efficient way to handle issues that may arise during a municipality's dissolution (e.g., disposition of municipalities' assets)." *South Carolina House Legislative Oversight Committee, Full Committee Report [PDF] (October 21, 2020, p.27)*. At the time of writing, this recommendation has resulted in no proposed legislation.

# Consolidation

The state constitution authorizes counties to consolidate with the municipalities and other political subdivisions within their limits into a single unit of government. *SC Constitution Article VIII, Section 12*. The first legislation attempting to implement this provision became law in 1992. *See SC Code 4-8-10, et seq.* The statutory framework contains ambiguities and has not been used in practice. As a result, no county-wide consolidations have been accomplished under this provision.

SC Code 5-3-30 and -40 authorize the consolidation of two or more municipalities. Municipalities have successfully consolidated under this provision. Batesburg and Leesville in Lexington County joined to form Batesburg-Leesville in 1992, and the Spartanburg County towns of Pacolet and Pacolet Mills consolidated in the early 2000s.

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<sup>1</sup> <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/SecretaryofState/SoS%20Full%20Committee%20Report%20-%20Full%20Version.pdf>

# Forms of Government

Although the revised constitution authorized the General Assembly to establish up to five forms of municipal government by general law, the legislature created only three in the Home Rule Act:

- Mayor-council form
- Council form
- Council-manager form

*SC Code 5-5-10.* 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. *SC Constitution Article VIII, Section 11.* The General Assembly has not adopted a statute implementing this true Home Rule provision.

All South Carolina municipalities must operate under one of the three approved forms of government. When Home Rule passed in 1975, municipalities had to select the specified form 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.

Although council’s legislative functions are the same for all three forms, state law and local law or policy specifically allocate the executive and administrative functions under each form.

## Changing Form

A certified petition of 15% of the qualified electors, or an ordinance of council, can call an election to change the form of municipal government. *SC Code 5-5-20.* A municipality may hold an election to change its form of government only once every four years.

If a municipal council receives a valid petition to change its form of government, the referendum is not optional; the municipality must promptly schedule and conduct the required referendum. If a majority of the votes cast in the referendum approve the change in the form of government, the municipality must implement the change “as soon as practicable.” This timing requirement does not appear in the codified law, but is instead in the Home Rule Act itself. In a 2016 opinion, the Attorney General interpreted the requirement to mean that the change in form of government should be implemented “between the date of election and a year hence.” *Op. S.C. Att’y Gen. (Nov. 1, 2016).*

Following the election, the municipality must notify the Secretary of State’s office if the form of government changes. *SC Code 5-5-30.*

Under prior law, the Voting Rights Act required that a municipality seeking to change its form of government obtain preclearance from U.S. Department of Justice. In 2013, the U.S. Supreme Court effectively eliminated the preclearance requirement. Therefore, preclearance is no longer required.

# Requirements for all Forms of Government

The General Assembly provides for the powers, duties, functions and responsibilities of municipalities by general law. *SC Constitution Article VIII, Sections 8 and 9*. The state constitution prohibits local and special laws. *S.C. Constitution Article VIII, Sections 7 and 10*. The general rules applicable to all municipal forms of government are contained in Chapter 7 of Title 5. *S.C. Code 5-7-10 to -310*. Within this Chapter, SC Code 5-7-30 contains the general home rule powers enjoyed by all municipalities in South Carolina.

## Council Meeting and Notice Requirements

Council must meet at least once in every month. *SC Code 5-7-250(a)*. Under the South Carolina Freedom of Information Act, municipalities must provide written public notice of the dates, times, and places of its scheduled regular meetings at the beginning of each calendar year. *SC. Code 30-4-80(A)*.

These two provisions, taken together, mean that municipal councils should initially schedule at least one regular meeting in each calendar month of the upcoming calendar year. Many municipalities have two regular meetings in each month. Municipalities that meet only once in each month may find it necessary to cancel a previously scheduled regular meeting because of lack of a quorum, public emergency or other circumstance. In such event, the municipality should call a special meeting in the same month as the canceled regular meeting to comply with SC Code 5-7-250(a). The mayor or a majority of council may call for a special meeting. *SC Code 5-7-250(a)*.

## Rules of Procedure

Council must adopt rules of procedure by ordinance. *SC Code 5-7-250, -270*. The adopted rules of procedure should establish a basic parliamentary procedure for meetings, either by adopting Robert's Rules or by providing the municipality's own, simplified parliamentary rules.

The rules should also address the process by which the agenda for a given meeting is prepared, including who may place an item on the agenda and the deadlines for submission.

Meeting procedures and the adopted rules of procedure must comply with the Freedom of Information Act. That act requires written public notice of regular council meetings at the beginning of each calendar year, requires posting of a 24-hour notice and agenda for all regular, special and rescheduled meetings, and requires giving notice to the media and other parties who request notice. *SC Code 30-4-80*.

Council may take formal action only during a public meeting. *SC Code 30-4-60, -70*. The municipality must prepare minutes of all public meetings and preserve them in perpetuity as public records. Minutes of executive sessions are not required. *SC Code 30-4-90*.

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

## Committees and Subsidiary Bodies

Councils may establish committees or other subsidiary bodies to assist in reviewing issues, vetting proposals and streamlining the council's work. However, two fundamental principles of South Carolina law guide and limit their use. First, only the full council may exercise the legislative power of the municipality. Second, all council business must be conducted openly.

Committees should be created by ordinance that clearly states they are subordinate to the council and exist solely as a resource for the council's deliberations. The ordinance should also set forth how members are appointed and the terms of those appointments. Absent a local ordinance specifying otherwise, the entire council makes committee appointments.

Committees may review information, conduct preliminary discussions, and make recommendations, but they may not make final decisions on matters that require council action, particularly legislative matters requiring an ordinance.

Finally, the South Carolina Freedom of Information Act applies to committees, subcommittees, and similar bodies, even if those bodies include only staff and have no formal decision-making authority. The Act requires that such bodies provide advance notice of meetings, ensure that meetings are open to the public, and prepare and retain minutes.

Improper use of committees, particularly any attempt to conduct substantive discussion outside of a properly noticed public meeting, is a common source of alleged FOIA violations.

# Statutory Powers: Mayor

## Council Form

Municipalities under the council form of government have 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, and acts and votes as a member of council. The mayor has no additional statutory authority beyond that of other councilmembers. Council may, but is not required to, delegate administrative duties to the mayor.

As a result, the mayor's role in the council form is primarily procedural and ceremonial unless council affirmatively delegates additional responsibilities.

## Mayor-Council Form

Municipalities under the mayor-council form have a mayor and no less than four councilmembers. State law provides that the mayor shall be the chief administrative officer of the municipality, but does not fully define the scope of that role. *SC Code 5-9-30*.

The same code section assigns specific powers to the mayor, providing that the mayor has the power and duty to appoint, suspend or remove all municipal employees; direct and supervise the administration of all departments, offices and agencies of the municipality; preside at meetings of the council and vote as other councilmembers; ensure that all laws of the municipality are faithfully executed; prepare and submit an annual budget and capital program to the council; submit a complete report on the finances and administrative activities of the municipality as of the end of each fiscal year; and make such other reports as the council may require.

Under other code sections, the mayor has the authority to call special meetings and to designate a temporary municipal judge. *SC Code 5-7-250(a), 14-25-25*.

In practice, the mayor-council form vests substantial executive authority in the mayor, although the precise boundaries of that authority are not always clearly defined by statute.

## Council-Manager Form

Municipalities under the council-manager form have a mayor and four, six or eight councilmembers. The mayor presides over meetings (by tradition), performs ceremonial duties, calls special meetings, designates a temporary judge, and acts and votes as a member of council. The mayor has no independent administrative authority under state law and has no additional legislative authority beyond that of other councilmembers.

State law vests executive authority in this form of government in the manager, rather than the mayor.

# Statutory Powers: Mayor

## Council Form

### Structure

- Five, seven or nine members, including mayor

### Mayor

- 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

## Mayor-Council Form

### Structure

- Mayor and four or more councilmembers

### Mayor

- 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)
- Ensures 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)

## Council-Manager Form

### Structure

- Mayor and four, six or eight members

### Mayor

- 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



# Statutory Powers: Council

Although the council retains legislative authority in all three forms of government, its administrative role varies significantly depending on the form.

## Council Form

Under the council form, the council has all legislative, policy-making 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 (*SC Code 5-7-190*); and prepares and adopts a balanced budget.

## Mayor-Council Form

Under 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

Under the council-manager form, the council has all legislative and policy-making 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.

# Statutory Powers: Council

## Council Form

- Has all legislative, policy and administrative power. S.C. Code 5-11-30, 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, 230
- Elects mayor pro tempore. S.C. Code 5-7-190
- Prepares and adopts a balanced budget. S.C. Code 5-7-260, 5-11-40(c), 12-43-296, S.C. Const. Art. X, Sec. 7

## Mayor-Council Form

- 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, 5-9-40, 12-43-296, S.C. Const. Art. X, Sec. 7

## Council-Manager Form

- Has all legislative and policy powers. S.C. Code 5-13-30
- Employs manager, attorney and judge. S.C. Code 5-7-220, 230, 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), 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 of Administrator or Manager

## Council Form

Under the council form, council may appoint an administrator to assist in carrying out its functions. The administrator has only the authority delegated by council.

Council may also appoint an officer of the municipality to administer departments, provided that neither the mayor nor any member of council may receive additional compensation for performing that role. *SC Code 5-7-180*.

## Mayor-Council Form

Under the mayor-council form, council may appoint an administrator to assist the mayor. The administrator's authority is limited to that delegated by council and may not conflict with powers assigned by state law to the mayor or council.

## Council-Manager Form

Under the council-manager form, the manager is the chief executive officer and head of the administrative branch of the municipality. He or she 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.

Furthermore, South Carolina law limits the personnel powers of mayor and council operating in the council-manager form of government: "Except for the purpose of inquiries and investigations, neither the council nor its members shall deal with municipal officers and employees who are subject to the direction and supervision of the manager except through the manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately." *SC Code Sec. 5-13-40(c)*.

Issues arising under this provision, particularly informal direction of staff by individual councilmembers, are a common source of conflict in council-manager governments. Municipalities in South Carolina may implement this provision in various ways, depending on the preferences and skills of council and the manager.

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.

# Statutory Powers: Administrator or Manager

## Council Form

- 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, 5-11-40(b)

## Mayor-Council Form

- May be appointed by council to assist mayor. S.C. Code 5-9-40
- Has only authority delegated by the council. S.C. Code 5-9-40

## Council-Manager Form

- 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), 5-7-220
- Prepares and administers annual budget. S.C. Code 5-13-90(2)
- Makes financial reports. S.C. Code 5-13-90(3)
- Advises council on departments and appointments. S.C. Code 5-13-30
- Designates manager during temporary absence. S.C. Code 5-13-80

## Varying Statutory Powers by Ordinance

Municipalities may not use local ordinances to alter or override the allocation of powers established by state law. The South Carolina Attorney General has consistently opined that the statutory roles of the mayor, council and manager cannot be modified in a way that conflicts with state law or effectively changes the municipality's form of government.

For example, state law provides that in the mayor-council form of government, the mayor shall “preside at meetings of the council.” *SC Code 5-9-30(3)*. There are no comparable provisions in the South Carolina Code applicable to the council or council-manager forms of government. The Attorney General has therefore opined that the council may not take the power to preside at meetings away from the mayor in the mayor-council form of government, but may in the council and council-manager forms of government. See *Op. SC Att’y Gen. (Aug. 25, 2022)*.

As another example, in the mayor-council form of government, “[t]he mayor and council may employ an administrator to assist the mayor in his office.” *SC Code 5-9-40*. The Attorney General has read this provision to mean that the council as a whole, including the mayor as a voting member, has the power to appoint or discharge the administrator. The Attorney General has furthermore opined that, because this power is given by statute to council, the council cannot “delegate the power to employ a town administrator solely to the mayor, with no participation by the Council in the appointment process.” See *Op. SC Att’y Gen. (Mar. 3, 2008)*.

In a closely related analysis, the Attorney General has also concluded that local ordinances cannot grant or deny powers to the mayor, manager or council in a way that would effectively change the form of government. For example, in 2007 the Attorney General responded to the question of whether a municipality with a council form of government can adopt an ordinance to “give the Mayor the strong Mayor powers.” *Op. SC Att’y Gen. (Nov. 30, 2007)*. The Attorney General’s office determined that it could not: “[I]f a municipality desires to change its form of government, a referendum must be conducted either upon the governing body’s receipt of a qualifying petition or upon a call for such a change by the municipality’s governing body via an ordinance.” *Id.*

## Specific Roles Incompletely Addressed by State Law

State law provides only general guidance and does not answer many specific, administrative-level questions that arise in municipal government.

For example, in the mayor-council form of government, the mayor has the power to “direct and supervise the administration of all departments,” *SC Code 5-9-30(2)*, but the “mayor and council may employ an administrator to assist the mayor in his office,” *SC Code 5-9-40*. Under this section, it is clear that only council as a body can hire or fire an administrator. But, if the council does hire an administrator, who provides day-to-day management of the administrator once hired? And even assuming that council has no objection to the mayor’s providing day-to-day management of the administrator, can individual council members direct or ask the administrator to take specific actions?

Cities and towns can mitigate the impact of such ambiguities in three ways.

First, and most importantly, the mayor, council and manager or administrator can defuse potential conflicts through clear and regular communication. Even if state statutory law specifically assigns a particular function to the mayor, the council, or the manager, the person or body entrusted with such functions should communicate a proposed action to other affected constituencies before acting. It’s important that this communication be provided equally to all relevant parties, not just certain individuals or groups, to avoid the perception of favoritism or exclusion.

For example, in the council-manager form of government, the manager has the authority to “[a]ppoint and, when necessary for the good of the municipality, remove any appointive officer or employee of the municipality.” *SC Code 5-13-90(1)*. Nevertheless, a manager should preemptively address concerns about hiring or firing a highly visible employee — for example, the police chief or the public utilities director — by first discussing the proposed employment action with the mayor and council.

Second, cities and towns should be sure that elected officials and senior staff receive adequate education and training in the state and local laws applicable to their form of government. The Municipal Association of SC regularly provides in-person training to councils on their form of government. Such training is particularly helpful for newly elected officials and newly hired senior staff, and cities and towns may benefit from regular, periodic education and training — both as new information for some members, and as a reminder for others.

Third, cities and towns can adopt local rules to address functions and powers not fully developed under state law. Local considerations will determine the required degree of formality for the rules; not every potential issue is appropriate for inclusion in a formal, generally applicable ordinance. Furthermore, council may address certain issues in the relevant authorizing document.

For example, state law specifies that in the mayor-council form of government, the mayor has the authority “to prepare and submit the annual budget and capital program to the council.” *SC Code 5-9-30(5)*. This section does not consider administration of the budget after adoption, including the authority to transfer budgetary approvals between line items or even departments. Rather than adopting a generally applicable rule in the code of ordinances, council can include provisions in the annual budget ordinance itself that specifically address such questions.

The following sections consider some areas in which state law does not clearly address executive or administrative authority, and suggests options for local resolution.

## Preparation of the Agenda

State law does not assign the power to prepare and approve the agenda for regular meetings in any form of government. As a result, debates often arise when one or more councilmembers want to add an item to the agenda, or when an item appears on the agenda without the knowledge or even over the objection of a substantial portion of the council.

Cities and towns should address this question by generally applicable local rule or ordinance. The form of the rule or ordinance will depend on the form of government and local conditions.

For example, one South Carolina municipality using the council form of government allows any three councilmembers acting together to place an item on the agenda if they submit the request in writing to the administrator by a specified deadline. If fewer than three members want to place an item on the agenda, they must first submit the request to the appropriate committee chair. The matter will then proceed through the committee process before ultimately being included on a full council agenda or dropped.

Another South Carolina municipality using the council-manager form of government provides that the municipal clerk prepares the agenda under the direction of the manager, and that an item may be placed on the agenda at the request of the mayor or a majority of council.

Cities and towns wishing to adopt a locally specific agenda rule, appropriate for their form of government, should contact the Municipal Association for guidance.

## Speaking or Acting on Behalf of the Municipality

Elected officials often participate in public events, intergovernmental meetings, or media communications in which their statements or actions may be understood as representing the official position of the municipality. This can include offering public-facing commentary on significant events, addressing other governmental bodies, or engaging with outside organizations on matters affecting the municipality.

But conflict often arises when an elected official, acting alone and without formal authorization, appears to commit or speak for the municipality, potentially creating confusion about the official position of the governing body.

The appropriate policy will depend on the local context. In some municipalities, it may be appropriate to require that any public statement or external communication on behalf of the municipality receive prior approval from council and be delivered only through a designated spokesperson. At the other end of the spectrum, a municipality may find that a far less formal process is beneficial — for example, a simple policy that allows elected officials to speak and act in their own discretion but asks them to clarify whether they are offering a personal view or conveying an adopted position of council. As a middle path, some

municipalities designate certain officials, whether elected or on staff, as the primary point of contact for intergovernmental or public communications, while still permitting other members to speak or act on behalf of the municipality on specific, identified topics.

Whichever approach is chosen, having a clear policy or mutual understanding will help reduce confusion and avoid conflicts.

## Contracting, Purchasing, and Spending Powers

State law clearly commits the appropriation function to council in all three forms of government. Although individual appropriations may be made by standalone ordinance, the primary method to approve municipal appropriations is through council's adoption of the annual budget. Accordingly, council has the power of the purse regardless of the form of government.

On the other hand, even after council has approved an appropriation, official actions will remain to be taken. For example, if council appropriates funds for the construction of a new fire station, someone must award and sign the construction contract. As a practical matter, the manager in the council-manager form of government and the mayor in the mayor-council form of government should have the authority to award and sign contracts on behalf of the municipality, provided that the council has appropriated funds for the purpose. But for certain high-visibility or high-cost projects, council may prefer to retain an advice and consent power prior to award and signature.

Many South Carolina municipalities address these questions through their procurement ordinances, which in addition to providing for competitive bidding often address the process for awarding and signing contracts. Most commonly, the award and signature authority depend on the size of the contract. For example, a finance official may have authority to award and sign contracts below a certain dollar amount, while the manager or administrator has the authority to award and sign contracts above that threshold. Particularly large contracts, in turn, may require full council approval prior to award and signature.

The dollar thresholds, authorized officials, and approval process will depend largely on local conditions and financial resources.

## Access to Information

Mayors and councilmembers, as elected officials, have an inherent right of access to municipal records and information necessary for the performance of their duties. This principle was affirmed in *Wilson v. Preston*, 378 SC 348 (2008), in which the South Carolina Supreme Court held that councilmembers have an organic right to detailed financial information about the municipality they represent.

This right must be balanced, however, against the practicalities of staff resources and operational capacity. Although councilmembers may request and receive information pertinent to their official duties, municipalities may establish procedures to manage the volume and timing of such requests to prevent disruption of day-to-day operations.

It is essential that these procedures apply equally to all members of the council, ensuring no preferential treatment or exclusion of any individual. And certain records, such as personnel files, medical information or other confidential materials may be exempt from disclosure, even to elected officials, to preserve privacy and legal protections for employees and other individuals. A sound approach would balance elected officials' rights of access with staff's ability to manage such requests efficiently, avoiding potential conflicts or disruptions.



# Powers for All Forms

Municipalities are not fully independent, 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.

Although the Home Rule Act did not expressly abridge or repeal all pre-Home Rule laws granting or restricting local authority, it substantially enlarged the powers of local governments and established a rule that these powers must be construed liberally. A general grant of power is now construed to include those powers fairly implied and not prohibited by the constitution or in conflict with general law. *SC Constitution Article VIII, Section 17; SC Code 5-7-10.*

All powers of a municipality are vested in the council, except as otherwise provided by law. *SC 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, regardless of form of government, is the only municipal body authorized to exercise legislative power. Council may not delegate or contract away this power.

“Legislative power” means the authority to enact laws, ordinances, or outward-facing policies that govern the municipality and those within its jurisdiction. The council exercises this power when it adopts prospective rules that affect the broader population. Other municipal actions with significant long-term effects on the public, such as adopting a budget or approving debt, also fall within the scope of legislative power, even if they do not involve the creation of enforceable laws or rules.

## Executive/Administrative

In contrast, “executive power” or “administrative power” means the authority to carry out and enforce

the laws, ordinances and policies adopted by council. The mayor, manager or administrator exercises this power by overseeing day-to-day operations, supervising employees, implementing budgets and applying council’s rules to individual situations. These acts are inward-facing, operational in nature, and intended to ensure the municipality functions effectively in accordance with legislative directives.

The exercise of executive or administrative functions and general control of municipal operations varies with the form of government. In the council form, council exercises executive functions, unless these functions are delegated to the mayor or an administrator employed by council to assist the council. *SC Code 5-11-40.* In the mayor-council form, the mayor is the chief administrative officer 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. *SC Code 5-13-90.*

In some contexts, the “executive power” may be distinguished from the “administrative power,” with the former being more expansive than the latter in terms of executing and enforcing the laws of the municipality. For purposes of managing internal operations, however, the powers are substantially comparable.

## Judicial

Only municipal courts can exercise judicial powers. The courts are part of 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 municipal court judges. 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 statutory powers to consider appeals, variances, conditional uses and other specialized matters. These boards are quasi-judicial in that they involve conducting a hearing, introducing and considering evidence, and applying law to the evidence to reach a decision.

In other contexts, state law provides that a locally appointed body may hear the initial appeal of municipal actions. For example, *SC Code 6-1-410* provides that



council or its designee may hear the initial appeal of a business license assessment or other determination.

The functions of and process within a quasi-judicial body are similar to the functions and processes of the courts. A party may appeal decisions of a quasi-judicial municipal body to a higher court within the unified judicial system, usually the Circuit Court but in some cases the Administrative Law Court.

## Discretionary vs. Ministerial Functions

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.

On the other hand, 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.

This distinction is frequently important. For example, in general terms, the South Carolina Tort Claims Act provides more protection against liability for discretionary matters than for ministerial matters. In addition, courts will not issue a writ of mandamus (a judicial order compelling an official to perform a specified act) for discretionary functions, but only for ministerial functions. Separation-of-powers principles require that courts give greater deference to the judgment of legislative or executive officials entrusted with discretion under the law.

## 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 awarding franchises. Council may delegate the power to contract to an executive or administrative officer unless state law requires an ordinance to approve the contract (e.g., selling or leasing municipal property or granting a franchise for use of the public streets and rights-of-way). *SC Code 5-7-260*.

Although a municipality may enter into contracts for proprietary or business reasons, it generally cannot

bind future councils in matters of governance or policy decisions. Instead, each successor council has the discretion to make legislative and policy determinations based on its own discretion and the prevailing circumstances at the time. This principle upholds the flexibility of municipal governance and ensures that each council has the authority to act independently within its legal framework.

For example, in *City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth.*, 325 SC 174 (1997), the South Carolina Supreme Court held that the Beaufort-Jasper Water and Sewer Authority, a special purpose district, could not condition its ability to serve water and sewer customers upon the consent of nearby municipalities.

More recently, the South Carolina Court of Appeals has applied the same principle in the context of litigation, holding that even a settlement agreement may not bind future councils with respect to governmental functions. *Town of Sullivan's Island v. Bluestein*, 928 S.E.2d 387 (S.C. Ct. App. 2026).

## Police

The term “police power” is frequently misunderstood. In common usage, the term “police” is limited to law enforcement matters. But in municipal law, the police power refers to all powers necessary and appropriate to protect and promote the health, safety, morals and welfare of the general public. Adopting and enforcing health and safety codes, regulating zoning and land use, business licensing, and adopting ordinances that provide penalties for offenses are all examples of actions under the general and specific statutory grant of municipal police powers.

General and specific grants of power are contained in the Home Rule Act (*Title 5, Chapters 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, Chapters 19 – 39*).

Although the constitution is generally construed as a document limiting powers of the General Assembly, rather than granting powers to local governments, it does contain self-executing authority for municipalities to own and operate public utility systems. The General Assembly cannot take this authority away. *SC Constitution, Article VIII, Section 16*.

