The Ordinance vs. Resolution Dilemma

S.C. Rural Water Association Decision Makers Summit
February 18, 2017
The Ordinance vs. Resolution Dilemma

- State law empowers municipal councils to enact ordinances and resolutions § 5-7-30, § 5-7-160.

- A frequent dilemma for cities is deciding when it’s appropriate to use a resolution versus an ordinance.

- **Ordinance vs. Resolution:** If state law does not require use of an ordinance, council can choose to use an ordinance or a resolution § 5-7-260.

- Decision should be based on the intended duration and impact of the proposed action
What Are Ordinances and Resolutions?

- **Ordinance**: a law made by a municipality or other local authority.

- Ordinances can be used to enact laws, adopt policies and rules with broad applicability, significant impact and extended duration.

- **Resolution**: a formal expression of the opinion, will or intent of council.

- Resolutions are usually adopted in written form to document Council’s opinion, will or intent.
More About Ordinances and Resolutions

- Ordinances must be codified, indexed, printed, maintained in a current form, reflect all amendments or repeals, and be available for public inspection at reasonable times § 5-7-290.

- Ordinances and resolutions must be consistent with the constitutions and the general laws of South Carolina and the United States

- Adoption of a resolution requires a single vote of council

- In substance, there is no difference in effect between a written resolution and a verbal motion approved by 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.
Procedural And Amendment Requirements

Procedural Requirements for Ordinances:

- Must be introduced in writing and in the required format for adoption
- Must be read at least twice 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

How to Amend or Repeal an Ordinance

- An adopted ordinance may only be amended or repealed by another ordinance
- All requirements for a new ordinance must be followed
State law requires the following actions to be accomplished by ordinance:

- Annexing property (§ 5-3-150, § 5-7-300)
- Setting salaries for council (§ 5-7-170)
- Conducting municipal elections (§ 5-15-10)
- Adopting standard codes (§ 5-7-280, § 6-9-60)
- Adopting council rules of procedure (§ 5-7-270)
- Adopting procurement ordinances (§ 11-35-50)
- Adopting a comprehensive plan, zoning and land development regulations. (§ 6-29-310, et seq.).
Additionally, under state law, the following actions require an ordinance:

- Adopt or amend an administrative code
- Establish, alter or abolish any municipal department or office
- Provide for a fine or other penalty or establish a rule or regulation in which a fine or other penalty is imposed for violations
- Adopt budgets and levy taxes (Property tax otherwise provided for)
- Grant, renew or extend franchises
- Authorize the borrowing of money
- Sell, lease or contract to sell or lease any lands of the municipality.
Utility Ordinances

- Utility related rules, regulations and requirements you should consider using an ordinance to establish and enforce:
  - Purchasing Procedures
  - Violation of rules and regulations and penalties
  - Damaging and tampering with utilities; unauthorized restoration
  - Payment of bills, penalties, procedures for delinquencies and nonpayment
  - Tap, Connection and Reconnection Fees
  - Fire Protection Service Charges
  - Utility Rates (base, minimums, volumetric charges, etc.)
  - Computation of charges when meter fails to register
Utility Ordinances

- Use of water from fire hydrants
- Right of entry on easements and inspections
- Mandatory connection authority
- Provision of services outside of city limits
- Annexation or annexation agreement requirements for service
- Construction permits, standards and requirements
- Sewer Pre-Treatment Program
- Discharge of surface waters and connection of run-off to sewers
- Cross-connection control program
- Grease, oil and sand interceptors
- Infrastructure reimbursement and other incentives
Elements of an Ordinance

1. Numbering
2. Title (or caption)
3. Preamble (whereas clauses)
4. Ordination Clause
6. Severability Clause
7. Effective Date
8. Signatures
Today’s technology and the Internet makes research and drafting easier

But be careful…Internet topic searches will produce national results

Must consider differences in state laws that may invalidate use of out of state ordinances in S.C.

Better approach may be to look at similar, or peer, cities in S.C.

This process used to be difficult and time consuming. Not any more…
An easy way to do this is to access online municipal codes, which allows you to pick and choose the best parts of peer city ordinances and incorporate them into your draft ordinance.

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](http://www.municode.com/Library/SC)

- American Legal publishing which lists the codes of approximately 20 municipal and county clients in South Carolina
Validity of Ordinances

- The courts have said that a local ordinance is a legislative enactment and presumed constitutional.

- The burden of proving the invalidity of a local ordinance rests with the party challenging it.

- Only a court may declare an ordinance invalid.

- For an ordinance to be found valid:
  1. It must have been enacted by a local governing body with the authority to do so.
  2. It must not conflict with state or federal law.
The Ordinance vs. Resolution Conundrum

Questions