

1979 WL 43069 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 14, 1979

*1 Glen S. Baldwin, Esquire
Greenville City Attorney
P. O. Box 2207
Greenville, SC 29602

Dear Mr. Baldwin:

Mr. McLeod has referred your letter to me for reply. You have asked the following questions:

(1) The City of Greenville adopted a zoning ordinance and map in 1962 pursuant to [Code Section 5-23-10 et. seq.](#) of the 1976 Code of Laws. The City is now in the process of proposing to revise its zoning ordinance and zoning map in their entirety under a new comprehensive plan. It is desirable to adopt this revised ordinance and map pursuant to the statutory authority granted under [Section 6-7-710 et. seq. of the 1976 Code](#) of Laws. Does the existence of [Section 5-23-10 et. seq.](#) present any conflict with respect to the new ordinance and map being adopted pursuant to [Section 6-7-720 et. seq. supra?](#)

It is my understanding that the General Assembly has provided cities with the authority to enact zoning ordinances in two pieces of legislation; South Carolina Code of Laws, 1976, [Section 5-23-10, et seq.](#), and [Section 6-7-310, et seq.](#) [Section 5-23-10, et seq.](#), is the older method of zoning. [Section 6-7-310, et seq.](#), is a new procedure for zoning and is based upon the municipality adopting a comprehensive plan by a local planning commission for appropriate zoning. Section 6-7-10 provides in part that:

[a]ny county or municipality may, but shall not be required to, exercise any of the powers granted by this chapter. Whenever such a governing authority shall elect to exercise any of the powers granted by this chapter, such power shall be exercised in the manner hereinafter prescribed.

Therefore, if Greenville is adopting an entirely new zoning ordinance and map and has followed the prerequisites of Section 6-7-10, et seq., for its enactment, there would be no conflict in the two laws.

(2) The new zoning ordinance and map are being presented to the City Council by the Planning Commission as recommended by the City's Zoning Commission rather than as individual amendments or modifications to the existing ordinance and map. Under [Section 5-23-10 of the 1976 Code](#) of Laws, there are certain requirements for the number of Council votes needed to pass on changes or amendments to the existing zoning ordinance or map. Specifically, this section requires that any change or amendment shall not become effective except upon the favorable vote of three-fourths of all the members of the legislative body of such municipality where a protest against such change is entered by certain designated interested persons. My question is whether or not this section would control as to voting requirements where Council intends to adopt an entirely new zoning ordinance and map pursuant to [Section 6-7-720 et seq. of the 1976 Code](#) of Laws. If so, would such voting requirement apply to any amendments that were offered with respect to the ordinance as a whole when it is presented for first and second readings of the City Council? Should Section 5-23-50, *supra* not control, would City Council then be able to adopt this new ordinance and map pursuant to its normal rules for procedure in adopting ordinances?

*2 You have stated in your letter that you are establishing an entirely new zoning ordinance and map pursuant to Section 6-7-10, et seq. Therefore, the procedure established in this Section would be the one that would be followed in adopting the new ordinance. The procedure for enacting this new zoning ordinance is found in Section 6-7-730.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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