The City of Woodcreek
IN THE MIDST OF THE TEXAS HILL COUNTRY

SPECIAL CITY COUNCIL MEETING (CITY HALL)
February 21, 2023; 3:00 PM
Woodcreek, Texas

MEETING NOTICE

The City Council of the City of Woodcreek, Texas will conduct a meeting at Woodcreek City Hall, 41 Champions Circle, Woodcreek, Texas. The meeting will be held on Tuesday, February 21, 2023 at 3:00 PM.

All attendees are encouraged to wear face coverings when a minimum of six-foot social distancing cannot be maintained. Smoking is not allowed anywhere on the property of City Hall.

The public may watch this meeting live at the following link: https://zoom.us/j/98921677941

A recording of the meeting will be made and will be available to the public in accordance with the Texas Public Information Act upon written request. This notice, as amended, is posted pursuant to the Texas Open Meetings Act (Vernon's Texas Codes Ann. Gov. Code Chapter 551).

The City of Woodcreek is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please call the City Secretary's Office at 512-847-9390 for information. Hearing-impaired or speech disabled persons equipped with telecommunications devices for the deaf may call 7-1-1 or may utilize the statewide Relay Texas program at 1-800-735-2988.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

It is anticipated that members of other City Boards, Commissions, Panels and/or Committees may attend the meeting in numbers that may constitute a quorum of the other City Boards, Commissions, Panels and/or Committees. Notice is hereby given that this meeting, to the extent required by law, is also noticed as a meeting of the other City Boards, Commissions, Panels and/or Committees of the City, whose members may be in attendance. The members of the City Boards, Commissions, Panels and/or Committees may participate in discussions on the items listed on this agenda, which occur at this meeting, but no action will be taken by those in attendance unless such action item is specifically listed on an agenda during a regular or special meeting for the respective Board, Commission, Panel and/or Committee subject to the Texas Open Meetings Act.

The City Council may retire to Executive Session any time during this meeting, under Texas Government Code, Subchapter D. Action, if any, will be taken in open session.

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

Any citizen shall have a reasonable opportunity to be heard at any and all meetings of the Governing Body in regard to: (1) any and all matters to be considered at any such meeting, or (2) any matter a citizen may wish to bring to the Governing Body's attention. No member of the Governing Body may discuss or comment on any citizen public comment, except to make: (1) a statement of specific, factual information given in response to the inquiry, or (2) a recitation of existing policy in response to the inquiry. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting per Texas Local Government code Sec. 551.042

*Citizen comments will be allowed at the beginning of every meeting, or alternatively, before an item on the agenda upon which the citizen wishes to speak is to be considered. All citizens will be allowed to comment for **three (3) minutes** per person and shall be allowed more time at the Mayor or Chair's discretion. In addition, citizens may pool their allotted speaking time. To pool time, a speaker must present the names individuals present in the audience who wish to yield their three(3) minutes. Citizens may present materials regarding any agenda item to the City Secretary at or before a meeting, citizens attending any meeting are requested to complete a form providing their name, address, and agenda item/concern, but are not required to do so before speaking and presenting it to the City Secretary prior to the beginning of such meeting. Comments may only be disallowed and/or limited as per Government Code § 551.007(e).*

*Submit written comments by email to woodcreek@woodcreektx.gov by **NOON,** the day prior to the meeting. Please include your full name, home or work address, and the agenda item number. Written comments will be part of the official written record only.*

AGENDA

CALL TO ORDER

MOMENT OF SILENCE

PLEDGES

ROLL CALL and ESTABLISH QUORUM

PUBLIC COMMENTS

CONSENT CALENDAR

REPORTS FROM OFFICERS AND COUNCIL LIAISONS

Report by Planning and Zoning Committee Liaison.

Report by Ordinance Review Committee Liaison.

Report by Parks and Recreation Board Liaison.

Report by Platinum Roads Panel Liaison.

Report by Tree Board Liaison.

Report by City Manager.

Report by City Secretary.

REPORT OF SPECIAL (Select or Ad Hoc) COMMITTEES

Ad Hoc Workgroup, ARPA Review (American Rescue Plan Act of 2021)

Ad Hoc Workgroup, Chapters 154-157 (Development Workgroup)

SPECIAL ORDERS

UNFINISHED BUSINESS AND GENERAL ORDERS

NEW BUSINESS

1. Workshop to Discuss Policies, Procedures, Roles and Legislation.
    a. Review of Woodcreek City Structure and Important Policies
    b. How Agendas Are Created: From Committees to Council. Discussion of Process.
    c. General Roles of Council Members, Staff, Committee Chairs and Members, Liaison Roles, and Definition of Our "Lanes".
    d. Preparation of Ordinances, Resolutions, Etc.
2. Discuss and Take Possible Possible Action on Items Discussed During Workshop Session.

ANNOUNCEMENTS

ADJOURN

POSTING CERTIFICATION

I certify that the above notice was posted on the **16th day of February, 2023 at 5:00PM**

By: ____________________

Suzanne J. MacKenzie, City Secretary

§ 30.01 TYPE A GENERAL-LAW MUNICIPALITY.

The City hereby changes to a Type A General-Law municipality, Aldermanic Form of Government.

(Ord. 89-33, 10-11-1989; Ord. No. 22-305 , 3-9-2022)

§ 30.13 GOVERNING BODY.

(A) *Governing body.* The governing body consists of a Mayor and five Aldermen who are elected by the qualified voters of the municipality. The terms of office of the Mayor and Council Member of the city shall be two-year staggered terms of office, and until successors have qualified.

(B) *Mayor—Powers and duties.* The Mayor shall have all powers and duties explicitly conferred upon them by Tex. Local Gov't. Code, §§ 22.037, 22.038, 22.042, and 102., but shall have no implied powers unless specifically granted to them by state statute or the City Council by resolution or ordinance.

The Mayor is the Chief Executive Officer of the municipality. The Mayor shall at all times actively ensure that the laws and ordinances of the municipality are properly carried out. The Mayor shall perform the duties and exercise the powers prescribed by the governing body of the municipality.

The Mayor shall inspect the conduct of each subordinate municipal officer and shall cause any negligence, carelessness, or other violation of duty to be prosecuted and punished.

The Mayor shall give to the governing body any information, and shall recommend to the governing body any measure, that relates to improving the finances, police, health, security, cleanliness, comfort, ornament, or good government of the municipality.

The Mayor may administer oaths of office.

In the event of a riot or unlawful assembly or to preserve the peace and good order in the municipality, the Mayor may order and enforce the closing of a theater, ballroom, or other place of recreation or entertainment, or a public room or building and may order the arrest of a person who violates a state law or a municipal ordinance in the presence of the Mayor.

The Mayor shall preside at all meetings of the governing body of the municipality and, except in elections, may vote only if there is a tie.

The Mayor is generally recognized as the ceremonial and governmental head of the City for most purposes.

The Mayor may call a Special Council meeting on the Mayor's own motion and shall call a Special Council meeting on the application of three Council Members. Each member of the governing body, the secretary, and the municipal attorney must be notified of the Special Council meeting. The notice may be given personally or left at the person's usual place of residence.

The Mayor shall allow a Council Member to add items to a Regular Council meeting agenda.

A Mayor may add items to a Special Council meeting agenda in which they called, and may add items to any Regular Council meeting agenda.

The Mayor's primary function is to carry out the legislative responsibilities they share with other members of Council: identifying the needs of the City, developing programs to satisfy those needs, and evaluating the extent to which municipal services reflect the policy goals of the Council.

The Mayor shall not have the power to expend funds of the City, sign agreements binding the City, or otherwise take any other action on behalf of the City without the express approval of the City Council.

The Mayor is hereby expressly authorized to expend funds in the daily operation of the City as they relate to payroll and accounts payable consistent with the approved annual budget, as it may be amended from time to time by the City Council.

In support of Council, the Mayor may create additional duties assigned to city staff.

Nothing in this Section is intended to alter the authority of the Mayor Pro Tempore under Tex. Local Gov't. Code, § 22.037 "if the Mayor fails, is unable, or refuses to act."

(C) *Mayor pro tempore.* At each new governing body's first meeting or as soon as practicable, the governing body shall elect one alderman to serve as president pro tempore for a term of one year. If the Mayor fails, is unable, or refuses to act, the president pro tempore shall perform the Mayor's duties and is entitled to receive the fees and compensation prescribed for the Mayor. If the Mayor and the president pro tempore are absent, any alderman may be appointed to preside at the meeting.

(D) *Council Members—Powers and Duties.* Council Members shall have all powers and duties explicitly conferred upon them by Tex. Local Gov't. Code, §§ 22.037, 22.038, 22.042, 22.071, 22.072 and 102., but shall have no implied powers unless specifically granted to them by state statute.

Council Members may add items to the Regular Council meeting agenda, and may add items to a Special Council meeting agenda in which they called.

The governing body of the municipality shall meet at the time and place determined by a resolution adopted by the governing body.

The governing body shall determine the rules of its proceedings and may compel the attendance of absent members and punish them for disorderly conduct.

A Council Member shall be fined $3.00 for each meeting that the Council Member fails to attend unless the absence is caused by the Council Member's illness or the illness of a family member.

Council may describe by resolution or ordinance the duties and powers of the Mayor, not otherwise granted to that position by State Statute.

The governing body by ordinance shall provide for the election or appointment of other municipal officers.

The governing body may confer on other municipal officers the powers and duties of an officer.

The governing body may prescribe the powers and duties of a municipal officer appointed or elected to an office under Chapter 22 whose duties are not specified under that code.

Council Members are the city's legislators. Their primary duty is policy making, which includes identifying the needs of local residents, formulating programs to meet the changing requirements of the community, and measuring the effectiveness of ongoing municipal services. Council Members provide direction and leadership, deciding what needs to be done and planning for the future of the City and its residents.

Council Members also perform the following duties as the governing body:

(1) *Regulator*—The Council exercises regulatory powers over the conduct and property of its citizens. It has the power to declare certain conduct to be criminal, to require that certain businesses and activities be licensed, and to tell property owners how and for what purposes they may use their property.

(2) *Financier*—The Council may levy taxes, assess fees and charges, and sell bonds in order to finance the many functions of the city government. The council also has to budget the expenditure of the city's funds.

(3) *Employer*—The Council is responsible for all of the city's employees, and looks to the City Manager and Mayor to see that they perform their duties effectively and professionally.

(Ord. No. 20-287 , § II, 11-10-2020; Ord. No. 22-305 , 3-9-2022)

§ 30.14 OTHER MUNICIPAL OFFICERS.

§ 30.15 MUNICIPAL MANAGER/ADMINISTRATOR.

(A) *Office of Municipal Manager/Administrator.* The Office of Municipal Manager/Administrator is created and shall receive such compensation as may be fixed by the Council.

(B) *Powers and Duties of Municipal Manager/Administrator.*

(1) The Municipal Manager/Administrator, who shall be referred to as the City Manager, shall be the Chief Administrative Officer of Woodcreek and shall be responsible to the governing body for the proper administration of the affairs Woodcreek not otherwise delegated to other Officers. To that end, the City Manager shall have the authority, duty and responsibility as required to carry out the following responsibilities and any others that may be assigned by the governing body, from time to time.

(2) The City Manager shall:

(a) Establish and maintain effective working relationships with the governing body, municipal officers, and municipal employees.

(b) Provide the governing body with pertinent information regarding the administration of all City departments and City activities, and make recommendations to the City Council for the administration and management of the City.

(c) Work with the governing body to develop and implement short- and long-range plans for the City's growth, including strategic and comprehensive plans.

(d) Complete all tasks generally assigned to the City Manager and working closely with City staff to develop, present, implement, administer and coordinate all of the following: (a) coordinate with the City Secretary and oversee elections; (b) serve as a liaison between vendors and Council; (d) assist the City Secretary with planning, zoning and permitting; (e) manage and oversee the City's website.

(e) Prepare job descriptions for approval by the City Council; delegate duties to the officers and employees of the City; supervise the day-to-day operations (including supervising and inspecting the conduct of all subordinate officers employees and causing all negligence, carelessness and violations of duty by the employees and officers to be given appropriate consideration), functions and programs of the City; and make recommendations to the governing body on any and all personnel, performance, administration, programs, projects, management, financial and general governance issues;

(f) Direct, coordinate and provide oversight over all departments, programs and projects of the City;

(g) Ensure that all applicable laws and ordinances are enforced;

(h) Ensure that a system of financial checks and balances is in place and is rigorously upheld to include, as a minimum, the segregation of duties as directed and approved by City Council;

(i) Supervise programs and projects, issue permits and perform other duties as assigned by the governing body.

(j) Attend all meetings of the City Council.

(k) Prepare, review and submit to the governing body prior to the beginning of each fiscal

year a budget for proposed expenditures for the ensuing year together with a message describing the important features of said budget; assist the City Council with respect to its consideration of said budget; and assure the proper administration of the budget after its adoption;

(l) Prepare and submit to the governing body as of the end of the fiscal year a complete report on the finances and administrative activities of the City for the preceding year.

(m) Report to the governing body in a timely fashion as specific issues arise, as part of regular City Council meetings, on the financial condition and needs of the City; provide timely information and assistance to City Council, as requested by the City Council; and work with City Council to ensure an annual audit is completed as required.

(3) The City Manager/Administrator shall have such further authority, duties and responsibilities as reasonably implied from the terms of this section and as heretofore or hereafter provided by the City Council; and shall be bonded in an amount determined by the City Council which bond shall be conditioned upon the good and faithful performance of the authorities and performances of the office and position of City Manager. The premium of the bond shall be paid by the City.

(C) *Municipal Manager/Administrator to Serve as Municipal Treasurer.* The Office of Municipal Treasurer is created. The Municipal Manager/Administrator shall also serve as the Municipal Treasurer.

(D) *Powers and Duties of Municipal Manager/Administrator as Municipal Treasurer.*

(1) The Municipal Manager/Administrator as the Municipal Treasurer shall (1) receive and securely keep all money belonging to the municipality; (2) make all payments on the order of the Mayor, attested by the secretary of the municipality under the seal of the municipality; (3) render to the governing body a full statement of the receipts and payments which must be rendered at the governing body's first regular meeting in every quarter and at other times as required by the governing body.

(2) The Municipal Manager/Administrator as the Municipal Treasurer will also perform the following duties which are statutorily given to the Municipal Secretary:

(a) Serve as the general accountant of the municipality and shall keep regular accounts of the municipal receipts and disbursements. The Secretary shall keep each cause of receipt and disbursement separately and under proper headings. The Secretary shall also keep separate accounts with each person, including each officer, who has monetary transactions with the municipality. The Secretary shall credit accounts allowed by proper authority and shall specify the particular transaction to which each entry applies. The Secretary shall keep records of the accounts and other information covered by this subsection.

(b) Keep a register of bonds and bills issued by the municipality and all evidence of debt due and payable to the municipality, noting the relevant particulars and facts as they occur.

(E) *Bond*. The Municipal Manager/Administrator as the Municipal Treasurer shall be bonded as required by Section 30.15(B)(3), and also as required by the law.

(Ord. 00-67, 6-14-2000; Ord. 13-173, 1-9-2013; Ord. 19-254, 2-25-2019; Ord. No. 20-287 , § II, 11-10-2020; Ord. No. 22-305 , 3-9-2022)

§ 30.16 MUNICIPAL SECRETARY.

(A) *Office of Municipal Secretary Created*. The Office of Municipal Secretary is created, shall be referred to as the City Secretary, and shall receive such compensation as may be fixed by the Council. The Municipal

Secretary may also be referred to as the Municipal Clerk.

(B) *Powers and Duties of Municipal Secretary.*

(1) The Municipal Secretary shall:

(a) Attend each meeting of the governing body of the municipality and shall keep, in a record provided for that purpose, accurate minutes of the governing body's proceedings.

(b) Engross and enroll all laws, resolutions, and ordinances of the governing body.

(c) Keep the corporate seal.

(d) Take charge of, arrange, and maintain the records of the governing body.

(e) Countersign all commissions issued to municipal officers and all licenses issued by the Mayor and keep a record of those commissions and licenses.

(f) Prepare all notices required under any regulation or ordinance of the municipality.

(g) Draw all the warrants on the Treasurer, countersign the warrants, and keep, in a record provided for that purpose, an accurate account of the warrants.

(h) Carefully keep all contracts made by the governing body.

(i) Perform all other duties required by law, ordinance, resolution, or order of the governing body.

(C) *Designation as Records Management Officer.* In addition to all other powers and duties set forth herein, the Municipal Secretary is also designated as the Records Management Officer for the City of Woodcreek.

(D) *Powers and Duties of Municipal Secretary as Records Management Officer.*

(1) The City Secretary shall file their name with the Director and Librarian of the Texas State Library within 30 days of the initial designation or assumption of the office, as applicable. In addition to other duties assigned, the Records Management Officer shall:

(a) Assist in establishing and developing policies and procedures for a records management program for the City of Woodcreek.

(b) Administer the records management program and provide assistance to custodians for the purposes of reducing the costs and improving the efficiency of recordkeeping.

(c) In cooperation with the custodians of the records: (i) prepare and file with the director and librarian the records control schedules and amended schedules required by Tex. Local Gov't. Code § 203.161 and the list of obsolete records as provided by Tex. Local Gov't. Code § 203.164; and (ii) prepare or direct the preparation of requests for authorization to destroy records not on an approved control schedule as provided by Tex. Local Gov't. Code § 203.165, of requests to destroy the originals of permanent records that have been microfilmed as provided by Tex. Local Gov't. Code § 204.008, and of electronic storage authorization requests as provided by Tex. Local Gov't. Code § 205.007.

(d) In cooperation with custodians, identify and take adequate steps to preserve local government records that are of permanent value.

(e) In cooperation with custodians, identify and take adequate steps to protect essential local government records.

(f) In cooperation with custodians, ensure that the maintenance, preservation, microfilming, destruction, or other disposition of records is carried out in accordance with the policies and procedures of the local government's records management program and the requirements of this subtitle and rules adopted under it;

(g) Disseminate to the governing body and custodians information concerning state laws, administrative rules, and the policies of the government relating to local government records; and

(h) In cooperation with custodians, establish procedures to ensure that the handling of records in any context of the records management program by the records management officer or those under the officer's authority is carried out with due regard for: (i) the duties and responsibilities of custodians that may be imposed by law; and (ii) the confidentiality of information in records to which access is restricted by law.

(E) *Municipal Secretary to Serve as Municipal Assessor and Collector Created.* The Office of Municipal Assessor and Collector is created and shall receive such compensation as may be fixed by the Council. The Municipal Secretary will serve as the Municipal Assessor and Collector.

(F) *Powers and Duties of Municipal Assessor and Collector.* The Municipal Assessor and Collector will, in addition to the duties of Municipal Secretary, perform all other duties required by law, ordinance, resolution, or order of the governing body.

(Ord. 90-34, 5-24-1990; Ord. No. 20-287 , § II, 11-10-2020; Ord. No. 22-305 , 3-9-2022)

§ 30.17 MUNICIPAL ATTORNEY.

(A) *Office of Municipal Attorney Created.* The Office of Municipal Attorney is created, shall be referred to as the City Attorney, and shall receive such compensation as may be fixed by the Council. The Municipal Attorney shall be a law firm or individual in private legal practice, licensed in the State of Texas, that contracts with the City to provide services as needed.

(B) *Powers and Duties of Municipal Attorney.* The Municipal Attorney will perform all duties required by law, ordinance, resolution, or order of the governing body.

(Ord. 85-4, 2-14-1985; Ord. No. 20-287 , § II, 11-10-2020)

Handbook for Mayors and Councilmembers

2022 Handbook for Mayors and Councilmembers

Texas Municipal League
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2022 Handbook for Mayors and Councilmembers

Foreword

Serving as a local elected official is one of the most demanding—and often thankless—tasks a citizen can perform. Municipal officials can be called upon day and night. They are subject to constant criticism, and almost everything they do will be wrong in someone's opinion. Many spend their own money to campaign for election; most receive little, if any, pay for the job.

But serving in local office can also be rewarding and productive. For many, it is more important than being in Congress or the state legislature because the city is the real world where municipal officials can make good things happen for their fellow citizens.

We hope this handbook will offer a few suggestions that will make your job easier. Obviously, such a guide cannot possibly touch upon every relevant subject, but it does include what we think are the most important topics. Throughout, however, it should be recognized that this handbook is only a guide and that there is no substitute for competent legal advice regarding interpretations of the law and other questions that might arise in specific situations.

If you don't find the answers to your questions about the part of city government you are covering or the issues facing cities today, we're ready to assist you in any way we can. Just give us a call at 512-231-7400, email us at legalinfo@tml.org, or visit our website at www.tml.org.

We wish you great success.

Bennett Sandlin
TML Executive Director

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About the Texas Municipal League

In the summer of 1913, Professor Herman G. James, Director of the Bureau of Municipal Research and Reference at the University of Texas at Austin, and A.P. Woolridge, then the Mayor of Austin, formed the League of Texas Municipalities.

The two men invited representatives from all Texas cities to come to Austin on November 4, 1913, for an organizational meeting. Fourteen cities sent representatives to Austin. At that first meeting, a modest membership fee was approved along with a constitution to govern the association.

Since that time, the League has grown into one of the largest and most respected organizations of its kind in the nation. From the original 14 members, TML's membership has grown to 1,160 cities. Membership is voluntary and is open to any city in Texas. More than 16,000 mayors, councilmembers, city managers, city attorneys, and department heads are member officials of the League by virtue of their cities' participation.

The Texas Municipal League exists solely to provide services to Texas cities. Since its formation, the League's mission has remained the same: to serve the needs and advocate the interests of its members. The TML constitution states that the purpose of the League is to "render services which individual cities have neither the time, money, nor strength to do alone."

League services to its member cities include legal advice and information on municipal legal matters, legislative representation on the state and federal levels, information and research, publication of a monthly magazine, conferences and training seminars on municipal issues, and professional development of member city officials.

Introduction

How to Use This Book

In the past, the League has prepared two separate handbooks for city officials: one for those in general law cities, and one for those in home rule cities. In the interest of efficiency, those books have been combined to form this *Handbook for Mayors and Councilmembers*. Most of the information is relevant to all cities. But a fundamental understanding of the fact that there are two types of cities in Texas will help the reader recognize those areas where a distinction is made.

The two types of cities in Texas are general law and home rule. Most smaller cities (those with 5,000 or fewer inhabitants) are general law cities. A general law city operates exactly as its name implies: it can do only what state law expressly authorizes. The most important part of that authorization is the form of government of a general law city. State law defines the composition of the governing body and various items that go with that (such as filling vacancies on the governing body). Chapter two describes in detail the roles and responsibilities of officers in general law cities: Type A, Type B, and Type C. The main differences in the powers of the different types of cities are largely of historical interest, but the state law directing the makeup of the governing body is still very important.

When a general law city reaches 5,000 inhabitants, it may follow procedures in state law to draft a home rule charter. The draft is then submitted to the voters of the city at an election. If the voters approve the charter at the election, the city becomes a home rule city. A home rule city is governed by its charter (see chapter three for the roles and responsibilities of officers in home rule cities) and looks to state law for limitations on its power. The state legislature has frequently passed laws that limit the authority of home rule cities, and state law also frequently imposes certain procedures that must be followed by any type of city.

This book is meant to be a broad and general overview of cities in Texas. Many of the topics are covered in much more detail in various papers and memos available from the League. City officials with questions about items in this book or anything relating to the governance or authority of their city should visit the TML website at www.tml.org and/or contact the League's legal services department at legalinfo@tml.org. The information in this book, or other information obtained from the League, should never be substituted for the advice of local legal counsel.

Chapter One:
Local Government in Texas

Understanding city government requires some knowledge of all local governments. This chapter briefly discusses counties, school districts, council of governments, and types of city governments.

Units of Local Government

According to 2010 Census of Government figures, Texas has 1,209 cities, 254 counties, 1,082 school districts, and 2,291 special districts. During the past 20 years, the number of special districts has steadily increased, due mainly to the rapid creation of water districts in unincorporated areas. Conversely, the number of school districts has steadily declined as smaller systems have consolidated with larger ones. The number of counties has remained constant for 100 years, while the number of cities is increasing at an average of about 10 per year.

The United States Census Bureau also recognized that four of the 10 cities with the largest recent population gains were in Texas —San Antonio, Dallas, Fort Worth, and Frisco. Texas also had seven of the most recent 15 fastest-growing cities by percentage — New Braunfels, Frisco, McKinney, Georgetown, Rowlett, Midland, and Round Rock.

Counties

Counties are known as “general purpose” governments due to the many different functions they perform. Counties serve the dual purposes of providing governmental services for the benefit of their residents and administrative services on behalf of the state. Major governmental services include road construction and maintenance, jails and courts, welfare, health, and law enforcement. Administrative services performed by counties as agents of the state include voter registration and motor vehicle licensing.

Special Districts

Schools and the many types of special districts are known as “single-purpose” governments, since they usually perform just one function, such as education, water supply, or hospital care. Most special districts serve a limited geographical area and were created because of the inability of general purpose local governments to provide a particular service.

Councils of Governments

Councils of governments (COGs) are also known as “regional planning commissions.” COGs are defined as “political subdivisions of the state” under Texas law. However, COGs differ considerably from cities, counties, and other conventional local governments because they cannot levy taxes nor incur debt.

COGs are voluntary, area-wide associations of local governments. Their function is to foster local cooperation among localities by serving as forums for intergovernmental problem-solving and by planning governmental programs and facilities on a regional basis. Though they do not have broad power to execute projects, many of the state’s COGs provide direct services on a limited basis.

Each COG operates under the supervision of a governing body composed of elected officials representing participating local governments. Financing is provided by a combination of dues paid by member governments and federal and state funds.

Cities

Among all of the different types of local governments, cities perform the greatest number of functions, both governmental and proprietary.

State law specifically defines and lists certain activities as either governmental or proprietary functions in the Texas Tort Claims Act. The law lists 36 functions that are governmental. Included among them are police and fire protection, health and sanitation services, street construction and design, transportation systems, establishment and maintenance of jails, and enforcement of land use restrictions. Three functions are listed as proprietary: the operation and maintenance of a public utility, amusements owned and operated by a city, and any activity that is abnormally dangerous or ultra-hazardous. Functions that are listed as governmental are not included as proprietary functions.

There are two categories of cities in Texas: home rule and general law.

Home rule cities are larger cities with more than 5,000 inhabitants in which the citizens have adopted a home rule charter. A charter is a document that establishes the city's governmental structure and provides for the distribution of powers and duties among the various branches of government.

The legal position of home rule cities is the reverse of general law cities. Rather than looking to state law to determine what they may do, as general law cities must, home rule cites look to the state constitution and state statutes to determine what they may not do. Thus, if a proposed home rule city action has not been prohibited, limited, or pre-empted by the state, the city generally can proceed.

General law cities are smaller cities, most of which are less than 5,000 in population. All general law cities operate according to specific state statutes prescribing their powers and duties. General law cities are limited to doing what the state authorizes or permits them to do. If state law does not grant general law cities the express or implied power to initiate a particular action, none may be taken.

Approximately seventy-five percent of all Texas cities operate under the general laws; the remainder are home rule cities. "General law" is a term used to describe all of the state laws applicable to a particular class of things. A general law city, therefore, is one that is subject to all of the state laws applicable to such cities, many of which are found in the Local Government Code.

General law city officials occasionally call the Texas Municipal League office to request a copy of their "city charters." Unlike home rule cities, general law cities do not have charters. The creation of a general law city is documented in its incorporation papers, filed at the county courthouse, which describe when the city was established and its original boundaries.

Categories of General Law Cities

There are three categories of general law cities: Type A, Type B, and Type C. Although it is sometimes difficult to distinguish between

the types, it is necessary to know the difference in order to determine which state laws apply.

Type B General Law Cities

Most new cities begin as Type B general law cities under a state law that permits the incorporation of any area containing 201 to 10,000 inhabitants. Later, as the population of a city grows to 600 or more, it can make a transition to Type A.

In a Type B general law city with the aldermanic form of government, the governing body is known as the "board of aldermen" and includes six members (a mayor and five aldermen), all of whom are elected at-large. At its discretion, the board of aldermen may provide by ordinance for the appointment or election of such additional officers as are needed to conduct the business of the city.

Type A General Law Cities

Type A general law cities are usually the larger general law cities. Most were incorporated under Type B status and then switched to Type A status when their population increased to 600 or more, or when they had at least one manufacturing establishment.

The governing body of a city operating as a Type A general law city is technically known as the board of aldermen, although many cities refer to it as the "city council." It varies in size depending on whether the city has been divided into wards. If the city has been divided into wards, the council consists of a mayor and two councilmembers from each ward—whatever the number. If the city has not been divided into wards, the governing body always consists of a mayor and five councilmembers.

In addition to the city council, other municipal officers include a marshal, treasurer, tax assessor-collector, city secretary, city attorney, and engineer. Whether these offices are elective or appointive depends on the method selected by the city council for filling them. Moreover, the city council may provide by ordinance for the appointment or election of such other municipal officers as it deems necessary.

Type C General Law Cities

A Type C city operates with the commission form of government. The governing body is known as the "board of commissioners" and always consists of a mayor and two commissioners. No other elective officers are required; however, the board of commissioners must appoint a city clerk, and may provide by ordinance for the election or appointment of such other officers as are required.

In a Type C city of 500 or less population, the board of commissioners must follow the requirements applicable to a Type B general law city—that is, the board of commissioners has the same powers and duties as the board of aldermen in a Type B general law city, except where specifically provided otherwise. In a city of over 500 population, the board of commissioners must follow the requirements of a Type A general law city, except where specifically provided otherwise.

Any city operating under the commission form of government can change over to the aldermanic form of government, and vice versa. The commission form of government in a general law city should not be confused with the commission plan adopted by the City of Galveston at the turn of the century. Under the Galveston plan, each member of the

municipal governing body—the city commission—simultaneously served as legislators and heads of the city's administrative departments. Thus, one member of the governing body served as "police commissioner,'' another served as "fire commissioner," and so on, with each commissioner exercising day-to-day supervisory authority over a particular department.

General law cities operating under the commission form of government are not authorized to adopt the Galveston plan.
In a general law city, one commissioner, acting alone, has no individual power; only the commission, acting collectively, exercises power.

City Manager Plan

The city manager plan can be adopted in any general law city under the provisions of Chapter 25, Local Government Code:

1) Upon presentation of a petition signed by at least 20 percent of the total number of qualified voters voting for mayor in the last preceding city election, the mayor must call an election on the question of adopting the city manager plan within 10 days after the date the petition is filed.
2) If a majority of the votes cast at the election favor adoption of the city manager plan, the council must, within 60 days after the election, appoint a city manager and fix his or her salary by ordinance.
3) The administration of the city is to be placed in the hands of the city manager, who serves at the pleasure of the city council.
4) In any city where the city manager plan has been approved, all officers of the city, except members of the governing body, thereafter shall be appointed as may be provided by ordinance.
5) Procedures for repealing the city manager plan are essentially the same as for adopting it.

The basic structure of the city manager plan is similar to that of a private corporation, in which the stockholders elect a board of directors which then hires a president to run the company. Under the city manager plan, the voters elect a city council which, in turn, hires a city manager to administer the city's day-to-day affairs.

Under the city manager plan, the council serves as the legislative body. The council sets policy, it approves the budget and sets the tax rate, and it determines the size of the payroll and the extent and cost of municipal services. In short, the council is the final authority on all of the many policy decisions that determine the scope and functions of the city government.

The mayor and councilmembers have no administrative duties under the city manager plan. These are vested in the city manager, who is responsible for directing the workforce and programs of the city in accordance with ordinances, rules, and regulations adopted by the council.

The typical city manager in Texas is appointed for an indefinite term and is subject to dismissal by the council at any time except as otherwise prohibited by law. He or she is designated as the chief executive and administrative officer of the city and is accountable to the council for the proper conduct of all municipal operations. The

manager has the unilateral authority to hire, discipline, and fire the department heads under the manager's control. In some cases, however, certain employees, such as the city attorney or municipal judge, are directly hired and/or supervised by the council rather than the manager. Although the manager's role varies from one city to another, the primary function is to implement the policies established by the council and ensure that the city is operated in an economical and responsible manner. Specific duties of the manager may include the following:

1) Enforcing all city ordinances, rules, and regulations.
2) Supervising all municipal employees and programs.
3) Preparing and executing the city's annual budget pursuant to the revenue and expenditure plans adopted by the council.
4) Managing the city's funds and preparing periodic reports that advise the council and the general public of the city's financial condition.
5) Providing information to the council to facilitate its ability to make informed decisions in the best interests of the city.
6) Preparing council meeting agendas and attending all such meetings to serve as a resource to the council and the public.
7) Drawing the council's attention to community needs and recommending alternatives by which the council can respond to those needs.

Adopting the city manager plan does not change the basic governmental framework of a general law city. Rather, it is an administrative mechanism added to the basic structure.

Legislation passed in 2003 clarifies that city councils of cities that have not adopted a city manager plan under chapter 25 of the Local Government Code are free to delegate by ordinance management duties to a city administrator.

The Home Rule Concept

Although scholars have used a variety of flowery phrases to describe the concept of home rule, the principle is simple: home rule is the right of citizens at the grassroots level to manage their own affairs with minimum interference from the state. Home rule assumes that governmental problems should be solved at the lowest possible level, closest to the people.

As mentioned earlier, home rule cities look to the state to tell them what they are prohibited from doing, rather than for specific grants of authority to undertake particular functions. In *Forwood v. City of Taylor*, the Texas Supreme Court summarized Texas' home rule doctrine as follows:

> *It was the purpose of the Home-Rule Amendment ... to bestow upon accepting cities and towns of more than 5,000 population full power of self-government, that is, full authority to do anything the legislature could theretofore have authorized them to do. The result is that now it is necessary to look to the acts of the legislature not for grants of power to such cities but only for limitations on their powers.*

As a result of the *Forwood* case and other court decisions upholding their broad powers, home rule cities have the inherent authority to do just about anything that qualifies as a

"public purpose" and is not contrary to the constitution or laws of the state.

Inherent Powers of Home Rule Cities

An "inherent power" is one that is possessed by a city without its having been specifically granted by the state. It is the right to perform an act without having received that right from the Texas Constitution or the state legislature.

Home rule cities have many inherent powers. A discussion of some of the inherent powers of major significance may explain why so many cities have chosen to adopt home rule charters.

Municipal Organization

In contrast to counties or general law cities, whose organization is fixed by state law, the governmental structure of a home rule city is left entirely to the discretion of local voters. The citizens of a home rule city are free to decide their form of municipal government (mayor-council, council-manager, and so on); choose between a large or small city council; provide for the election of the city council at-large, by single-member district, or by place; fix the terms of office for councilmembers at two, three, or four years; or establish overlapping terms of office. Moreover, they can decide whether the mayor is to be elected directly by the voters, selected from among members of the council, or chosen by some other method.

The citizens of a home rule city also have total discretion over the city's administrative structure. Subject only to local preferences, the charter can establish a simple administrative framework or a complex one, provide for the appointment or election of major administrative officials, and so on. And finally, the charter can provide for the creation of any boards or commissions that local voters decide are necessary to make the city function effectively.

Annexation

From 1912-2019, when H.B. 347 passed, the inherent power to unilaterally annex adjoining areas was one of the most important home rule prerogatives. To annex "unilaterally" means that the city can bring an adjacent, unincorporated area into the city without the permission of the persons residing in that area.

In 2019, the legislature passed H.B. 347. The bill drastically altered the annexation landscape for all cities. The bill provides that a city:

1) May annex vacant land at request of the owner
2) may annex an area with a population of less than 200 only if the following conditions are met, as applicable: (1) the city obtains consent to annex the area through a petition signed by more than 50 percent of the registered voters of the area; and (2) if the registered voters of the area do not own more than 50 percent of the land in the area, the petition described by (1) is signed by more than 50 percent of the owners of land in the area; and
3) may annex an area with a population of 200 or more only if the following conditions are met, as applicable: (1) the city holds an election in the area proposed to be annexed at which the qualified voters of the area may vote on the question of the annexation and

a majority of the votes received at the election approve the annexation; and (2) if the registered voters of the area do not own more than 50 percent of the land in the area, the city obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area.

Initiative, Referendum, and Recall

Initiative, referendum, and recall are inherent home rule powers that are reserved for exclusive use by local voters in order to provide direct remedies in unusual situations. There is no constitutional or statutory authority for initiative, referendum, or recall. These powers are unique to home rule cities, and they are not available to voters at any other level of government, including the state.

Initiative is a procedure under which local voters directly propose (initiate) legislation. Citizen lawmaking through the initiative process allows local voters to circumvent the city council by direct ballot box action on new ordinances that have wide support in the community, but which the council refuses to enact.

The initiative process begins with circulation of a petition setting forth the text of the desired ordinance. Then, petitioners must obtain the number of voter signatures needed to force the city council to submit the ordinance to the people at a citywide election. Petition signature requirements vary from charter to charter. Some are based on a percentage of the number of qualified voters in the city, while others are expressed as a ratio of the number of votes cast at the last general city election.

After a completed petition is filed, the city secretary checks it to make sure that all of those who signed are qualified voters. If the petition complies with the requirements of the charter, the city council has two options: (1) it can adopt the proposed ordinance; or (2) it must call an election on the ordinance. If, at the election on the proposed ordinance, a majority of those voting favor its adoption, the ordinance is put into effect.

Referendum is a procedure under which local voters can repeal unpopular, existing ordinances the council refuses to rescind by its own action. The procedures for forcing the city council to call a referendum election are usually the same as for initiative elections. Petitions calling for an election to repeal “Ordinance X” are circulated. When the required number of signatures is obtained, the petition is submitted to the city council, which can either repeal the ordinance by its own action or call an election at which the people can vote to repeal it. If, at such election, a majority favors retaining the ordinance, it is left on the books. If a majority favors its repeal, it is rescinded when the council canvasses the election returns.

Recall is a process by which local voters can oust members of the city council before the expiration of their terms. Under most charters, a recall election begins with the filing of an affidavit stating the name of the councilmember whose removal is sought and the grounds for removal. The city clerk or secretary then furnishes the person filing the affidavit with petition forms that must be completed and returned within a prescribed time.

Most city charters impose two further limitations on recall efforts. First, they prohibit more than one recall election per

councilmember per term. Secondly, they forbid recall elections for any councilmember during the early stages of his or her term—as, for example, prohibiting an election to recall a councilmember within 60 days of the date he or she was sworn into office, or prohibiting recall elections for councilmembers whose terms will expire within 60 days. The following language is typical of charter recall provisions:

> *The people of the city reserve the power to recall any member of the council and may exercise such power by filing with the city clerk a petition, signed by qualified voters of the city equal in number to at least ten percent of the qualified voters of the city, demanding the removal of a councilman.*

Charter Amendments

In addition to initiative and referendum, direct lawmaking by local voters can be accomplished through amendments to the charter document itself. Under Section 9.004 of the Local Government Code, citizens can force the city council to call an election on a proposed charter amendment by simply filing a petition signed by five percent of the qualified voters or 20,000, whichever is less. Voter-initiated charter amendments, if adopted, can change most aspects of the city government.

Limitations on Home Rule Powers

Although the powers of a home rule city are extensive, they remain subject to all of the limitations imposed by state and federal law. Some of these are briefly summarized below.

Every city must comply with the federal and state constitution and statutory requirements. Examples include state statutes that require every city to pay unemployment taxes, that require cities with 10,000 or more in population to pay longevity compensation to its police officers and firefighters, or prohibit conducting regular city elections on any day except on those days prescribed by the Election Code.

Though certain limitations are imposed on home rule cities by the state, some can be further narrowed by local action. For example, the Texas Constitution authorizes any city with more than 5,000 inhabitants to levy property taxes at a maximum rate of $2.50 per $100 assessed valuation. But a home rule charter may set a local ceiling lower than that. If a city’s charter limits the city tax rate to $1.70 per $100 of assessed valuation, this provision has the same effect as state law. The city council is bound by it even though the state constitution permits a higher rate.

Additionally, the governing body of a home rule city cannot act on any matter which has been preempted by the state. For example, the Texas Alcoholic Beverage Code fixes the business hours of retail liquor stores. Therefore, an ordinance requiring liquor stores to open or close at times other than those prescribed by state law may not be enacted.

Finally, when a charter provision conflicts with a state law, the state law controls, unless expressly stated otherwise.

The Charter Document

Although all municipal governments are subject to an abundance of federal and state laws, the charter remains the most important document for a home rule city. Members of the council should read the charter

immediately upon their election to office; annual reviews also can be useful.

Most charters include the following components:

- Provisions establishing the city's form of government (mayor-council, council-manager, and so on) and its legislative and judicial machinery;
- Organizational provisions establishing the administrative structure of the city government and the means for financing its operations;
- Provisions governing the procedures of the city council and advisory boards and commissions, and procedures for granting franchises, and assessing and collecting taxes; and,
- Popular controls over the city government, such as elections, referenda, initiative, and recall.

Forms of Home Rule City Government

Every home rule city in the state operates under one of two forms of government: mayor-council or council-manager. Among Texas' approximately 385 home rule cities, the vast majority have the council-manager form.

Mayor-Council Government

The mayor-council plan has two variants: strong-mayor and weak-mayor. Under the strong-mayor system, most key administrative and appointive powers are concentrated in the hands of a full-time mayor who also presides over meetings of the city council. The mayor usually has: (1) the power to appoint and remove department heads and the members of most major boards and commissions; (2) the prerogative to prepare the city budget and, following its adoption by the council, to execute the budget; (3) a high enough salary to enable the officeholder to devote their full time to being mayor, as well as an office budget sufficient to hire an adequate staff; and (4) the power to veto actions by the city council. In a strong-mayor city, councilmembers have no administrative duties. Their role is to enact ordinances, adopt policies governing the operations of the city, and otherwise function as the legislative branch of the city government.

Under the weak-mayor system, the powers of the mayor are limited. First, the mayor may be selected by the council rather than being directly elected by the people, which dilutes his or her political influence. Secondly, the mayor's pay is usually minimal and few, if any, funds are provided for staff. Third, department heads often are appointed and removed by majority vote of the city council, which diffuses administrative authority. And finally, few weak mayors have either the authority to veto actions of the council or the exclusive power to develop and execute the budget, since these powers are collectively exercised by the council.

Very few home rule cities in Texas use the weak-mayor form of government.

Council-Manager Plan

The basic structure of the council-manager form of government is similar to that of a private corporation where the stockholders elect a board of directors which then hires a president to run the company. Under the council-manager plan, the voters elect a city council which, in turn, hires a city manager to administer the city's day-to-day affairs.

In a council-manager city, as in any other form of city government, the council serves as the legislative body. The council sets policy, approves the budget and sets the tax rate, and determines the size of the payroll and the extent and cost of municipal services. In short, the council is the final authority on all of the many policy decisions that determine the scope and functions of the city government.

Under the council-manager plan, the mayor and councilmembers have no administrative duties. These are vested in the city manager, who is responsible for directing the workforce and programs of the city in accordance with ordinances, rules, and regulations adopted by the council. The typical city manager in Texas is appointed for an indefinite term and is subject to dismissal by the council at any time except as otherwise prohibited by law. He or she is designated, either by charter or ordinance, as the chief executive and administrative officer of the city and is accountable to the council for the proper conduct of all municipal operations. The manager has the unilateral authority to hire, discipline, and fire the department heads.

Although the manager's role varies from one city to another, the manager's primary function is to implement the policies established by the council and ensure that the city is operated in an economical and responsible manner. Specific duties of the manager may include the following:

1) Enforcing all city ordinances, rules, and regulations.
2) Supervising all municipal employees and programs.
3) Preparing and executing the city's annual budget pursuant to the revenue and expenditure plans adopted by the council.
4) Managing the city's funds and preparing periodic reports that advise the council and the general public of the city's financial condition.
5) Providing information to the council to facilitate its ability to make informed decisions in the best interests of the community.
6) Preparing council meeting agendas and attending all such meetings to serve as a resource to the council and the public.
7) Drawing the council's attention to community needs and recommending alternatives by which the council can respond to those needs.

In larger cities, city managers spend comparatively little time on citizen contacts, personnel problems, and other routine matters. Managers in these cities usually have a sizable staff capable of handling day-to-day problems, thus allowing the manager to concentrate on communicating with the council, policy issues, planning activities, and work sessions with department heads.

On the other hand, the managers of medium-sized and smaller cities frequently operate with limited resources and small staffs. The manager must, by necessity, be personally involved in the details of providing police, fire, solid waste, and other services.

Chapter Two: Roles and Responsibilities of Officers in General Law Cities

All members of the city council play unique roles in making the city government operate effectively in a general law city. Many of their functions are set by law, while others are established as a matter of local custom or policy.

Office of the Mayor

The mayor occupies the highest elective office in the municipal government. As political head of the city, the mayor is expected to provide the leadership necessary to keep it moving in the proper direction.

Except under the city manager plan of government, the mayor is the city's chief executive officer. The mayor presides over council meetings and is generally recognized as the ceremonial and governmental head of the city for most purposes.

Most of the powers exercised by the mayor are created through ordinances and resolutions adopted by the city council. Very few mayoral powers are prescribed by state law.

Legislative Responsibilities

The mayor's most important duty is to carry out the legislative responsibilities he or she shares with other members of the council—identifying the needs of the city, developing programs to satisfy those needs, and evaluating the extent to which municipal services satisfactorily reflect the policy goals of the council.

Under the law, the mayor is the presiding officer of the city council. In this capacity as presiding officer, the mayor's actual powers in legislative matters can be greater than those of other councilmembers. For example, the mayor can influence the flow of debate through the power to recognize councilmembers for motions or statements.

Also, the mayor rules on questions of procedure at council meetings, and those rulings are binding unless successfully challenged by a majority of the governing body. Finally, the mayor of a Type A general law city can formally object to ordinances and other resolutions passed by the council. If the mayor objects to an ordinance or resolution before the fourth day after it is placed in the city secretary's office, it must be reconsidered by the governing body. If approved, it becomes effective (Local Government Code Section 52.003).

Appointive Powers

Appointive powers represent another area in which the mayor's powers often outrank those of councilmembers, especially when the mayor is authorized by ordinance to appoint department heads and advisory board members. In Chapter 25 council-manager cities, the mayor's appointive powers are more limited, because the city manager may appoint all or most administrative employees. Although most of the mayor's appointive

powers are established by ordinances enacted by the city council, some are established by state law, such as the power to appoint commissioners of a housing authority (Local Government Code Section 392.031).

Law Enforcement and Related Duties of the Mayor

The office of the mayor involves a variety of law enforcement responsibilities. The mayor is specifically obligated by law to "actively ensure that the laws and ordinances of the city are properly carried out," and "in the event of a riot or unlawful assembly or to preserve the peace," the mayor may order the closing of certain public places.

Under extreme circumstances, as in the case of a riot, the mayor of a Type A general law city can summon a special police force into service (Local Government Code Section 341.011) or call for assistance from the Texas National Guard. Also, if the city has used the provisions of Sections 362.001 et seq., Local Government Code, to enter into a mutual law enforcement pact with other nearby cities or the county, the mayor can call on those localities for help in dealing with civil disorders and other emergencies. Additionally, most local emergency management plans authorize the mayor to exercise supreme powers in case of a public calamity, after the mayor has declared a local disaster or asked the governor to declare a state of emergency. State law also permits a mayor to require a mandatory evacuation order and control who can access an area during a phased reentry (Government Code Chapters 418 and 433).

Judge of the Municipal Court

In every general law city where no separate office of judge of the municipal court exists by ordinance, the mayor is ex officio judge of the court (Government Code Section 29.004). A mayor serving as the ex officio municipal judge must still receive the annual training required of all municipal judges.

Signatory Duties

As signatory for the city, the mayor maybe required to sign a variety of documents to give them official legal effect. The mayor's signature is required on all bonds, certificates of obligation, warrants, and other evidence of debt, as well as may be required on ordinances, resolutions, advertisements for bids on public works projects, contracts, and similar legal paperwork. The mayor is also responsible for signing proclamations recognizing special events and personal achievements.

Ceremonial Duties

The mayor's participation in local ceremonial events is a never-ending responsibility. The mayor is expected on a daily basis to cut ribbons at ceremonies opening new businesses; break the ground to begin the construction of new city facilities; and regularly appear at fairs, parades, beauty pageants, and other community celebrations.

The mayor also issues proclamations for a variety of purposes, whether to honor visiting dignitaries or declare "Support Your Local School Week." And as a featured speaker before professional clubs, school assemblies, and neighborhood groups, the mayor can expect to be interviewed, photographed, and otherwise placed on extensive public display by the media.

Administrative Duties

Except in Chapter 25 council-manager cities, the mayor serves in the dual roles of administrator and political head of the city, going to city hall on a regular basis, working with department heads on matters that need attention each day, and performing the ceremonial duties that go with the office. In some cases, ordinances approved by the council give the mayor wide latitude to deal with the many problems that arise each day. Also, an administrative staff is sometimes available to help the mayor, but the office still involves considerably more effort—and power—than its counterpart in cities operating under the city manager plan.

Limitations on the Mayor's Powers

The broad powers of the mayor can be offset by several methods, including ordinance requirements that the council ratify mayoral appointments and other key actions.

Limiting the mayor's power at the council table is another way of imposing restraints. In Type A general law cities, for instance, the mayor is allowed to vote only in the event of a tie (Local Government Code Section 22.037). As state law is unclear on the mayor's ability to vote in Type B general law cities, those cities should consult with their local legal counsel with questions.

The mayor's prerogatives can also be restricted by the structure of the city government. Under the Chapter 25 council-manager plan, for example, the mayor has no administrative powers and will probably be in city hall on a less frequent basis. The ordinances of most council-manager cities also make it clear that decision-making is to be shared by the full council, and that the mayor is to be considered the same as any other member of the governing body for policy purposes. This is accomplished by concentrating administrative powers in the hands of a city manager, who acts under the direction of the full council.

Qualifications of Office

In Type A general law cities, every candidate for the office of mayor must meet the following qualifications:

1) Be a United States citizen;
2) Have been a resident of Texas for at least 12 months, as of the deadline for filing for the office;
3) Have resided in the city for at least 12 months preceding election day;
4) Be a registered voter;
5) Be 18 years of age or older upon the commencement of the term to be filled at the election;
6) Not have been convicted of a felony for which he or she has not been pardoned or otherwise released from the resulting disabilities; and
7) Not have been deemed mentally incompetent by a final judgment of a court.

(Election Code Section 141.001; Local Government Code Section 22.032).

In Type B and Type C general law cities, every candidate for mayor must meet the qualifications listed above, except that he or she must have resided in the city for six months, rather than twelve, preceding election day (Election Code Section 141.001; Local Government Code Section 23.024).

Terms of Office

In a Type B general law city operating under the aldermanic form of government, the mayor's term of office is one year, unless the board of aldermen has enacted an ordinance providing a two-year term for the mayor and two-year overlapping terms for aldermen (Local Government Code Section 23.026). In a Type A general law city, the term of the mayor and members of the city council or board of aldermen is two years (Local Government Code Section 22.035). In a Type C general law city, the mayor's term of office is two years (Local Government Code Section 24.023).

In any city, the term of office for members of the governing body can be extended to three years or four years upon approval of a majority of the voters voting at an election on the question (Texas Constitution, Article XI, Section 11).

Vacancies

When the mayor is temporarily unable to perform his or her duties because of illness, out-of-town travel, or similar reasons, the mayor pro tem assumes the responsibilities of the office on an interim basis (please see discussion of mayor pro tem on the next page). But if a permanent vacancy occurs in the office of mayor as a result of death, disability, resignation, or some other reason, the vacancy should be filled according to prescribed procedures.

In a Type B general law city operating under the aldermanic form of government, a mayoral vacancy must be filled by appointment by the board of aldermen. The term of the person appointed expires at the same time that the term of the person who vacated the office would have expired if he or she had remained in office (Local Government Code Section 23.002).

In a Type A general law city operating under the aldermanic form of government, the vacancy can be filled either by appointment of the city council or by a special election if the mayor's office is the only one vacant. However, if another vacancy exists on the board of aldermen when the mayor's office is vacant, both vacancies must be filled at a special election. When a vacancy is filled by appointment, the term of the person appointed expires at the next general municipal election. When a vacancy is filled by special election, the person elected serves out the remainder of the unexpired term of the vacancy being filled (Local Government Code Section 22.010).

In a Type C city operating under the commission form of government, a vacancy in the office of mayor must be filled by appointment by the two remaining members of the board of commissioners. But if there are two vacancies on the board of commissioners, they must be filled at a special election called by the county judge, and the persons elected serve out the remainder of the unexpired terms of the vacancies being filled (Local Government Code Section 24.026).

If the terms of office in a city have been changed to three or four years, appointment to fill a vacancy is no longer an option. Any vacancy must be filled by special election (Texas Constitution, Article XI, Section 11).

Absences

Under Section 22.041 of the Local Government Code, "if a member of the governing body is absent for three regular consecutive meetings, the member's office is considered vacant

unless the member is sick or has first obtained a leave of absence at a regular meeting."

Removal

Procedures for removing the mayor or a councilmember from office are set forth in Section 21.002 of the Local Government Code. Under the law, a member of the governing body is subject to removal for incompetence, official misconduct, or intoxication. A petition for removal must be filed with a district court, may be filed by any resident of the city, and must state the alleged grounds for removal. The judge may decide to issue a citation to the member in question or may decline to do so. If the judge declines to issue a citation, the petition is dismissed at the cost of the petitioner. If the judge issues a citation to the member, the member must appear before the judge to answer the petition and may request a trial by jury. The petitioner must execute a bond in an amount fixed by the judge. The bond shall be used to pay damages and costs to the member if the alleged grounds for removal are found to be insufficient or untrue. The final judgment on the issue may be appealed by either party. Conviction of the member for any felony or official misconduct will result in immediate removal, and the removed member is ineligible for reelection for two years.

There is no such thing in a general law city as "recall," which is a procedure citizens can use to vote an incumbent mayor or councilmember out of office before the expiration of his or her term. The power of recall is limited to voters in home rule cities in which the charter provides for the procedure.

Compensation

In Type C cities, the board of commissioners may, by ordinance, fix the mayor's compensation at a maximum of $5 for each regular commission meeting and $3 for each special meeting. Alternatively, the board of commissioners in a city of less than 2,000 can pay the mayor a salary of up to $600 per year, while the board of commissioners in a city of 2,000 or greater population can pay the mayor up to $1,200 per year (Local Government Code Section 141.003).

In Type A and B general law cities, no maximum salary amount is fixed for the mayor. The governing body can set the mayor's compensation at any level it chooses (Local Government Code Sections 141.001 and 141.002). Only one limitation exists: an elected officer cannot receive a pay increase that was approved during the term for which he or she is elected. Such increase will become effective only after the next general municipal election at which the office is filled (Local Government Code Section 141.001).

Expense Reimbursement

It is commonplace for the city to reimburse the mayor for travel and other expenses incurred on official city business trips, such as meetings of the Texas Municipal League and similar organizations. Most city travel policies are established by ordinance or resolution.

Office of the Mayor Pro Tem

The mayor pro tempore is a member of the council who performs the mayor's duties during the mayor's incapacity or absence. The mayor pro tem is selected by majority vote of the council from among its own membership.

The mayor pro tem's term is one year. The mayor pro tem retains the right to vote on all matters before the council while performing the duties of the mayor (Local Government Code Sections 22.037 and 23.027).

Office of Councilmember

Councilmembers are the city's legislators. Their primary duty is policymaking, which includes identifying the needs of local residents, formulating programs to meet the changing requirements of the community, and measuring the effectiveness of ongoing municipal services.

Unless restricted by state law, each councilmember is entitled to vote or abstain on every question decided at a council meeting, and has full parliamentary privileges in council meetings—including the right to speak and make motions when recognized by the chair and the right to introduce new ordinances and amendments to existing ones. Though foremost in importance, lawmaking is just one of many functions councilmembers perform. They also wear several other hats, which one writer describes as follows:

- Regulator—The council exercises regulatory powers over the conduct and property of its citizens. It has the power to declare certain conduct to be criminal, to require that certain businesses and activities be licensed, and to tell property owners how and for what purposes they may use their property.
- Financier—The council may levy taxes, assess fees and charges, and sell bonds in order to finance the many functions of the city government. The council also has to budget the expenditure of the city's funds, and then explain to the people why municipal government is a bargain compared to the price of rampant crime, fires, disease, and all of the other problems that would flourish without proper city services.
- Employer—The council is responsible for all of the city's employees, and must see that they are adequately paid and provided with decent working conditions and fringe benefits.
- Buyer—The council is one of the biggest purchasers in the community, and must see to it that the city gets the best value possible for dollars spent.

Even this is not a complete description of all the challenges that confront councilmembers.

The real task is in providing leadership and direction for the city, in deciding what needs to be done, and in helping plan what the city will be for future generations.

Qualifications

In general law cities, the qualifications for the office of councilmember are:

1) Be a United States citizen;
2) Have been a resident of Texas for at least 12 months as of the deadline for filing for the office;
3) Have resided in the city for at least six months preceding election day;
4) Be a registered voter;
5) Be 18 years of age or older upon the commencement of the term to be filled at the election;
6) Not have been convicted of a felony for which he or she has not been pardoned or otherwise released from the resulting disabilities; and

7) Not have been deemed mentally incompetent by a final judgment of a court.

(Election Code Section 141.001; Local Government Code Sections 22.032 and 23.024).

One additional requirement: if a Type A general law city has been divided into wards, every council candidate must, at the time of his or her election, be a resident of the ward he or she proposes to represent if elected (Local Government Code Section 22.032).

Terms of Office

In a Type B general law city, the term of office for aldermen is one year, unless the board of aldermen has enacted an ordinance providing a two-year term for the mayor and two-year overlapping terms for aldermen (Local Government Code Section 23.026). In a Type A general law city, the term of office for members of the city council is two years (overlapping terms) (Local Government Code Section 22.035).

In any city, the term of office of members of the governing body can be extended to three years or four years upon approval of a majority of the voters voting at an election called on the question (Texas Constitution, Article XI, Section 11).

Vacancies

In a Type B general law city operating under the aldermanic form of government, vacancies on the board of aldermen— whatever the number of vacancies—must be filled by appointment by the remaining members of the board (Local Government Code Section 23.002).

In a Type A general law city operating under the aldermanic form of government, when there is only one vacancy on the governing body, the vacancy can be filled either by appointment of the city council or by means of a special election. However, if there are two or more vacancies on the governing body, such vacancies must be filled at a special election (Local Government Code Section 22.010).

In a Type C general law city, a single vacancy must be filled by appointment by the two remaining members of the board of commissioners. But if there are two vacancies on the board, they must be filled at a special election called by the county judge (Local Government Code Section 24.026).

Absences

Under Section 22.038 of the Local Government Code, an illness of an alderman or someone in his or her family is the only reason for absence from council meetings in a Type A general law city without a fine. Unexcused absences are punishable by a fine of $3 for each council meeting missed. If an alderman is absent for three consecutive regular meetings—unless because of sickness or the alderman has obtained a leave of absence at a regular meeting—his or her office shall be vacant. (Local Government Code Section 22.041).

There is no law applicable to absences by aldermen in Type B general law cities or members of the board of commissioners in cities operating under the commission form of government (Type C general law cities). However, in cities over 500 population, which operate under the commission form of

government, Sections 51.035 and 51.051 (the "borrowing provisions") of the Local Government Code (relating to the application of laws to cities with the commission form) would probably make Sections 22.038 and 22.041 of the Local Government Code (relating to absences) applicable to such cities. Type B general law cities should contact their local legal counsel to discuss this issue, as state law is unclear.

Removal

Procedures for removing a councilmember from office in a general law city are the same as for the mayor and are governed by Chapter 21 of the Local Government Code.

Compensation

In Type C cities, the board of commissioners may, by ordinance, fix commissioners' compensation at a maximum of $5 for each regular commission meeting and $3 for each special meeting. Alternatively, the board of commissioners in a city of 2,000 or greater population can provide for paying commissioners up to $600 per year (Local Government Code Section 141.003).

In Type A and B general law cities, no maximum salary amount is fixed for aldermen. Therefore, the governing body can set councilmembers' compensation at any level it decides. Only one limitation exists: an alderman cannot receive the benefit of a pay increase adopted during the term for which he or she is elected. Such increase will become effective only after the next general municipal election at which the office of the alderman serving at the time of the pay increase is filled (Local Government Code Chapter 141).

Expense Reimbursement

It is commonplace for cities to reimburse councilmembers for travel and other expenses incurred on official city business trips to meetings of the Texas Municipal League, a council of governments, and similar organizations. Most travel policies are established by ordinance or resolution.

Chapter Three: Roles and Responsibilities of Officers in Home Rule Cities

All members of the city council play unique roles in making the city government operate effectively in a home rule city. Many of their functions are set by law, while others are established as a matter of local custom or policy.

Office of the Mayor

The mayor occupies the highest elective office in the municipal government. As political head of the city, the mayor is expected to provide the leadership necessary to keep it moving in the proper direction.

Except under the city manager plan of government, the mayor is the city's chief executive officer, just as the governor serves as chief executive of the state. The mayor presides over council meetings, is the signatory for the city, and is generally recognized as the ceremonial and governmental head of the city for most purposes.

Most of the powers exercised by the mayor are created either by provisions in the charter or through ordinances and resolutions adopted by the city council. Very few mayoral powers are prescribed by state law.

Legislative Responsibilities

The mayor's most important duty is to carry out the legislative responsibilities he or she shares with other members of the council—identifying the needs of the city, developing programs to satisfy those needs, and evaluating the extent to which municipal services satisfactorily reflect the policy goals of the council.

All charters designate the mayor as presiding officer of the city council and as such, his or her actual powers in legislative matters can be greater than those of other councilmembers. For example, as presiding officer of the council, the mayor can influence the flow of debate through the power to recognize councilmembers for motions or statements.

Also, the mayor rules on questions of procedure at council meetings, and those rulings are binding unless successfully challenged by a majority of the governing body. Finally, the charters of some cities authorize the mayor to veto ordinances and other enactments approved by the city council.

Appointive Powers

Appointive powers represent another area in which the mayor's powers often outrank those of councilmembers, especially in mayor-council cities where the mayor is authorized to appoint department heads and advisory board members. In council-manager cities, however, the mayor's appointive powers are more limited, since the city manager appoints all or most administrative employees, and the full council appoints the members of advisory boards and commissions.

Signatory Duties

As signatory for the city, the mayor is required to sign a variety of documents to give them official legal effect. The mayor's signature is required on all bonds, certificates of obligation, warrants, and other evidence of debt, as well as ordinances, resolutions, advertisements for bids on public works projects, contracts, and similar legal paperwork. The mayor is also responsible for signing proclamations recognizing special events and personal achievements.

Ceremonial Duties

The mayor's participation in local ceremonial events is a never-ending responsibility. The mayor is expected on a daily basis to cut ribbons at ceremonies opening new businesses; break the ground to begin the construction of new city facilities; and regularly appear at fairs, parades, beauty pageants, and other community celebrations.

The mayor also issues proclamations for a variety of purposes, whether to honor visiting dignitaries or declare "Support Your Local School Week." And as a featured speaker before professional clubs, school assemblies, and neighborhood groups, the mayor can expect to be interviewed, photographed, and otherwise placed on extensive public display by the media.

Powers of the Mayor in Mayor-Council Home Rule Cities

In mayor-council home rule cities, the mayor serves in the dual roles of administrator and political head of the city. He or she is in city hall on a continuing basis, working with department heads on routine items that need to be addressed each day, handling emergencies, and performing all of the ceremonial duties that go with the office. Depending on the city, the charter may give the mayor broad authority to deal with the many problems that arise each day. A skilled administrative staff usually is available to help the mayor carry the day-to-day load. Also, in some cities, the charter gives the mayor the power to veto actions of the council.

The broad powers of the mayor in mayor-council cities usually are offset by charter provisions that require the council to ratify mayoral appointments and other key actions. Also, the requirement for council approval of the budget provides councilmembers with an effective method of slowing down a zealous mayor by reducing or abolishing expenditures.

Further checks can be created by distributing governmental powers in a certain way. Under the Houston charter, for example, provision is made for an elected city controller responsible for supervising the expenditure of municipal funds independent of both the mayor and council.

Powers of the Mayor in Council-Manager Home Rule Cities

Under the council-manager form of government in a home rule city, the mayor's administrative responsibilities differ sharply from those of a mayor in a mayor-council city. Under the council-manager plan, the mayor has no day-to-day administrative duties; these are vested in a city manager who is responsible for implementing policies established by the council. In most council-manager cities, the mayor is in city hall on an irregular basis and is involved very little in routine operational matters.

The charters of most council-manager cities make it clear that decision-making is to be exercised by the full council, and that the mayor is to be considered the same as any other member of the council for policy purposes. This is accomplished by concentrating administrative powers in the hands of the city manager and by requiring action by the whole council, and not just the mayor, to appoint key board and commission members.

And finally, a number of state laws further ensure that the full council share appointive powers. An example is Local Government Code Section 211.008, which requires that the city's governing body appoint the zoning board of adjustment.

Limitations on the Mayor's Powers

As noted above, the powers of the mayor in both mayor-council and council-manager home rule cities can be limited by requiring full council approval of the budget and board and commission appointments, and by distributing governmental powers among a variety of city officials rather than concentrating them in the office of mayor. Another way to impose restraints on the mayor is to limit his or her power at the council table. For example, some charters in home rule cities do not allow the mayor to initiate motions at council meetings. Some charters forbid the mayor from voting except to break a tie.

Office of the Mayor Pro Tem

The mayor pro tempore is a member of the council who performs the mayor's duties during the mayor's incapacity or absence. The mayor pro tem is usually selected by majority vote of the council, and his or her term is often the same as that of a councilmember. In some cities, the term of mayor pro tem is shorter; in one city, for example, each councilmember serves a three-month term as mayor pro tem on a rotating basis.

Office of Councilmember

Councilmembers are the city's legislators. Their primary duty is policymaking, which includes identifying the needs of local residents, formulating programs to meet the changing requirements of the community, and measuring the effectiveness of ongoing municipal services.

Unless restricted by state law, each councilmember is entitled to vote or abstain on every question decided at a council meeting, and has full parliamentary privileges in council meetings—including the right to speak and make motions when recognized by the chair and the right to introduce new ordinances and amendments to existing ones.

Though foremost in importance, lawmaking is just one of many functions councilmembers perform. They also wear several other hats, which one writer describes as follows:

- Regulator—The council exercises regulatory powers over the conduct and property of its citizens. It has the power to declare certain conduct to be criminal, to require that certain businesses and activities be licensed, and to tell property owners how and for what purposes they may use their property.
- Financier—The council must levy taxes, assess fees and charges, and sell bonds in order to finance the many functions of the city government. The council

also has to budget the expenditure of the city's funds, and then explain to the people why city government is a bargain compared to the price of rampant crime, fires, disease, and all of the other problems that would flourish without proper city services.

- Employer—The council is responsible for all the city's employees, and must see that they are adequately paid and provided with decent working conditions and fringe benefits.
- Buyer—The council is one of the biggest purchasers in the community, and must see to it that the city gets the best value possible for dollars spent.

In addition to these everyday duties, councilmembers spend considerable time representing the city in a wide circle of external relationships. Examples include:

- Serving on committees of the Texas Municipal League and other statewide local government organizations.
- Working with state legislators on city-related bills.
- Working with the National League of Cities, the U.S. Conference of Mayors, and other national public interest groups on municipal issues pending before Congress or federal regulatory agencies.
- Supporting efforts of the chamber of commerce, industrial foundations, and other organizations to foster the city's economic development.

Size of the Council

There is no state law requiring the city council of a home rule city to be any particular size. As is true in so many other areas of home rule, the size of the governing body is determined by the city's charter.

Method of Electing the Council

There are four basic methods of electing home rule city councils in Texas. The first is the at-large system, under which candidates are elected citywide without regard to where they live.

The second is the place system of electing the council, under which candidates run citywide, but each must file for a designated seat (place) on the council.

Under an at-large/from-districts system, candidates are elected citywide, but councilmembers must reside in designated geographical areas of the city.

Under a pure single-member district electoral system, all candidates for the council (not including the mayor) must live in designated districts of the city and are voted upon only by the voters residing in those districts.

Additionally, a number of cities use hybrid electoral systems that combine various features of the plans described above. Mixed systems include those in which some members of the council are elected at-large and the remaining councilmembers are elected from single-member districts, or where some members of the council are elected at-large and the balance are elected from districts at-large.

Qualifications

Every candidate for the office of mayor or councilmember must meet the qualifications

prescribed by the Texas Election Code, which requires that a candidate:

1) Be a United States citizen;
2) Be 18 years of age or older upon the commencement of the term to be filled at the election;
3) Has been a resident of Texas for at least 12 months as of the deadline for filing for the office;
4) Has resided in the city for at least 6 months as of the deadline for filing for the office;
5) Has not been convicted of a felony for which he or she has not been pardoned or otherwise released from the resulting disabilities;
6) Has not been found mentally incompetent by a final judgment of a court; and
7) Be a registered voter.

(Election Code Section 141.001).

The Election Code authorizes home rule cities to establish two exceptions to these six criteria. First, the charter can require council candidates to be up to 21 years old, rather than 18, upon the commencement of the term to be filled at the election. Second, the charter can require candidates to be residents of the city for 12 months, rather than 6 months, as of the deadline for filing for office (Election Code Section 141.003).

Terms of Office

The terms of office for mayors and councilmembers range from two to four years and are set by the city's charter.
More than ninety percent of all home rule charters provide continuity on the governing body by staggering councilmembers' terms, thus preventing wholesale changeovers on the council at any one election. Under staggered term procedures, the terms of approximately half of the members of the council expire at one municipal election, and the other half expire at the next election. In the case of a seven-member city council with two-year terms, the terms of three members might expire during each odd-numbered year, while the other four terms would expire during each even-numbered year. Some home rule charters limit the number of terms a councilmember may serve.

Vacancies

Vacancies on the council can result from resignation, death, disability, recall, or failure of a councilmember to meet the requirements of the charter. In some instances, a vacancy can occur if a member of the council announces for another elective office. For example, under Article XI, Section 11, of the Texas Constitution, in cities where the term of office for councilmembers is three or four years, any councilmember who announces for another elective office is automatically removed from the council if more than one year and 30 days remains in his or her term at the time of such announcement.

Also, some city charters provide that any councilmember who runs for another office automatically vacates his or her seat on the council. A city charter may provide that:

> *If any officer of the city shall file as a candidate for nomination or election to any public office, except to some office under this charter, he shall immediately forfeit his office.*

Procedures for filling vacancies vary from charter to charter. In some instances, charters require that vacancies on the governing body be filled by appointment of the council in every case, regardless of whether a regular municipal election is imminent. The charters of others require the council to fill a single vacancy by appointment, but if two or more vacancies exist, they must be filled at a special election. Under Article XI, Section 11, of the Texas Constitution, cities with three- or four-year terms must fill all vacancies by election unless: (a) there is 12 months or less left in the councilmember's term; and (b) the charter provides for appointment. Finally, some charters require that all council vacancies must be filled by special election. Among these cities, the common practice is not to require special elections in cases where a regular municipal election is imminent (for example, within sixty to ninety days of the time the vacancy occurred).

Compensation

As with so many other aspects of home rule government, state law is silent regarding the compensation of mayors and councilmembers. As such, the salary can be governed by the charter or set by local policy if the charter is silent.

Salaries

In most of the cities operating under the mayor-council form of government, the mayor may receive a substantial salary for his or her full-time administrative services. In council-manager cities, the charter generally treats councilmembers as part-time legislators for whom minimum compensation is provided.

Most charters fix the dollar amount of the salary or fees to be paid to members of the governing body. A few permit the council to set its own compensation.

Expense Reimbursement

It is commonplace for cities to reimburse councilmembers for travel, hotel, and other expenses incurred on official city business trips to meetings of the Texas Municipal League, National League of Cities, and similar organizations. Only a small number of charters make any mention whatsoever of councilmembers' expense reimbursement. Most travel policies are established by ordinance or resolution.

Other Benefits

A final category of benefits for councilmembers includes staff and office facilities. Again, there is no consistency among cities: benefits range from providing part-time clerical help to full-time secretaries and administrative assistants.

As with so many other issues, the question of what—if any—staff and facilities should be provided to councilmembers must be decided locally.

Chapter Four: Powers and Duties of Cities

Both home rule and general law cities have the authority to deal with many issues. General law cities must look to state law for the authority to act, while home rule cities may have more latitude in certain areas (although the state legislature has seen fit to limit home rule authority in many ways). Below is a discussion of some of the basic powers given to cities.

Administrative Oversight in General Law Cities

The Mayor as Chief Executive Officer

In a general law city, a mayor's duties and authority come first from the Local Government Code and other state law and then may be expanded by the city council. See Local Government Code Sections 22.037, 22.042, and 23.027. The city council in a smaller city may give the mayor the responsibility of supervising the city's employees, procuring supplies, ensuring that the streets are cleaned and repaired, and overseeing the multitude of other items that need attention each day. Department heads report directly to the mayor, who meets with them from time to time to check on their problems. Most of the mayors who assume these extensive responsibilities usually do so in addition to their regular jobs.

The degree of flexibility the council permits the mayor to exercise in administrative matters varies from one city to another. In some cities, the council expects the mayor to make routine decisions only as specifically authorized by ordinances enacted by the governing body. In others, the mayor is given free rein over the city's administration.

Placing the lead responsibility for administration in the hands of the mayor enables citizens and the city council to go to one central point for solutions to particular problems. Also, this arrangement can help focus accountability and keep the city's business moving ahead smoothly and efficiently. At the same time, this system can easily go awry if the mayor does not get along with the council or when council meetings deteriorate into haggling sessions over whether the mayor has the legal authority to do something.

The City Council as "Administrative Board"

In addition to their legislative duties, some city councils supervise local operations on a continuing basis. Under this approach, the full council approves all purchases and other administrative details, and department heads report directly to the council at every regular meeting.

This arrangement has the advantage of providing the council with maximum control over the city's operations. If a department is not functioning properly, the council can go directly to the source of the problem and take corrective action.

The downside is that the council meets just once or twice a month, and may not be able to

deal in a timely manner with problems as they arise. Delays can occur if a department is unable to proceed with a project because of snags that only the council can overcome. Also, this arrangement tends to be inefficient unless some method is established for coordinating the operations of various departments on a regular basis between council meetings, while not violating open meetings laws.

City Manager or Administrator

Many city councils have found it advantageous to delegate administrative powers and responsibilities to a single appointive officer or employee. In some cases, this official is the city manager or city administrator, whose position has been established by ordinance. In others, the lead administrative role is assumed by the city clerk or secretary, the utility manager, or another department head who serves as “first among equals.” Whatever the title, the official the city has delegated administrative functions to is responsible for overseeing all the city’s operations on a continuing basis and for reporting to the council on behalf of the various departments. All administrative actions by the council are taken through the official, and any questions the council may have concerning the enforcement of ordinances or performance of city programs are directed to that individual.

Centralizing authority and accountability in one appointed officer or employee can simplify the council’s job. The council will be relieved of attending to minor details and will have more time for the important task of setting policy. With proper guidance from the council, a skillful administrator can create an efficient management team capable of running itself.

Conversely, concentrating too much authority in the hands of an appointed officer or employee may put a barrier between citizens and their elected representatives. Also, allowing one person to control information concerning the city’s internal administrative operations can lead to a situation in which councilmembers are isolated from the real-world problems the community is experiencing with the city government.

Another form of administrative oversight of a city is accomplished by an election under chapter 25 of the Local Government Code. Under this chapter, the city manager position is created pursuant to an election, and his duties are established by state law. This form of government is rare and has different characteristics from other forms where a manager or administrator position is created solely by ordinance at the city council’s discretion.

Council Committees

Most smaller cities are faced with the problem of limited resources, and there simply are not enough staff members to handle the many demands imposed on the city organization. One method of dealing with this problem is to subdivide the council into administrative committees, each responsible for a different area of the city government.

Council committees usually are organized by service or function: police, fire, health, budget, and so on. “Standing committees” are permanent panels that meet regularly and have assigned areas in which there is always work to be done. On the other hand, “ad hoc” or “special” committees serve on a temporary basis and deal with short-term items that cannot be handled by a standing committee. At the option of the city council, either the full

council can designate the councilmembers who chair or serve as members of the various committees or the council can delegate this authority to the mayor.

Most council committees serve as the liaison between the governing body and individual city departments. They communicate with department heads, ensure that the full council is kept apprised of departmental problems, and, as necessary, conduct departmental evaluations and report their findings to the council.

The most common temptation for members of council committees is to overstep the bounds of their authority. Although they can be vested with substantial authority—such as the authority to conduct investigations or take employment action—council committees do not possess legislative powers and should never attempt to act as if they are the city council.

One cautionary note: care should be taken to avoid violations of the Texas Open Meeting Act, which requires that meetings of all governmental bodies be posted in advance and open to the public. If there is some question as to whether meetings of a council committee are subject to the open meeting statute, the best practice usually is to assume that they are (see Texas attorney general opinions H-3, and JM-1072; and JC-60) and consult with the city attorney for guidance.

Administrative Oversight in Home Rule Cities

While the same general policy-making functions are shared by city councils everywhere, administrative responsibilities differ according to the particular local government organization. For example, if the city operates under a city manager or administrator plan, or if the mayor serves as an administrative head of the city, the council exercises control in a more indirect way by setting broad policies that are left to the mayor or manager for execution.

Regardless of the administrative structure used, every city council should operate on the basis of written policies that set out the specific powers and duties of all the city's departments and officials, and some method should be established for ensuring that those policies are carried out. Policy decisions are not implemented automatically, and no matter how much careful thought may go into their preparation, there is always a management job to be done. Someone must assume the responsibility for organizing and controlling the city's administrative machinery.

The city's charter, along with local ordinances and policies, outline the administrative procedures in a home rule city.

The Police Power

Cities have the power to regulate a wide range of activities in order to promote the general welfare of the city's residents. This is known as the city's "police power," and it encompasses all governmental powers exercised for the public good.

More particularly, the police power is defined as the city's authority to preserve and promote the health, safety, morals, and welfare of local citizens. It is based on the supremacy of the rights of the general public over individual rights. Some of the more common methods by which city police powers are exercised are

described below.

In order to preserve the peace, the city council has the power to create a police department to maintain order, enact ordinances controlling noise and other disturbances, and require animals to be leashed. The council also can declare certain activities to be public nuisances and penalize persons who create them.

With regard to public health and safety, the council has the power to take all actions and make all regulations that may be necessary or expedient for the promotion of health or the suppression of disease. A city's authority to protect the health of the public is generally broader than other city police powers.

The regulation of dogs and other animals, the regulation of unwholesome business practices, and the regulation of slaughterhouses are just a few of the powers the city council may exercise to protect the health of its citizens. The council also has the power to enact quarantine regulations, regulate cemeteries, and regulate weeds and stagnant water. The authority for these regulations can be found in the Local Government Code, the Health and Safety Code, and other statutes.

Additionally, a city can enact a zoning ordinance to regulate the height and size of buildings, the size of lots and density of population, the location and use of buildings, and other aspects of land and improvements thereon, and the uses to which they are put (Local Government Code Chapter 211). The city council also has the authority to prescribe some standards for the construction of buildings within the city, regulate the condition of buildings, and condemn unsafe buildings.

Planning, Subdivision Controls, and Annexation

The city council has the power to spend city funds to compile statistics, conduct studies, and make plans for the orderly growth of the city and the welfare of its residents. The council can create a planning commission to develop and maintain a city plan, and can establish a planning department to implement the plan.

The council can establish rules and regulations governing the subdivision and development of land within the city. The city also can extend its subdivision controls to land located within the city's area of extraterritorial jurisdiction in order to ensure the orderly development of outlying areas (Local Government Code Chapters 212 and 213).

Prior to 2017, a home rule city could annex most areas without consent. However, in 2017, the legislature began to drastically alter the annexation landscape by passing S.B. 6, which provided that certain home rule cities:

(1) may annex an area with a population of less than 200 only if the following conditions are met, as applicable: (1) the city obtains consent to annex the area through a petition signed by more than 50 percent of the registered voters of the area; and (2) if the registered voters of the area do not own more than 50 percent of the land in the area, the petition described by (1) is signed by more than 50 percent of the owners of land in the area; and

(2) may annex an area with a population of 200 or more only if the following conditions are met, as applicable: (1)

the city holds an election in the area proposed to be annexed at which the qualified voters of the area may vote on the question of the annexation and a majority of the votes received at the election approve the annexation; and (2) if the registered voters of the area do not own more than 50 percent of the land in the area, the city obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area.

In 2019, the legislature finished restricting cities ability to annex without consent. H.B. 347, which became effective on May 24, 2019, now applies these restrictions on annexation to all cities. Cities can either follow the procedure above or annex on request of landowners.

Regulation of Streets and Other Public Places

The city council has supervisory powers over all streets, alleys, sidewalks, bridges, parks, and other public ways and places within the city. The council has the power to: (1) regulate the use of streets and other public ways, provide for cleaning and lighting, prevent and remove encroachments, and direct and regulate the planting of trees; (2) regulate openings for laying out gas, water, and other mains and pipes; (3) regulate the use of sidewalks and require the owners or occupants of abutting premises to keep their sidewalks free from obstructions; (4) prevent activities that would result in damage to streets, alleys, or other public grounds; (5) regulate crosswalks, curbs, and gutters; (6) regulate and prevent the posting of signposts, handbills, and similar items on streets or sidewalks; (7) regulate traffic and sales on streets, sidewalks, and other public spaces; (8) control weedy lots and junked vehicles; (9) regulate the location of manufactured housing; and (10) regulate the location of sexually oriented businesses and establishments that sell alcoholic beverages.

Construction of Public Facilities

In addition to its regulatory powers, the council has the authority to erect, construct, and maintain a wide variety of facilities for public use, including water and sewage systems, airports, hospitals, parks, libraries, transit systems, electric and gas systems, streets, bridges, culverts, sidewalks, street lights, and many other kinds of facilities.

A city may construct or maintain certain public facilities using either traditional competitive bidding or an alternative procurement and delivery method (such as design-build, construction management, a job order contract, or competitive sealed proposals) that provides the “best value” to the city (Local Government Code Chapter 252 and Government Code Chapter 2267).

Donations of City Funds

The Texas Constitution prohibits the donation of city funds to private individuals, corporations, or associations (such as garden clubs or boy or girl scouts), no matter how worthy the cause. The purpose of this prohibition is to prevent a city council from appropriating public money for private purposes (Texas Constitution, art. III, §52, and art. XI, §3).

Expenditures that serve a "public purpose" (for example, contributions to a local volunteer fire department) may fall outside of the constitutional prohibition against donations.

If the city council wishes to make such an expenditure, it must determine whether the expenditure accomplishes a public purpose, and the determination is subject to review by the courts. Written contracts with formal control over use of a city expenditure or payment are usually necessary in order for the council to ensure that the city receives some sort of payment or value for its expenditure—the accomplishment of the public purpose.

The constitutional prohibition does not apply to expenditures made in connection with contracts for services provided by engineers, architects, and other professionals, nor to the payment of dues to the Texas Municipal League, councils of governments, or similar organizations.

A city may establish and implement programs to promote state or local economic development and to stimulate business and commercial activity within the city. A program such as this may include provisions for making loans and grants of public money and for utilizing the city's personnel and services for the purpose of economic development (Local Government Code Chapter 380).

Payment of Bonuses to City Employees

The State Constitution (Article III, Sections 52 and 53) prohibits the payment of bonuses to city employees. If, for example, when December arrives, it is found that the city has some extra funds and it is decided that it would be nice to reward the city's employees with a Christmas bonus, such a distribution of public funds would be illegal. However, if the bonus is part of the employee's overall compensation, and is included in the budget as such, it is a legitimate expenditure.

Bids

Chapter 252 of the Local Government Code requires that any city purchase requiring the payment of more than $50,000 be awarded pursuant to certain competitive bidding or sealed proposal procedures. The statute mandates that the city either accept the lowest responsible bid under the traditional competitive bidding process, accept the bid or proposal that provides goods or services at the best value for the city, use an Internet-based reverse auction procedure, or participate in a cooperative purchasing program.

Certain cities that choose to use traditional competitive bidding when purchasing real or personal property may give preference to a local bidder if certain procedures are followed and the local bid is within a certain percentage of the lowest bid from a non-local bidder. In some cases, local preference is allowed only if the purchase is for less than $100,000.

Cities making an expenditure of more than $3,000 but less than $50,000 must contact at least two historically underutilized businesses (HUBs) from a list provided by the Texas Facilities Commission through the state comptroller's office. If the list does not identify a HUB in the county in which the city is situated, the city is exempt from this requirement.

The above procedures do not apply to some purchases, including: (1) the purchase of land or rights-of-way; (2) personal or professional services, such as engineering, architectural, or planning services; (3) property bought at an auction; (4) property bought at a going-out-of-business sale; (5) property bought from another political subdivision or the state or federal government; and (6) advertising, other than legal notices.

Also, the city can waive the requirement for bids in—for example—the following instances: (1) in the case of public calamity, where it becomes necessary to act at once to provide relief for local citizens or to preserve or protect the public health; or (2) in the case of unforeseen damage to public property, machinery, or equipment, where immediate repair is necessary.

A city may use a competitive sealed proposal procedure for the purchase of goods, services, and high technology items. If a city makes a contract without compliance with competitive procurement laws, it is void, and the performance of the contract, including the payment of any money under the contract, may be enjoined by: (1) any property tax-paying resident of the city; or (2) a person who submitted a bid for a contract to which the competitive sealed bidding requirement applies, regardless of residency, if the contract is for the construction of public works.

City Depository

Under chapter 105 of the Local Government Code, the city council is authorized to designate a bank as the official depository of the city's funds. The city attorney should be consulted as to the manner of designating the depository, as well as procedures the city must follow after designation has been made.

Uniform Election Dates

The Texas Election Code prescribes certain days for holding municipal elections for officers. Any municipal election for officers held on a day other than one of those prescribed is void, with a few exceptions. Currently, the uniform election dates for city elections are the first Saturday in May and the first Tuesday after the first Monday in November.

Official Newspaper

At the beginning of each fiscal year, the council is required to designate, by ordinance or resolution, the official newspaper of the city, and to publish therein the captions of penal ordinances, notifications of public hearings, and other required public notices (Local Government Code Sections 52.004 and 52.011). Type B general law cities must, before enforcing an ordinance, publish the ordinance (or simply the caption and penalty for violations of the ordinance) enacted by the governing body by either posting it in three public places or by publication in the newspaper (Local Government Code chapter 52). Many home rule charters may have similar provisions.

Federal Voting Rights Act

On June 25, 2013, the U.S. Supreme Court issued its opinion in Shelby County v. Holder. In the case, Shelby County, Alabama, alleged that the basis for applying the federal Voting Rights Act to certain states is unconstitutional. The Court agreed. It concluded that Section 4

of the Act is unconstitutional, but the holding also affects other portions of the law, including the requirement that any voting change made by a city be "precleared" by submitting it to the U.S. Department of Justice or a federal court for a determination that it is not discriminatory.

In response to the opinion, the United States Department of Justice is providing a written response to jurisdictions that submit proposed changes to the Attorney General that advises that no determination will be made under Section 5 of the Voting Rights Act on the specified change.

Based on the United States Department of Justice's response, the Texas Municipal League advises that Section 5 preclearance submissions to the Department of Justice are no longer required. However, each city should heed the advice of its attorney to make the determination on whether or not preclearance is required, as pending litigation may impact other sections of the Voting Rights Act.

Delegation of Legislative Powers

The city council is prohibited from delegating its legislative powers. As a practical matter, this means that the council may not authorize any person, committee, board, or commission to make policy decisions on its behalf. The job of ensuring that the council's policies are carried out can be assigned to the mayor, city manager, or some other city official, but the ultimate responsibility for establishing policy rests with the council.

Chapter Five:
The City Council at Work: Meetings

It is imperative that every meeting of the city council be conducted in an orderly and legal manner. If the council's procedures are improper, the legality of its actions may be successfully challenged in court. If its meetings are slovenly and disorganized, the council cannot expect to command public respect.

Legal Requirements

State law prescribes several specific requirements for council meetings, including: (1) that meetings be scheduled at a fixed time and place; (2) that a quorum of the council be present (either in person or, in certain cases, by video conference) for the transaction of business; (3) that any question before the council be decided by majority vote of the members present and voting, except where the law requires more than a simple majority; and (4) that the mayor always presides, if present.

Texas Open Meetings Act

Every meeting of the city council must be conducted in accordance with chapter 551 of the Government Code, the Texas Open Meetings Act. Among all the state laws affecting city officials, this is the one most likely to be unintentionally violated because of lack of knowledge.

To help educate government officials on the Act's requirements, each elected or appointed member of a governmental body must take at least one hour of training in the Open Meetings Act. The training must be completed not later than ninety days after the member takes the oath of office or assumes the responsibilities of the office.

The attorney general's office allows the training requirement to be met in at least two ways: (1) viewing a video that is available to borrow or online; and (2) receiving training from certified entities, such as TML. Please visit the attorney general's website or call TML for more information on the training.

The Open Meetings Act requires that written notice of the date, hour, location, and subject of every council meeting, be posted 72 hours in advance of such meeting on a bulletin board in city hall accessible to the public day and night. Cities that maintain a website must also post the city council agenda on the website and the minutes of the city council's meetings must be posted when approved. If the governmental body makes a good-faith attempt to continuously post the notice on the Internet during the prescribed period, the notice physically posted at city hall must be readily accessible to the general public only during normal business hours. There are some special requirements, including additional notice requirements, if a meeting is to be held by videoconference call.

There are three exceptions to the 72-hour posting requirement:

1) At least one hour advance notice is required for a special meeting called in

the case of “emergency or urgent public necessity,” the nature of which must be stated in the notice.

2) Items of an emergency or urgent public necessity nature may be added to the agenda of a meeting for which 72 hours notice has already been posted if a supplemental notice listing such items is posted at least one hour prior to the meeting stating the emergency that requires action on the additional items.
3) Pursuant to a general posting of items of “community interest,” the following need not specifically appear
4) on the posted notice: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; honorary recognitions of city officials, employees, or other citizens; reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by a city official or employee; and announcements involving imminent threats to the public health and safety of the city.

The Act also requires that all council meetings, with narrow exceptions, be open to the public. Closed meetings (“executive sessions”) are permitted for the discussion of items that legitimately fall within the exceptions stated in the law. Exceptions from the open meeting requirement are provided for the following:

1) Private consultations between the city council and its lawyers to discuss pending or contemplated litigation, settlement offers, and other legal matters that implicate the attorney-client privilege. The city’s attorney must be present (either in person if the attorney is a city employee, or in person or by telephone, video conference call, or Internet communications if the attorney is an independent contractor) at any closed meeting held under this exception.
2) Discussions regarding the purchase, exchange, lease, or value of real property, or negotiated contracts for prospective gifts or donations to the city, when a discussion of these items in public would have a detrimental effect on the city’s negotiating position.
3) Deliberations involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a city officer or employee, or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing.
4) Discussions regarding the deployment or implementation of security personnel or devices, or a security audit. Also, security assessments or deployment relating to information research technology.
5) Discussions regarding commercial information received from a business prospect and/or the nature of any incentives being considered by the city for economic development purposes.
6) Deliberations regarding a test item or information relating to a test that the city administers to individuals who seek to obtain or renew a license or certificate necessary to engage in an activity.
7) Electric or gas service discussions in very limited circumstances.
8) Discussions regarding various critical infrastructure and homeland security information, including: (a) staffing requirements of an emergency response provider; (b) tactical plans; (c) infrastructure vulnerability

assessments and other reports prepared for the federal government; (d) the location of dangerous materials that may be used for weapons; (e) computer passwords; and (f) information regarding security systems that protect property from terrorism or related criminal activity.

Before an executive session can take place, the council must first convene in open session, the presiding officer must announce that a closed meeting will take place, and he or she then must identify the section of the Open Meetings Act that authorizes the closed session.

The law requires that a certified agenda or a recording must be made of all meetings that are closed to the public, except executive sessions held for the purpose of consulting with an attorney under the provisions of the law. For an executive session to discuss critical infrastructure or homeland security matters, a recording is mandatory. The law does not define "certified agenda," but it does provide that the agenda shall state the subject matter of each deliberation and include a record of any further action taken. It also must include a record of the date and time of the beginning and end of the meeting. The presiding officer must certify that the agenda is a true and correct record of the proceedings. In lieu of the certified agenda, the governmental body may make a recording of the closed meeting, including an announcement made by the presiding officer at the beginning and end of the meeting indicating the date and time.

The certified agenda or the recording must be maintained for a period of two years after the date of the meeting. However, if a lawsuit is filed during this two-year period, the certified agenda or recording must be preserved pending the outcome of the action. The certified agenda or recording is not a public record, and it is unlawful to make either available to the public without lawful authority, but either may be reviewed by a current member of the governmental body that conducted the closed meeting. It is advisable that the certified agenda or the recording be placed in a sealed envelope identifying the contents and then placed in secured storage. They are available for inspection by a judge if litigation has been initiated involving an alleged violation of the open meetings law. The judge may order that the recording or certified agenda be made available to the public if the closed meeting was not authorized.

Although a certification of the posted notice may have been the intent of the legislature, the fact that a certified agenda or recording is to be made available only upon court order may indicate that the contents of the certified agenda consist of a more descriptive agenda item than might be placed on the posted notice. For example, while the posted notice may state that an executive session is being held for the purpose of discussing "Land Acquisition for an Electric Substation," the certified agenda may read "Land Acquisition—Discuss acquisition of land for a new electric substation to serve The Oaks subdivision." Although the statute requires the certified agenda to include a record of any further action taken, the open meetings law expressly provides that no final action, decision, or vote can be made except in a meeting that is open to the public. The "further action" which must be noted on the certified agenda may be, for instance, no action, a directive to place the item on an open meeting agenda for final action, or a request that additional information be gathered for discussion on another date.

One of the most difficult aspects of the Open Meetings Act results from the fact that communications between a quorum of a city council about public business, no matter the forum or the time, constitute a “meeting” to which the Open Meetings Act applies. As a result, city councilmembers have generally been advised to avoid commenting, for instance, on social media sites related to city business if the discussion will ultimately involve a quorum.

However, Texas Government Code Section 551.006, provides that communication between councilmembers about public business or public policy over which the council has supervision or control does not constitute a meeting if certain conditions are met. The communication must be: (1) in writing, (2) posted to an online message board that is viewable and searchable by the public, and (3) displayed in real time and displayed on the message board for no less than 30 days after the communication is first posted. A city is prohibited from having more than one online message board used for these purposes.

Additionally, the online message board must be prominently displayed on the city’s primary website and no more than one click away from the city’s website. The message board may only be used by city councilmembers or city employees that have received authorization from the council. If a city employee posts on the message board, the employee must include his or her name and title with the communication. The council may not vote or take action by posting on the city’s online message board, and if the city removes a posted message, the city must retain the posting for six years as it is considered public information.

Stiff penalties are provided for violations of the Open Meetings Act. A councilmember or any other person who participates in an illegal closed meeting can be punished by a fine of $100 to $500, confinement in the county jail for one to six months, or both. The same penalty can be applied to a councilmember who has a prohibited series of communications. For instance, using the telephone or email to poll other councilmembers or meeting with them individually to deliberate over some matter of city business that will be deliberated among a quorum of councilmembers could violate the Act.

The actions taken by a city council in an illegal meeting are voidable, and a court may assess costs of litigation and reasonable attorney’s fees incurred by a party who substantially prevails in an action brought under the open meetings law.

Public Information Act

Chapter 552 of the Government Code requires that most city records, including those in the possession of councilmembers, be open to public inspection.

As with the Open Meetings Act, each elected or appointed member of a governmental body must take at least one hour of training in the Public Information Act, or designate a public information coordinator to take the training on his or her behalf.

The training or designation must be completed not later than ninety days after the member takes the oath of office or assumes the responsibilities of the office. Again, note that a public official (for example, a member of a city council) may designate a public information

coordinator to satisfy the open records training requirement.

“Public information” is defined as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; (2) for a governmental body and the governmental body: (A) owns the information; (B) has a right of access to the information; or (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body. Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’s or employee’s official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

“Public information” includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business. “Official business” is defined as any matter over which a governmental body has any authority, administrative duties, or advisory duties. This means, for instance, that the Act now expressly provides that a councilmember’s private computer or cell phone communications, if made in connection with the transaction of official business, are public information.

Councilmembers are considered “temporary custodians” of the public information on their privately-owned devices. “Temporary custodian” means an officer or employee of a governmental body, including a former officer or employee, who, in transaction of official business, creates or receives public information that the officer or employee has not provided to the officer for public information of the governmental body or the officer’s agent. As a temporary custodian, the councilmember must preserve the public information in its original form in a backup and on their privately-owned device for the required record retention period, or transfer the public information to the governmental body or the governmental body server. Also, as the temporary custodian, a councilmember is required to surrender public information that has been requested to the public information coordinator not later than the tenth day after receiving a request for the information from the public information coordinator. Failure to surrender the information could be grounds for disciplinary action by the governmental body, as well as, other penalties being brought against the temporary custodian.

The media on which public information is recorded includes paper; film; a magnetic, optical, or solid state or other device that can store an electronic signal; tape; mylar; and any physical material on which information may be recorded, including linen, silk, and vellum. The general forms in which the media containing public information exist include a book, paper, letter, document, email, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

Certain information is specifically excluded from the requirements of the law. While the list of exempt materials is too long to recite here, it includes such information as working papers being used to draft ordinances or resolutions; certain personnel records; information that would, if released, give an advantage to bidders; documents protected because of attorney-client relationships; documents relating to pending litigation; and various types of critical infrastructure and homeland security information, including information that relates to: (a) staffing requirements of an emergency response provider; (b) tactical plans; (c) infrastructure vulnerability assessments and other reports prepared for the federal government; (d) the location of dangerous materials that may be used for weapons; (e) computer passwords; and (f) information regarding security systems that protect property from terrorism or related criminal activity.

Despite the narrow exemptions established in the law, its net effect is to require that most information must be made available, upon request, to the news media and other members of the public. A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions, must, with some exceptions, ask for a decision from the Texas attorney general. If an attorney general decision is required, the city must request the decision and state the exceptions that apply not later than the 10th business day after receiving the written request. Not later than the 15th business day after receiving the request, the city must submit to the attorney general the reasons that the exceptions apply, a copy of the request for information, and a copy of the information requested or representative samples labeled to indicate which exceptions apply to which parts of the information.

Formal Meetings of the Council/ The Agenda

A well-organized agenda is an indispensable part of every orderly council meeting. The agenda establishes a calendar of activities for the council to follow in the course of its meeting. It lists all the items of business that will be considered. By putting councilmembers on notice as to what will be discussed, each of them is enabled to arrive at the meeting prepared and ready to conduct business.

The following illustrates a typical agenda format:

1) Call to Order—The presiding officer calls the meeting to order and determines whether a quorum is present.
2) Invocation—Optional.
3) Roll Call—Although most city councils are small enough to readily determine who is present by simply looking around the council table, a formal roll call lends an air of dignity to the proceedings.
4) Approve Minutes of the Previous Meeting—Unless a majority of the council desires that the minutes of the previous council meeting be read, the minutes can be approved as submitted or corrected.
5) Consent Items—“Consent” items are noncontroversial items that can be considered and voted upon as a block.
6) Presentations by Citizens—Scheduling this agenda item early in the meeting permits citizens to complete their

business with the council in a timely manner and then leave, if they wish.

7) Public Hearings.
8) Old Business—Final passage of ordinances, and other business pending from previous council meetings.
9) New Business—New ordinances or resolutions (or amendments to existing ones) or policies that councilmembers or city staff wish to have the council consider. Under the Open Meetings Act, each item to be considered must be specifically described in the agenda. It is not sufficient just to put the words "New Business" or "Old Business" on the agenda, and then allow the consideration at the council meeting of any or all items that might be brought up.
10) Reports of Advisory Boards and Commissions—Each board or commission must be listed, together with a description of each report that will be presented at the council meeting.
11) Items from Council—This part of the agenda is provided for councilmembers to present matters other than ordinances, resolutions, and other matters requiring formal action. The attorney general has opined that matters raised by councilmembers or members of the city staff must be specifically described on the agenda (other than items of "community interest," as previously explained in this chapter). Examples would include a councilmember's request that the staff take action on a particular problem, as described in the agenda.
12) Staff Reports—This agenda item includes reports from the mayor and/or city administrator on the status of various projects, problems that are developing in particular neighborhoods, and so on. Under the open meetings law, each of these reports must be listed and specifically described in the agenda.
13) Announcements.
14) Adjournment—If there is no further business, the mayor can adjourn the meeting. If all of the items listed in the agenda have not been considered and disposed of, a majority vote usually is required to adjourn.

The amount of detail included in the agenda is a matter for the council to decide. Oftentimes, the agenda is used as the notice of the meeting. In that case, the legal rule applicable to the format of an agenda is found in the open meetings law, which requires that every agenda item be specifically described in the meeting notice. In practice, this means that broad categories, such as "Old Business" or "New Business," cannot be included in the agenda without listing each of the specific items that will be discussed.

The governmental body is specifically required to have minutes or a recording of each of its open meetings. The minutes shall state the subject matter of each deliberation and shall indicate each vote, other decision, or other action taken by the governmental body. The minutes or recording are public records and may be examined or copied by members of the public. This requirement must be met for all open meetings of governmental bodies, including meetings when formal actions or votes do not occur. City councils or boards that meet to discuss formulation or development of a policy or ordinance that will be voted on at a later date must keep a formal record of the proceedings, even though no final vote or action is taken.

Rules of Order and Procedure

Recognizing that every legislative body needs a systematic way of conducting its business, many city councils operate according to formal rules of order and procedure. Rules of order and procedure prevent confusion by establishing an organized process for conducting council meetings. Properly followed, they save time for all participants, while protecting the individual's right to participate fully.

The following provisions usually are included in rules of order and procedure:

- Designation of the time and location of regular meetings of the council, together with a description of procedures for calling special meetings;
- Procedures for placing items on a meeting agenda;
- Methods for compelling councilmembers to attend meetings;
- A description of the duties of the presiding officer at council meetings;
- A description of the parliamentary rules under which the council will operate;
- Procedures for introducing and voting on ordinances, resolutions, and other items;
- The order of business the council will follow at each meeting; and
- A ranking of motions by order or precedence, which motions may or may not be debated, and so on.

Although most city councils use *Robert's Rules of Order* to conduct their meetings, some have adopted their own local rules. *Robert's Rules of Order* may be appropriate for some cities, but is often too cumbersome for others. State law is silent with regard to this matter; so, unless your city charter provides otherwise, any standard rules that are reasonable and consistently followed are acceptable.

The following two sections briefly describe motions and debate rules that are fairly common.

Motions

A motion is simply a vehicle for initiating action on a proposal. Some types of motions can be brought up and voted on at any time, while others are out of order at certain times. Certain motions outrank others. Some motions require a second; others do not. Knowing the difference between the various types of motions and when to use them is a first step in taking an active part in passing or defeating measures before the council.

A main motion is used to initiate the consideration of a new item of business. After being seconded, a main motion is subject to being debated, amended, tabled, or withdrawn before a final vote is taken.

Any councilmember making a main motion may, prior to receiving a second, withdraw or change it. If the motion has been seconded, approval of the person who seconded it is required in order for the maker of the motion to change or withdraw it, unless another councilmember objects, in which case the change or withdrawal must be voted upon.

A new main motion cannot be brought up for consideration while another main motion is being debated. Each main motion must be disposed of before another is made.
A secondary motion is used to propose an action on a main motion being debated by the

council. Examples of secondary motions include the following:

1) Motion to table the main motion; that is, lay it aside and go on to the next item on the agenda.
2) Motion to request that discussion cease and that the main motion be voted upon; that is, moving the previous question.
3) Motion to limit discussion to a fixed amount of time.
4) Motion to postpone action on the proposal until some definite time in the future.
5) Motion to refer the proposal to a committee.
6) Motion to amend the main motion.
7) Motion to postpone action on the proposal to an indefinite future time.

These examples of secondary motions are listed in the order of their rank. Therefore, if the council is debating Councilmember X's motion that the item under consideration be referred to a committee, and Councilmember Y moves to table the main motion, debate would cease until Councilmember Y's higher-ranking motion is voted upon.

A privileged motion is used to bring procedural questions before the council, such as whether the council should recess or adjourn. Unlike other motions, privileged motions do not require a second in order to be considered.

A privileged motion can be offered at any time, without regard to any other motion pending before the council, and must be decided before the council returns to the other business under discussion. Therefore, a motion to adjourn, if made while a main motion is before the council, must be decided before the main motion is considered any further.

Some privileged motions are more privileged than others. This is the usual order of their importance:

1) Motion to set the time and place of the next meeting.
2) Motion to fix the time of adjournment.
3) Motion to adjourn.
4) Motion to recess.
5) Motions on questions of privilege.
6) Motion to keep the meeting to the agreed order of business.

Thus, during consideration of a main motion, a privileged motion might be made to adjourn. But before the question is called on the motion to adjourn, another higher-ranking privileged motion might be made to set the time and place of the next meeting.

Debate

Motions are usually classified three ways: (l) undebatable motions; (2) privileged motions upon which limited debate is permitted; and (3) fully-debatable motions.

Undebatable motions involve procedural questions that can be resolved without discussion, such as tabling a main motion, moving the previous question, restricting further discussion of a main motion to a fixed number of minutes, postponing action, or referring an item under discussion to a committee. [See items (1) through (7) under "secondary motions."] After an undebatable motion is offered, the presiding officer must immediately take a vote, without discussion.

Privileged motions upon which limited debate is permitted include setting the time of the next meeting and others listed among items (1) through (6) under "privileged motions."

Any discussion of a privileged motion must be addressed to the motion itself. A motion to fix the time for adjourning the council meeting, for example, might require limited debate as to the advisability of such a decision, but other points of discussion would be out of order.

Fully-debatable motions are subject to unlimited discussion prior to a decision.

One of the most important principles of debate is that councilmembers' statements be directly relevant to the item under consideration. Councilmembers recognized by the mayor are given the floor only for the purpose of discussing the item then pending, and they are out of order if they depart from that item.

"Debate" can easily evolve into statements of personal philosophy. Interesting though they may seem to the speaker, such departures do not belong in a council meeting. Meandering can be controlled by limiting councilmembers to one speech per agenda item or by restricting the length of their speeches. (Robert's Rules of Order sets an arbitrary limit of 10 minutes for each such speech.) A more difficult alternative is to impose limits on the number of minutes that will be allotted for a given agenda item.

Role of the Mayor as Presiding Officer

The mayor, as presiding officer, has the primary responsibility for ensuring that the council's rules of procedure are followed and for maintaining the dignity of council meetings. The mayor calls the meeting to order and confines the discussion to the agreed order of business. He or she recognizes councilmembers for motions and statements and allows audience participation at appropriate times. The mayor sees to it that speakers limit their remarks to the item being considered and, as necessary, calls down people who are out of order.

Proper performance of these functions requires that the mayor know parliamentary procedure and how to apply it. The mayor must recognize that parliamentary procedure is a tool, not a bludgeon—that is used to ensure that the will of the majority prevails while the right of the minority to be heard is protected.

In addition to fulfilling the duties of the presiding officer, the mayor should be familiar with legal requirements imposed by state law. This involves knowing which actions are required on ordinances, when extraordinary council votes are required, and when a time element—such as the deadline for giving notice of a city election—is important. The city attorney can help with these matters, but if the mayor knows the basics, time can be saved and illegal or incomplete actions prevented.

Presiding effectively at a council meeting is an art that no book can fully teach. The tactful presiding officer knows how to courteously discourage councilmembers who talk too much or too often, and how to encourage shy councilmembers who are hesitant to speak at all.

Councilmembers' remarks should always be directed to the chair. Even when responding to questions asked by another councilmember, he or she should begin by saying, "Mayor, if you will permit me. . ." and wait for recognition from the chair before proceeding. This helps avoid the spectacle of two councilmembers haggling over an issue that is of little interest to their council colleagues.

In addition to maintaining order and decorum at council meetings, the mayor must see to it that all motions are properly dealt with as they arise. The mayor must recognize the councilmember offering the motion, restate the motion, present it to the council for consideration, call for the vote, announce the vote, give the results of the effect of the vote, and then announce the next order of business.

In some cases, the mayor might refuse to allow a councilmember to offer a motion, even though it is in order, either because of unfamiliarity with parliamentary procedure or because of personal opposition to the proposed action. The mayor's refusal to allow a motion to be considered is subject to appeal, as are all of the mayor's decisions regarding procedures. A simple majority vote is all that is required to overrule the mayor's decision on procedural issues. If the decision of the chair is sustained, no further action is taken; but if the decision of the chair is overruled by the council, the council goes forward with the discussion of the motion or other matters before it.

On rare occasions, the mayor, in the heat of the moment, may rule that an appeal is out of order, or even declare the meeting adjourned. Both rulings are improper. A meeting cannot be summarily adjourned by the mayor. If an appeal from the decision of the chair is made immediately following the ruling, it is not out of order. If the mayor refuses to honor the appeal, the person making the appeal could then state the question, suggest limited debate, and then put the question to a vote.

Streamlining Council Meetings

Even the best planned council meetings can deteriorate into endurance contests. These are not necessarily the exceptional meetings, with long public hearings or battles over controversial ordinances. As often as not, these are regularly-scheduled meetings which drone on until the entire council is thoroughly exhausted.

Regulating Talk

Too much talking is the most common cause of lengthy meetings. Talking can assume a variety of forms—bickering or tiresome exchanges of personal opinions among councilmembers, endless speeches by citizens appearing before the council, or unnecessarily long and detailed reports by staff.

Nearly all these problems can be overcome by tactful action on the part of the presiding officer. If citizens addressing the council ramble on and on, the mayor may have no choice but to tell them to confine their remarks to the subject at hand and conclude as quickly as possible. If the problem is created by a talkative councilmember, a simple statement to the effect that "it's getting late and we must move along" usually will suffice, though private visits by the mayor may be needed to handle chronic talkers.

Shortening the Agenda

Having too many items on the agenda is another frequent cause of lengthy council meetings. This is not an easy problem to solve, and several evaluation sessions may be needed to correct the situation.

Perhaps the agenda is loaded down with detailed items that are included for reasons of custom, rather than necessity, and many of these could be handled by staff without council action. If too much meeting time is needed to explain the various items on the

agenda, perhaps a requirement that the more complex ones be explained in writing in advance of the meeting would help.

In some cases, it may be discovered that lengthy council meetings are the result of complexities that simply cannot be overcome. In these instances, the only answer may be more frequent meetings.

Handling "Consent" Agenda Items

Agendas tend to be cluttered with uncontroversial, recurring items that are of little interest to most councilmembers, but must be included because they require formal council approval. Examples include council approval of the minutes of previous meetings, routine purchases, and minor fund transfers between accounts. Most of these items generate no discussion, but each uses up time by requiring a separate motion to approve, a second, and a vote.

This problem can be overcome by establishing a "consent" agenda category that encompasses routine items that are approved by a single motion and a vote, without debate. ("Councilmember Smith moves the approval of items 3a, b, c, d, e, f, and g.")

If a councilmember objects to a consent item, it is removed from the list and added to the regular agenda at the appropriate spot. If a councilmember questions a consent item, but not so strongly as to require that it be removed from the list, his or her "no" vote or abstention can be entered in the minutes when the consent vote is taken.

The number of consent items can range from a handful to 25 or 30 or more, depending on the council's workload and preferences. Whatever the size, the consent agenda can be a real time-saver. One city reported that using a consent agenda had slashed the length of the average council meeting by 50 percent.

Administrative Improvements

Some council meetings are unnecessarily long because of deficiencies in the city's administrative procedures. For example, citizens who can't get their problems solved at city hall during normal business hours are likely to show up at council meetings to demand assistance. The fact that most of these complaints should have been handled through administrative action does not relieve the council of the duty to spend time listening to them.

Councilmembers who sense that too much formal meeting time is being devoted to hearing gripes from citizens about administrative inaction usually come to the conclusion that the way to get frustrated citizens off the agenda and into proper channels is to establish a system for receiving and processing complaints. The system can be simple, such as assigning one or two employees to process complaints on a part-time basis, or it can be a more sophisticated office operated by a full-time staff. In any event, it is usually advisable to have at least one of the staff members responsible for this function attend council meetings to be available to head off complaints.

Mechanical Aids

The time needed to explain an agenda item can be reduced by using photographs, flipcharts, and other graphic arts to supplement or replace written reports. Graphics and visual presentations needn't be expensive. In most cases, using a simple map to show the location of a project, flow charts

to illustrate a particular procedure or process, photographs to point out the physical characteristics of the matter being discussed, or a PowerPoint presentation can provide the extra perspective that written words or oral discussions sometimes fail to convey.

Council Work Sessions

Informal work sessions (sometimes called "workshops") of the council may be needed from time to time to study certain matters in detail. These are most often held in conjunction with budget review, since regular council meetings do not provide enough time to consider the budget in detail. Work sessions also are useful when major policy questions must be decided or when a complicated ordinance, such as a building code, comes before the council.

The Texas Open Meetings Act applies to all council meetings, whether formal or informal. Notices of workshop meetings therefore should be posted in the same manner as notices of regular council meetings. Also, minutes or a recording must be made of the meetings.

Citizen Participation

Many citizens form their opinions of the city government on the basis of having attended just one council meeting. For some, it will be the only one they attend in their lifetime. This is the time to impress citizens favorably, and to show them that the council is capable of doing its job.

The "citizen participation" period, also known as "public comment," is a time slot set aside on the agenda for citizens to address the council on any subject. Prior to 2019, councils determined when and if there would be citizen participation on an agenda because the Open Meetings Act only gave the public the right to observe an open meeting. Through reasonable rules, councils governed when citizen participation was placed on the agenda, how long a citizen could speak on a topic, and the decorum of the speaker towards the council.

House Bill 2840, effective on September 1, 2019, now requires a council to give the public the right to speak on items on the agenda for consideration at an open meeting. The council is required to allow the public to speak on items on the agenda either at the beginning of an open meeting or during the meeting when that item is being discussed by the council. The council can still adopt reasonable rules regarding the right of the public to address the council. This includes limiting the amount of time that the public may address the council on a given item. If the citizen addressing the council on an item on the agenda speaks a foreign language and needs an interpreter, then the council must allow at least double the time allowed for this non-English speaker to address the council. Just as before, the presiding officer should inform visitors of the place on the agenda at which time they will be recognized to speak. And if an exceptionally controversial item has drawn a large crowd, it is generally wise to state the approximate time the item is likely to come up for discussion.

To guard against citizen filibusters, some councils limit the length of time any one citizen may speak to three or four minutes, and permit this to be extended only by a two-thirds vote of the council. This kind of limitation often is necessary to keep talkative speakers from infringing on the rights of others who may wish to speak.

Although limited verbal interchanges between citizens and council members are appropriate, discussions should not be permitted to drag on. When a member of the public makes an inquiry about a subject for which notice has not been given, a councilmember may respond with a statement of factual information or recite existing policy. Though councilmembers are expected to be polite to citizens appearing before them, H.B. 2840 prohibits councils from forbidding public criticism in public comment.

The city council cannot take action unless it has been posted on the agenda in accordance with the Open Meetings Act. If a citizen brings an item before the council that needs to be acted upon, the city council should request that it be placed on the agenda for the next meeting. The attorney general has also stated that a city that knows or reasonably should know the subject matter of a citizen's presentation should place the matter on the agenda.

Public Hearings

The purpose of a public hearing is to present evidence on both sides of an issue. Some public hearings are required by state law, as in the case of the Uniform Budget Law (Sections 102.001 et seq., Local Government Code), which requires a public hearing on the city budget prior to its adoption. Others are voluntarily conducted by the council to obtain a full range of citizen opinion on important matters, such as a proposed bond issue. The difference between a public hearing and public comments is that a public hearing is required by law for particular topics with specific notice requirements by the Open Meetings Act.

The proper conduct of a public hearing is no less important than for a regular council meeting. Each should begin promptly and be conducted in an orderly manner in conformance with established rules of procedure.

At the start of the hearing, the presiding officer should clearly state the subject to be discussed. If, for instance, it is a rezoning hearing, the proposed ordinance should be read and its purpose explained. If the subject is controversial, the following order can be adhered to: proponents' presentation, opponents' presentation, proponents' rebuttal, opponents' rebuttal, questions from council.

One cardinal rule to remember is that numbers don't always count. There are some topics that naturally draw large, highly biased crowds. Vocal minorities often swamp public hearings to show that their side has widespread support. Such items as little league ballparks, school crosswalks, water rates, and taxes can attract crowds, but the size of the turnout does not necessarily indicate that their cause is just. The council is elected to serve all the citizens, and a councilmember must look at the overall picture—not just the view presented by one partisan group.

The council is responsible for weighing the evidence presented at the hearing and, after due consideration, reaching a decision. Obviously, this cannot always be done at the same meeting as the public hearing. In fairness to those who have taken the time to attend, the presiding officer should indicate when a decision can be made immediately after the hearing and the result announced. Otherwise, the chair should describe the reason that no decision will be made at that time, then state the probable time at which a final determination will be reached.

When a decision is announced on an issue that involves a public hearing, the presiding officer may, with the assistance of legal counsel, give the reasons why the decision was reached. Even a brief explanation will help prevent observers from feeling that the outcome of the hearing was decided in advance, and that they wasted their time by attending.

Chapter Six: Financial Administration

Financial administration, simply stated, is matching dollars with needs. Financial administration is the small town mayor who notices that city hall has a leaky roof, and makes a mental note to have it replaced when the money is available. Financial administration is a million-dollar capital improvements program, a bond election preceded by a barrage of information disseminated through the news media, a bond sale, and a report to the taxpayers through the newspaper—all of this is part of financial administration.

Financial administration involves an understanding of the extent and limits of the economic resources of the city and the methods of tapping them to meet citizens' demands for city services. It begins with a thorough knowledge of revenue sources and ends with a proper accounting of all of the funds expended by the city. Much lies in between; it is all financial administration.

Revenue Sources

City revenues come from many sources, including utility systems, property taxes, sales taxes, user fees, federal grants, and street rentals. (The Texas Municipal League publishes a comprehensive Revenue Manual for Texas Cities.)

Utility Revenues

Most Texas cities own water and sewer systems, while comparatively few operate electric or gas systems. Among those that own water or sewer systems, the revenue produced by utility billings accounts for a substantial portion of all money taken in at city hall. This percentage is considerably higher among cities that own electric or gas systems.

Property Taxes

Municipal property tax revenue is growing each year, both in total dollars and on a per-capita basis. In many cases, however, the demands on city budgets have increased at a much greater rate than have property tax collections.

Maximum Property Tax Rates

The Texas Constitution establishes the maximum permissible property tax rate for cities at the following levels: (1) for Type B and small Type C general law cities—25¢ per $100 assessed valuation; (2) for other general law cities with a population of 5,000 or less—$1.50 per $100 assessed valuation; and (3) for cities with 5,001 or greater population—$2.50 per $100 assessed valuation.

Administrative Procedures

Over the years, the Texas system of property tax administration has undergone significant change.

Prior to 1980, the appraisal of property for tax purposes was fragmented among more than 3,000 cities and other local jurisdictions, and there were no uniform statewide standards governing the administration of local taxes. In 1979, however, the Texas Legislature changed this situation radically when it enacted a new State Property Tax Code that established uniform appraisal policies and procedures.

Under the code, county-wide appraisal districts are now responsible for preparing a unitary tax roll that encompasses all property within the county. Although cities and other jurisdictions retain the authority to set their own tax rates and collect their own taxes, they must use the tax roll prepared by the central appraisal district for all tax-related purposes.

The basic procedures for administering property taxes include the following:

1) Appraisal: The taxable value of all property in the county is determined by the central appraisal district.
2) Protest: Any property owner dissatisfied by the value fixed by the central appraisal district can appeal to the appraisal review board. Upon a convincing demonstration that the appraisal district's determination was erroneous, the review board has the authority to correct the error, including but not limited to ordering a reduction of the taxable value of the appellant's property.
3) Assessment of Taxes: The tax roll prepared by the central appraisal district is furnished to cities and other taxing entities within the county; those entities use it as the basis for levying taxes for the coming fiscal year.

   Legislation passed in 2019 overhauls the process by which cities adopt their tax rates. Generally speaking, if taxes that fund maintenance and operations expenses increase more than 3.5 percent, the city must hold an election on the November uniform election date for voters to approve the rate. (Note: There are exceptions to this general process for cities under 30,000 population, under certain circumstances.) A city may not adopt a tax rate exceeding the lower of the voter-approved tax rate or the no-new-revenue tax rate until it publishes notice and holds a public hearing. Cities must take various other actions to promote transparency in the tax-rate-setting process, including posting certain information on their websites, and incorporating tax rate information into a database maintained by their appraisal districts.
4) Collection: After the council has set the property tax rate for the coming fiscal year, the tax assessor-collector mails tax notices to all property owners in the city and initiates the collection of taxes.

The procedures for assessing and collecting property taxes are prescribed by the Tax Code and Local Government Code. Complete details regarding state requirements are available from the Property Tax Division of the Texas State Comptroller of Public Accounts.

Delinquent Property Taxes

For obvious reasons, it is to the city's advantage to collect as much as possible of the amount of property taxes owed. In this regard, financial analysts are inclined to criticize cities that fail to consistently collect at least 95

percent of the taxes levied. In many Texas cities, a 98-percent collection rate is the norm.

The more successful city tax offices are assisted by an attorney who is skilled in collecting delinquent taxes. In some cases, this may be the city attorney, but the more common practice is for the city to hire a lawyer who specializes in the delinquent tax field. Most outside lawyers charge a fee that is paid by the delinquent taxpayers on the basis of a percentage of the delinquent taxes they owed.

City Sales Tax

As a result of legislation initiated by the Texas Municipal League, the general city sales tax became available to Texas cities in 1968 and has become almost universal, with virtually all cities in the state having adopted it.

Most cities in which the combined local sales tax (city, county, special district) has not reached two percent can consider the imposition of certain additional sales taxes for purposes that include economic development, crime control, property tax relief, and street maintenance. Additional information regarding the sales tax for economic development is available from the Texas Municipal League and the League's *Economic Development Handbook.*

User Fees

Charges for the use of city services are an increasingly popular method of generating revenues. In addition to charging for solid waste collection and water and sewer services, cities impose fees for the use of a variety of facilities, including swimming pools, golf courses, and airports.

Federal Grants

Despite cutbacks in recent years, federal aid is still an important part of the municipal revenue picture. For individual cities, federal aid as a proportion of all revenues fluctuates widely, with "distressed" cities receiving large amounts of federal money, and the more prosperous cities receiving comparatively little.

Street Rentals

A portion of an average city's revenue is produced by rental charges collected from private firms—such as cable TV companies, telecommunications providers, and gas and electric utilities—in return for allowing them to use streets and other public rights-of-way. Municipal street rental charges for electric, gas, and water utilities are authorized under the state Tax Code, which allows cities to impose such charges on utility and transportation enterprises in return for the privilege of using the city's streets and alleys to string lines, bury pipes, and otherwise use public property to conduct business. The provisions for collecting compensation from telecommunications providers are contained in Local Government Code Chapter 283, and those relating to cable and video providers are in Chapter 66 of the Utilities Code. Chapter 284 of the Local Government Code contains right-of-way compensation provisions for small cellular network nodes.

Fines

Under state law, a city may assess a fine of up to $2,000 per day for violations of ordinances dealing with fire safety, zoning, or public health-related matters. A city may assess a fine of up to $4,000 per day for violation of an ordinance governing the dumping of refuse. For ordinances dealing with other violations, the maximum fine is $500 per day.

The amount of revenue from fines as a proportion of city revenues usually varies in direct proportion to city size. In larger cities, fines generate a comparatively small proportion of total revenues; in most small cities, fine revenues play a much more important role in the city budget.
State law limits the amount of revenue that a city under 5,000 population may derive from fines for violations of traffic laws.

License and Permit Fees

Under their police powers, cities regulate a wide variety of activities in order to promote the health, safety, and welfare of local citizens. Permit and license fees provide the revenues necessary to finance the cost of these regulatory programs. Examples of permit fees include those charged for examining subdivision plats and plumbing installations. Examples of license fees include those for registering dogs. The amount of a permit or license fee must bear a reasonable relationship to the cost of the particular regulatory program. Under the law, excessive fees may not be imposed in order to create "profits." Also, the city may not assess a fee or require a permit for which no bona fide regulatory function is performed.

Hotel-Motel Tax

Chapter 351 of the Tax Code authorizes most cities to levy an occupancy tax of up to seven percent on the price of a hotel or motel room. Other cities, depending on population, may levy an even higher tax. Under the law, proceeds from this tax must be earmarked for certain specified purposes, including the advertising and promotion of the city and its vicinity to attract tourism, arts and cultural activities, historical restoration and preservation activities, registration of convention delegates, operation of visitor information centers, the construction of civic centers and auditoriums, certain sporting events, signage, and tourist buses. Cities must maintain a written list of all projects funded by the hotel-motel tax. Cities must also annually report to the comptroller their hotel occupancy tax rates, the amount of revenue collected from hotel occupancy taxes during the year, and the amounts and percentages allocated to specific uses during the year.

Taxes on Alcoholic Beverages

Under the Texas Alcoholic Beverage Code, the state levies both a gross receipts tax and a separate tax on the sale of all mixed drinks served in clubs, saloons, and restaurants. Some of the state's total collections are remitted back to the cities on a pro rata basis.

Additionally, cities are authorized by Section 11.38 of the Texas Alcoholic Beverages Code to levy fees not to exceed one-half of the state fee for a variety of alcoholic beverage-related permits, including permits for package stores, distributors, brewers, and others issued within the city.

Occupation Taxes

Cities are authorized under Section 302.101 of the Texas Tax Code and Article VIII, Section 1, of the Texas Constitution to levy an occupation tax on certain businesses and professions, such as operators of pinball machines and other coin-operated devices. The rate of the city tax may not exceed an amount set by statute and may not exceed 50 percent of the rate of the occupation tax levied by the state on the same businesses, if no statutory amount is set. A city may not levy a tax on a business or profession not subject to state occupation taxation.

Special Assessments

A “special assessment” is a charge imposed by the city on a limited group of properties to finance public improvements that specifically benefit those properties and enhance their value. Special assessments are most frequently used to finance the construction of sidewalks or reconstruction of streets. The cost of improvements is apportioned among all the owners of property abutting the improvement according to relative benefit. Costs are divided between property owners and the city according to the state law applicable to the particular type of improvement.

Miscellaneous Revenues

Miscellaneous income is derived from many different sources, such as rental charges for the use of the city’s property, the sale of city property, the sale of water and other utility services to other jurisdictions, and interest income on idle city funds.

Budgeting

For many councilmembers, budgeting represents the most wretched and tiresome aspect of city government. Budgeting begins amid cries from some citizens for “tax relief” and demands from others that their “essential” programs be funded. Upon its adoption, the budget is dismissed with a sigh: “Now that that dreadful chore is behind us, we can get on with the ‘fun’ part of the city’s business.”

Financial management is indeed unglamorous, and budgets are poor leisure reading. However, it is also true that among all the functions performed by the city council, budgeting is the most important.
In its simplest definition, budgeting is a plan for utilizing the city’s available funds during a fiscal year to accomplish established goals and objectives. Within a broader context, the budget also serves to:

1) Provide the public with an understandable financial plan that plainly describes activities that will be undertaken during the next fiscal year and the extent and specific types of services that will be performed.
2) Establish priorities among city programs, particularly new or expanded programs.
3) Define the financial framework that will be used to periodically check the status of city operations.
4) Determine the level of taxation necessary to finance city programs.

Budgeting is the forum for making the most of the council’s key decisions about the future of the city. It is a process for determining the community’s standard of living—what local residents need and want, what they are willing and able to pay for, and what services they can expect to receive for their tax dollars.

The council can use the budget to restore an ailing municipal government to financial health, or misuse it to drive a healthy government to insolvency. It can be used to nurture community development or freeze growth. The budget is everything. It is, in the words of one mayor, “the World Series of municipal government.”

Statutory Requirements

The budgeting process in every Texas city, regardless of size, must comply with the

requirements in Chapter 102 of the Local Government Code. Under the statute:

1) The city council must adopt an annual budget and conduct the financial affairs of the city in strict conformance with the budget.
2) The budget for each fiscal year must be adopted prior to the first day of such fiscal year. In most Texas cities, the fiscal year begins on October 1; therefore, the budget must be adopted by September 29 or earlier.
3) The city's budget officer must prepare a proposed budget for the consideration of the city council. In most cities, the law requires that the mayor serve as budget officer; in cities that have adopted the city manager form of government, the city manager is the budget officer.
4) Copies of the proposed budget compiled by the budget officer must be filed with the city clerk/secretary and made available for public inspection. The initially proposed budget must be filed no later than thirty days prior to the date upon which the city council sets the property tax rate for the next fiscal year.
5) If the budget will raise more total property taxes than in the prior year, it must contain a cover page giving notice of that fact. A budget calling for such a property tax increase must be posted on the city's website, if it operates one.
6) The city council must hold a public hearing on the budget after the 15th day that the budget has been filed with the city clerk or secretary. Notice of the public hearing must be given in a newspaper of general circulation in the county not less than ten nor more than thirty days prior to the hearing. The notice must identify a proposed property tax increase.
7) Upon adoption of the final budget by majority vote of the council, copies must be filed with the county clerk and city clerk/secretary and made available for public inspection. A budget that raises total property taxes requires a separate ratification vote. The adopted budget must contain a cover page that includes property tax information as well as the record vote of each councilmember on the budget. The adopted budget and cover page must be posted on the city's website, if it operates one.
8) After the new fiscal year has begun and the budget has been put into effect, no expenditure "shall thereafter be made except in strict compliance with such adopted budget," nor may the council amend the budget except for reasons of "grave public necessity" requiring "emergency expenditures to meet unusual and unforeseen conditions, which could not, by reasonable diligent thought and attention, have been included in the original budget..."
9) The budget and any amendments to it must be filed with the county clerk.
10) The governing body of the city may levy taxes only in accordance with the budget.

For obvious reasons, Chapter 102 of the Local Government Code is generally interpreted to prohibit deficit financing— that is, budgeting expenditures for which no offsetting revenues are provided.

Charter Requirements in a Home Rule City

All city charters establish a framework for budget preparation, adoption, and

implementation. While the details of these provisions vary from city to city, charter hearing(s), and require the council to adopt the budget by a certain time.

Many charters also prescribe the format of the budget, including requirements that it contain a message describing the budget officer's proposed fiscal plan for the city and significant features of the budget for the forthcoming fiscal year; a general summary, with supporting data, which shows proposed expenditures and anticipated revenues for the next fiscal year and their relationships to corresponding data for the current budget year; and details of proposed expenditures and anticipated revenues.

Basic Budget Information

Adoption of a plan of city services for the next fiscal year begins with a budget document containing certain basic information. The budget document should identify all services currently provided and proposed to be provided (or terminated) during the coming fiscal year. For each service, the following information should be furnished:

- An itemization of expenditures for each service during the previous fiscal year, a projection of actual expenditures for the current year, and proposed expenditures for the next fiscal year.
- A statement of objectives for each service to be funded during the next fiscal year. "Objectives" do not mean organizational objectives—such as "to add new police officers" or "to purchase a new street sweeper." Rather, these statements should describe the benefits the community will derive from a particular service, such as "to reduce average police

requirements generally prescribe a timetable for preparing the budget, require a public

response time to emergency calls by three minutes," or "to clean x number of miles of streets."

- The proposed level of each service for the next fiscal year, together with a description of performance standards for each. In the case of the solid waste budget, for example, service levels and performance can be expressed in terms of the numbers of customers served and the volume of refuse collected. Street maintenance can be expressed in terms of lane miles resurfaced, maintenance requests, and number of complaints concerning street quality, and so on. This approach will help the council focus on community benefits that will be produced by a given expenditure, rather than on such details as whether a particular department is requesting too much money for supplies or travel.
- A brief description of the methods by which the services will be delivered.
- An itemization of the cost components of proposed services.
- Sources of funding for the proposed services.
- A description of factors that could affect the cost of proposed services.

The budget also should contain a summary of the city's financial condition for the prior year and current year, and a projection of its anticipated condition for the coming fiscal year and beyond. This summary should indicate:

- Outstanding obligations of the city.
- Beginning balance of all cash funds.

- Actual revenues, broken down by source, collected in the preceding year and anticipated for the ensuing year.
- Estimated revenue available to cover the proposed budget.
- Estimated tax rate required to cover the proposed budget.

Properly organized, this information will enable councilmembers to gain a comprehensive understanding of the city's financial condition and give them the tools they need to establish the scope and direction of municipal services for the coming year.

Implementation

After the budget has been approved, regular monitoring by the city council can help ensure that municipal services are carried out in accordance with budget objectives and within expenditure ceilings. In most cities, the budget officer is required to furnish the council with periodic reports that show the prior month's expenditures and total expenditures to date for each budgeted activity. Using these reports, the council can identify deviations from budget plans, anticipate financial trouble spots, and determine whether the various departments are functioning properly.

On a periodic basis, perhaps quarterly, the council should be furnished with a written description of significant budgetary developments during the current fiscal year. For each activity, this statement should describe progress to date in comparison with objectives, and should provide reports on expenditures by budget category and revenue collections. Revised estimates of revenue also should be presented, together with revised surplus or deficit projections. These reports will give the council the basis for determining how well the city is meeting its service targets with the funds available. Also, it can help the council determine whether budget modifications are needed during the year.

Municipal Borrowing

It is a rare case when a city is able to carry out a capital improvements program of any consequence without using its credit. More often, the city borrows money, and in doing so, offers future tax collections or utility revenues as security for the loan.

Loans fall into two categories: short-term and long-term—or, stated differently, loans to be repaid within the current fiscal year versus those to be repaid in future years. This section briefly reviews the two types of loans.

Short-Term Borrowing

Most short-term loans are made with local banks. Their purpose is to provide funds of a temporary nature, and they are made with the expectation of repayment within the current fiscal year. A bank loan made in August to avoid an overdraft in the general fund pending receipt of tax collections in September is a good example of a short-term loan.

A short-term loan differs from a long-term loan in two respects: (1) it will mature within the current fiscal year; and (2) it can be approved by the city council without the necessity for voter approval at a referendum election.

Short-term loans should be used sparingly. An excessive amount of short-term debt can adversely affect the city's bond rating and impair its ability to accomplish long-term borrowing for major capital improvement

programs. Frequent use of short-term borrowing reflects deficiencies in the quality of the city's management of its financial resources.

Long-Term Borrowing

Unlike short-term loans, which can be repaid with general fund dollars derived from a variety of revenue sources, long- term loans require that the specific source of revenue that will be used to repay the debt be identified and, in certain cases, pledged.

Long-term loans secured by a pledge of property taxes are called "general obligations" and include ad valorem tax bonds, time warrants, and certificates of obligation. Long-term loans secured by a pledge of revenue from an income-producing facility are called "revenue bonds."

General Obligation Debt

General obligation debts are payable from, and are secured by, a pledge of future property tax collections. Under standards promulgated by the attorney general of Texas, a city with a maximum permissible tax rate of $1.50 per $100 assessed valuation may not incur general obligation debt that will require the levy of a tax at a rate higher than $1.00, after allowing ten percent for delinquencies in collection and for the payment of maturing principal and interest.

General obligation debt is commonly expressed as a percentage of the city's total assessed valuations. For example, a city that has a total assessed valuation of $10 million and outstanding general obligation debt in the principal amount of $500,000 is said to have a debt ratio of five percent. Three common forms of general obligation debt are ad valorem tax bonds, time warrants, and certificates of obligation.

Ad Valorem Tax Bonds

Ad valorem tax bonds are commonly referred to as general obligation, or G.O. bonds. They are issued pursuant to an ordinance adopted by the city council, typically following approval of the bonds at a referendum election. The bonds are examined as to legality by the attorney general of Texas, and then delivered by the city to the successful purchaser or bidder for payment in cash. This cash is then used by the city to pay for libraries, police buildings, city halls, and other public facilities with a long, useful life.

G.O. bonds usually are issued in $5,000 denominations, and the bond issue usually provides serial maturities, with a certain amount of principal maturing each year over a period not to exceed forty years.

General obligation bonds have the highest degree of investor acceptance of any type of municipal indebtedness, and they command the lowest interest rates. Therefore, unless exceptional circumstances dictate otherwise, G.O. bonds are the preferred means of borrowing against a pledge of tax revenues.

Time Warrants

Time warrants are also general obligation debts and are payable from ad valorem taxes. Unlike G.O. bonds, which are sold for cash, time warrants are issued directly to vendors to pay for construction, equipment, and services. Also unlike G.O. bonds, time warrants do not require voter approval, although the law does require that the city council publish notice of its intent to issue them and that the council

call a referendum election upon presentation of a petition signed by ten percent of the taxpaying voters.

The procedures for issuing time warrants are cumbersome and expensive and will result in the city paying a higher rate of interest than if the borrowing were accomplished with bonds. Nevertheless, time warrants can occasionally be advantageous—for example, to complete the construction of a public works project where there has been a cost overrun and bond funds have been exhausted.

Certificates of Obligation

The third form of general obligation debt payable from ad valorem taxes is certificates of obligation (COs). Like time warrants, COs can be issued without voter approval—except that upon notice of the city's intent to issue certificates, five percent of the qualified voters can force an election on the issue by submission of a petition. With certain exceptions, a city may not issue a CO to pay a contracted obligation if a bond proposition to authorize the issuance of bonds for the same purpose was submitted to the voters during the preceding three years and failed to be approved.

Certificates of obligation can be issued directly to vendors to pay for construction work, equipment, machinery, materials, supplies, land, or professional services furnished to the city. Also, under certain circumstances COs can be sold, like bonds, for cash, in which case they must he approved by the attorney general in the same manner as bonds.

Revenue Bonds

There is only one type of bond secured by a pledge of revenues from an income-producing facility such as a utility system. These obligations are revenue bonds and usually are designated with the name of the system that pledges the revenues (for example, Waterworks System Revenue Bonds, Waterworks and Sewer System Revenue Bonds, and so on).

When utility revenues are pledged to support revenue bonds, the pledge is made of the system's net revenues—that is, gross revenues minus operating and maintenance costs. Such bonds are payable solely from these revenues and include a statement on their face that the holder shall never be entitled to demand payment from property taxes.

In determining whether the amount of pledged revenues is sufficient to repay the outstanding revenue bonds of a utility system, analysts will look at the ratio between the system's net earnings and the requirements of principal and interest maturities over a period of years. As a rule, net revenues should be at least 1.25 times larger than the average annual debt service requirements of the system. This ratio is called "coverage," and revenue bonds are said to have 1.25X coverage, or 2.23X coverage, and so on. The higher the coverage, the better the security for the bonds and, all other things being equal, the lower the rate of interest at which the bonds can be issued.

In pledging the revenues of a utility system, it is common to make a "cross pledge," or "combined pledge." This is a pledge of the revenues of one system to repay bonds issued for improvements to a different system; for example, pledging the net revenues of the water system to the payment of bonds issued to improve the sewer system. On the other hand, the revenues of a utility system may not

be cross pledged to the payment of bonds issued on behalf of a non-revenue-producing facility. For instance, water system revenues cannot be pledged to the payment of bonds issued to build a city hall.

Bond Ratings

As the annual volume of long-term debt incurred by state and local governments has grown over the years, competition between cities and other borrowers for the investor's dollar has increased correspondingly. A municipal bond rating is one of the methods used to help alleviate the problems arising from this competitive situation.

A bond rating gives a quick indication of the quality of a new issue being offered, so that prospective bidders may know if they want to develop a bid. But a bond rating has greater value than a mere screening device: it also influences the rate of interest payable on bonds. Therefore, it is desirable that the city maintain a good rating for its bonds, because it can mean the difference between a good bid and a poor one, and a difference in interest charges to the city running into many tens of thousands of dollars.

Most Texas cities have more than one bond rating. Each bond issue is rated separately, based on the source of revenue that has been pledged to secure payment. General obligation bonds, therefore, are rated separately from water or sewer revenue bonds.

In determining the rating of a bond issue, analysts focus on the nature of the particular security. In the case of general obligation bonds, prime importance is attached to relationships among the city's debt, wealth, population, and tax collection experience. The economic base of the city, the stage of its development, and the quality of its government also are important factors. Finally, analysts examine the exact nature and strength of the legal obligation that the bonds represent.

The bond ratings of two particular firms are universally accepted in investor circles. These are Moody's Investors Service and Standard & Poor's Corporation, both of which are based in New York City. The four investment grade ratings granted by these services are as follows:

<u>Moody's Investors Service</u>
Aaa: Best quality, carrying the smallest degree of investment risk
Aa: High quality (together with Aaa comprise "high-grade bonds")
A: Higher medium-grade (many favorable investment attributes)
Baa: Lower medium-grade (neither high-quality nor high-risk)

<u>Standard & Poor's Corporation</u>
AAA: Highest rating, with extremely strong capacity to repay loan
AA: Only a small degree below AAA in the capacity to repay the loan
A: Strong capacity to repay loan, although more susceptible to adverse effects in economic conditions
BBB: Adequate capacity to repay loan

In offering newly issued bonds for bids, the city should apply to one or both of the rating agencies to obtain a rating on the issue being offered. The nominal cost of obtaining a rating can be recovered many times over by minimizing interest costs on the basis of a favorable bond rating, as opposed to the sale of non-rated bonds.

Bond Elections

If it has been determined by the city council that a bond election is required, the first step—and the key step—in a successful campaign is citizen participation. The tried-and true elements of a successful bond election include the following:

- Let private citizen volunteers, rather than the city council, conduct the campaign to persuade local voters to vote for the bonds.
- Enlist the support of community and civic organizations.

Installment Obligations

An ever increasing number of Texas cities are financing municipal purchases through installment sales or lease-purchase agreements. Generally speaking, cities must competitively procure the personal property at issue when a lease-purchase agreement or installment sale involves an expenditure of more than $50,000 in city funds.

Anticipation Notes

Certain cities may have authority to borrow against anticipated revenue (typically federal grant money) by issuing anticipation notes. Anticipation notes may be appropriate for borrowing relatively small amounts of money when the issuance of bonds would be cost prohibitive. State agencies may be authorized to purchase anticipation notes from cities, thus speeding the grant process to fund city projects. The law relating to anticipation notes may be found in chapter 1431 of the Texas Government Code.

Capital Improvements Programming

It is a financial fact of life in every city that the demand for new streets, water lines, and other public works will always exceed the supply of current funds. Capital improvements programming is the primary method used by most cities to cope with the perpetual imbalance between capital demands and limited financial resources.

A capital improvements program (CIP) is a long-term plan, usually spanning five to six years, for financing major cost items that have a long useful life, such as buildings, land, streets, utility lines, and expensive equipment. The CIP document lists all the capital items scheduled for construction or acquisition during the next five or six years, the time when construction or acquisition is to occur, the amount expected to be spent during each year of the CIP, and the source of funding for each expenditure.

Preparation of a CIP involves five major steps. First, a list of proposed capital improvements is prepared on the basis of recommendations from the city council, staff, and citizen groups. The city's comprehensive plan will be the source of many CIP items, but whatever the source, each item included in the list should be supportive of the community goals expressed in the plan.

Second, cost estimates are developed for all proposed CIP items. In addition to stating the up-front cost of each item, these calculations usually include a description of savings that will result from its acquisition or construction,

as well as the impact the item would have on future revenues or operating costs.

Third, a determination is made of the city's ability to pay for the items included in the draft CIP, together with a description of the method by which each will be financed. Ability to pay will be determined by a financial analysis of past, current, and future revenue, expenditure, and debt patterns. Options for financing particular items include special assessments, state or federal grants, additional fees or taxes, current revenues (pay-as-you-go), reserve or surplus funds, general obligation or revenue bonds, and certificates of obligation. The objective of this step is to determine, for each year, the minimum costs the city will incur before any new capital expenditures can be financed.

Fourth, all proposed CIP items are organized by the staff for orderly presentation to the city council. Each is ranked in recommended priority order. Items that overlap or duplicate previously approved projects or that are inconsistent with the city's comprehensive plan are identified and perhaps downgraded. Finally, the tentative CIP is discussed at public hearings, thoroughly reviewed by the council, and then finally approved by formal council action.

Based on information contained in the CIP, a capital budget is prepared to show all capital expenditures in priority order, together with summaries of the financial activities planned for each year, including the amounts of bonds to be issued, amounts of operating funds required, and so forth.

The capital budgeting process normally takes place on a cyclical basis. Under a six-year CIP, year one is the current capital budget adopted by the city council at the same time it approves the operating budget. Many times, the capital budget is included as a component of the operating budget. Years two through six, having been approved by the council when it adopted the CIP, remain in the record as expressing the council's intent to carry forward with the balance of the CIP.

At the conclusion of year one, the council approves another one-year capital budget and extends the CIP, with revisions, for another year. Thus, year two of the previous CIP becomes year one of the new six-year program, and the cycle begins anew.

Capital improvement programming offers several advantages. By scheduling ample time for construction or acquisitions, costly mistakes can be avoided, as is the case when streets have to be dug up repeatedly because they are not planned in relation to other facilities. Also, by working with a list of planned projects, sites can be purchased at lower cost, and by spacing out projects over several years, the city's tax and debt load can be stabilized, and balance can be maintained between debt service and current expenditures.

Financial Reporting

Financial reports prepared periodically throughout the fiscal year are an essential part of the control system necessary to permit the city council to determine whether funds are being expended in accordance with the budget and to identify discrepancies between anticipated and actual revenues. Financial reports fall into four general categories—internal budgetary reports, annual financial reports, annual audits, and local debt reports—each of which is briefly discussed next.

Internal Budgetary Reports

Internal budgetary reports are prepared on a monthly basis and are distributed to the city council and department heads. These reports illustrate the financial condition of the city as it unfolds from month to month and answer such questions as: Are city services being provided as planned? Are expenditures exceeding budgeted levels? Is the cash inflow at the expected level? By determining the answers to these and related questions on a regular basis, the council can identify problem areas and initiate corrective actions accordingly.

Annual Financial Report

The annual financial report is compiled at the conclusion of the fiscal year and shows, item by item, budgeted versus actual revenues and expenditures, together with other information that describes the city's year-end financial condition. The financial report should be prepared by an independent certified public accountant appointed by the city council and made available to the department heads, the news media, and other interested parties.

Annual Audit

Sections 103.001-103.004 of the Local Government Code require each city to have an annual audit of its financial records and accounts. The audit can be performed either by a certified public accountant or a qualified city employee, and must be made available for public inspection no later than 180 days after the close of the city's fiscal year.

The audit involves examination of three aspects of the city's financial operations: (1) internal controls; (2) statements, records, and accounting transactions; and (3) compliance with statutory and budgetary requirements. Properly conducted, the audit provides a double check on the city's financial status, a method for communicating with the citizenry, and a bona fide statement of the city's financial condition, which will improve its ability to issue bonds.

Local Debt Report

Section 140.008 of the Local Government Code requires cities to annually compile and report various types of debt obligation information, including the amounts of principal and interest to pay outstanding debt obligations, the current credit rating given by any nationally recognized credit rating organization to debt obligations of the city, and any other information that the city considers relevant or necessary to explain the outstanding debt values. Subject to certain exceptions discussed below, the local debt report must be posted continuously on the city's website until the city posts the next year's report. The report must be made available to any person for inspection.

As an alternative to posting the report on the city's website, a city may provide all required debt information to the comptroller and have the comptroller post the information on the comptroller's official website. Further, a city with a population of less than 15,000 may provide the comptroller with its local debt report for inclusion on the comptroller's website. A city that already includes the required debt information in other reports that are posted to the city's website may provide a link to that information rather than replicating the data in the local debt report.

Investments

In 1995, the Texas Legislature enacted the Public Funds Investment Act, which requires the governing body to adopt a written investment policy. A city may contract with an independent investment advisor to provide investment and management services. Typically the city investment officer must attend one investment training session within twelve months of taking office and must attend eight hours of training once every two years thereafter. The treasurer and the chief financial officer (if the treasurer is not the chief financial officer) must also attend ten hours of training every two years. The Texas Municipal League offers comprehensive public funds investment training.

Financial Warning Signals

In recent years, increasing attention has been given to monitoring the financial health of cities. Although most of the chronic financial problems of cities tend to slowly snowball over an extended period of time, they usually result from a standard set of problems, including: (1) a decline in revenues or tax base; (2) an eroding capital plant; (3) a faltering local or regional economy; (4) growing debt burden; (5) accumulation of unfunded pension liabilities; (6) a sudden loss of substantial federal funds; (7) an increase in spending pressures; and/or (8) ineffective financial management practices.

Chapter Seven: Ordinances and Resolutions

The city council takes official action by two primary means: resolutions and ordinances. Both of these play important roles in their own respective ways, and they share certain similarities. But there are distinctions between the two, and it is good to know the differences.

The distinction between an ordinance and a resolution is in subject matter, not terminology. An ordinance cannot be changed into a resolution merely by calling it a resolution, nor may the requirements for enacting an ordinance be bypassed by simply passing a resolution. A resolution generally states a position or policy of a city. An ordinance is more formal and authoritative than a resolution. An ordinance is a local law that usually regulates persons or property and usually relates to a matter of a general and permanent nature.

Passage of an ordinance generally involves three steps, the first of which is the introduction of the proposed ordinance at a council meeting.

Next, the city clerk or city attorney either reads the entire ordinance or reads just the caption of the ordinance and allows the person proposing it to provide an explanation.
There is no state law requiring that ordinances be read aloud in their entirety. In addition, there is no generally applicable state law that requires multiple readings of an ordinance. (Some home rule charters, however, do provide for more than one reading.) If the ordinance is short, the council may wish to have it read in full for the benefit of any citizens present. If the ordinance is long and technical, the usual practice is to settle for a brief summary and general explanation of the purpose of the ordinance.

Third, the ordinance is debated by the council and either defeated, postponed, referred to a committee for further study, or approved. If the ordinance is approved, it is then signed by the mayor and attested to (certified) by the city secretary or city attorney.

Also, depending on city type and the subject matter of an ordinance, it may have to be published in a newspaper before becoming effective.

Because of the relatively cumbersome procedures involved in enacting an ordinance, it is important to know when an ordinance is required and when less formal kinds of council action will suffice. Though there are no absolute standards that apply, these three rules of law may help:

1) Any council enactment that regulates persons or property and imposes a fine for violations must be in the form of an ordinance. This requirement is based on the principle that there must be a printed law and citizens must have some notice that it is in effect before they can be subjected to a fine.
2) An enactment must always be in the form of an ordinance if the state law authorizing the particular action requires an ordinance. Examples include the creation of a planning and

zoning commission or setting the tax levy for the next fiscal year.

3) An ordinance is required to amend or repeal an existing ordinance.

Compatibility of Ordinances with State and Federal Laws

An ordinance, or portion thereof, is void if it conflicts with the U.S. Constitution, the Texas Constitution, or a federal or state law. Also, even though an ordinance might be valid at the time it was passed, if a law subsequently enacted by the state or federal legislature conflicts with the ordinance, the ordinance is void. Conversely, if an ordinance supplements and is in harmony with the law, the ordinance will be sustained.

An ordinance is invalid if a court determines that the state legislature intended to preempt the field with regard to the subject addressed in the ordinance. If the legislature has preempted the field, no ordinance except those specifically authorized by statute may be enacted in such field.

Examples of conflicts that have caused ordinances to be ruled invalid include:

- an ordinance prescribing a different penalty from that imposed by state law where the ordinance and the law dealt with the same type of offense;
- An ordinance restricting the hours of operation of liquor stores to fewer than those authorized under the state Alcoholic Beverage Code;
- an ordinance legalizing an activity or business that was prohibited by state law; and
- an ordinance in conflict with the Interstate Commerce Clause of the United States Constitution.

Validity of Ordinances

An ordinance that is arbitrary, oppressive, capricious, or fraudulent will be invalidated by the courts. The courts can inquire into the validity of ordinances by looking at whether the ordinance has a substantial relationship to the protection of the general health, safety, or welfare of the public. The courts usually will not substitute their judgment for that of the city council; but if an ordinance is not in compliance with lawful requirements, the courts may overturn it. An ordinance is considered valid if no lawsuit has been filed to invalidate the ordinance on or before the third anniversary of the effective date of the ordinance, unless the ordinance was invalid on the day it was enacted or it was preempted.

Form of the Ordinance

State law does not prescribe the form of an ordinance, other than to require that it contain an ordaining clause (Section 52.002 of the Local Government Code) and to require the publication, or sometimes posting of either the complete text or caption of every ordinance that establishes penalties for violations (Sections 52.011-52.013 of the Local Government Code). But a form for ordinances has evolved by custom and is now used by most cities.

Although the actual drafting of an ordinance is best left to the city attorney, councilmembers should be familiar with the basic form. This

includes:

1) The number of the ordinance. This information is good to have for indexing and ready reference.
2) The caption, which briefly describes the subject of the ordinance and the penalties provided for its violation. Although an ordinance is valid without a caption, this is a useful feature because it provides a simple way of determining what is included in the ordinance without reading the entire document. Also, if the ordinance does not have a caption, Section 52.011 of the Local Government Code requires that the ordinance be published in its entirety if it provides a penalty for violations. Conversely, a penal ordinance may be published by caption only if the caption states the penalty for violations.
3) A preamble, which is optional, may be included in cases in which the council wants the courts to understand the reasons the ordinance was passed, factual findings made by the council, or the legislative authority for the ordinance.
4) The ordaining clause, which is required by law, in most instances.
5) The body of the ordinance, which usually is broken down into sections according to subjects. This contains the command of law as ordained by the council.
6) The effective date of the ordinance which may, in some circumstances, be governed by state law or city charter (if adopted by a home rule city).
7) A severability clause which clarifies that the invalidity of some portions of the ordinance should not render the entire ordinance invalid.
8) The penalty clause, which fixes the penalty for violating the ordinance. Under state law, the maximum penalty the council may establish for violating an ordinance dealing with fire safety, zoning, or public health (except for dumping refuse) is a fine of $2,000 per day for each day the ordinance is violated. The maximum penalty the council may establish for violating an ordinance governing the dumping of refuse is $4,000 per day. For ordinances dealing with other violations, the maximum fine is $500 per day. Cities do not have the power to punish violators by sending them to jail.
9) The final part of the ordinance is the statement that it was passed and approved, giving the date of passage, the signature of the mayor, and a space for the city clerk or secretary to sign and attest to the fact that the ordinance was actually adopted. Some cities also require the city attorney to approve the form of the ordinance. If required by state law or city charter, signatures must be present on the ordinance or the ordinance may be declared void.

The following ordinance illustrates these eight components:

Ordinance No. 125

CAPTION

AN ORDINANCE OF THE CITY OF ANYWHERE, TEXAS, ESTABLISHING WATER CONSERVATION REQUIREMENTS AND PROVIDING A PENALTY FOR VIOLATIONS.

PREAMBLE
WHEREAS, because of the conditions prevailing in the City of Anywhere, the general welfare requires that the water resources available to the City be put to the maximum beneficial use and that the waste or unreasonable use be prevented; and WHEREAS, lack of rain has resulted in a severe reduction in the available water supply to the City, and it is therefore deemed essential to the public welfare that the City Council adopt the water conservation plan hereafter set forth.

ORDAINING CLAUSE
NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANYWHERE, TEXAS:

BODY
SECTION 1. AUTHORIZATION.
The City Manager or his designee is hereby authorized and directed to implement the applicable provisions of this Ordinance upon his determination that such implementation is necessary to protect the public welfare and safety.

SECTION 2. APPLICATION.
The provisions of this Ordinance shall apply to all persons, customers, and property served with City of Anywhere water wherever situated. No customer of the City of Anywhere water system shall knowingly make, cause, use, or permit the use of water received from the City for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this ordinance, or in an amount in excess of that use permitted by the conservation stage in effect pursuant to action taken by the City Manager or his designee in accordance with the provisions of this Ordinance.

SECTION 3. CONSERVATION REQUIREMENTS.
From May 1 to September 30 of each year and upon implementation by the City Manager and publication of notice, the following restrictions shall apply to all persons:
(a) Irrigation utilizing individual sprinklers or sprinkler systems of lawns, gardens, landscaped areas, trees, shrubs, and other plants is prohibited except on a designated day which shall be once every five days, and only then during the hours of 8:00 p.m. and 12:00 noon. Provided, however, irrigation of lawns, gardens, landscaped areas, trees, shrubs or other plants is permitted at any time if: (i) a hand-held hose is used: (ii) a hand-held, faucet filled bucket of five (5) gallons or less is used; or (iii) a drip irrigation system is used.
(b) The washing of automobiles, trucks, trailers, boats, airplanes and other types of mobile equipment, the refilling or adding of water to swimming and/or wading pools and the use of water for irrigation of golf greens and tees is prohibited except on designated irrigation days between the hours of 8:00 p.m. and 12:00 noon.
(c) The washing or sprinkling of foundations is prohibited except on designated irrigation days between the hours of 8:00 p.m. and 12:00 midnight.
(d) The following uses of water are defined as “waste of water” and are absolutely

prohibited: (i) allowing water to run off into a gutter, ditch, or drain; (ii) failure to repair a controllable leak; and (iii) washing sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas except to alleviate immediate fire hazards.

SECTION 4. EFFECTIVE DATE
This Ordinance shall become effective immediately upon its passage and publication as required by law.

SECTION 5. SEVERABILITY
This Ordinance shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of the Ordinance shall not affect the validity or constitutionality of any other section, clause, provision or portion of this Ordinance.

SECTION 6. PENALTY
Any person, corporation or association violating any provision of this Ordinance shall be deemed guilty of an offense, and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars ($500.00). The violation thereof shall be deemed a separate offense, and shall be punished accordingly. Provided, however, compliance may be further sought through injunctive relief in the District Court.

CONCLUSION
PASSED AND APPROVED this____ day of _________, 20___

/s/_______________
Mayor

ATTEST:
/s/_______________
City Secretary/ Clerk

APPROVED AS TO FORM:
/s/_______________
City Attorney

Chapter Eight: Conflicts of Interest

Mayors and councilmembers are expected to avoid involvements that put their own personal interests at cross purposes with those of the public. In most cases, good judgment is enough to keep city officials within the bounds of propriety. There are, however, state laws governing the behavior of city officials.

At least three situations can impair the ability of mayors or councilmembers to properly perform their duties. All three involve conflicts of interest in which a member of the city council is placed in the position of owing loyalty to the interests of the city on one hand, and to some other interest on the other.

The first situation occurs when a councilmember occupies two or more public offices at the same time. The second exists when the city council votes to take an action that will have a beneficial effect on a business or property in which a councilmember has a major interest. And the third exists in cases of nepotism, where hiring decisions are made on the basis of relationship. Each of these situations is described below.

Dual Office-Holding

Two or More Civil Offices

Mayors and councilmembers are prohibited from holding more than one public office at the same time if both are “offices of emolument.” An emolument is a benefit that is received as compensation for services and includes salaries, fees of office, or other compensation—not including the re-imbursement of actual expenses.

Therefore, a mayor or councilmember who receives a salary, fees for attending council meetings, or any other emoluments from the city, may not simultaneously serve as a district judge, state senator or representative, county clerk, or in any other local or state office of emolument. The only exceptions to this prohibition are found in Article XVI of the Texas Constitution, which allows certain state officers and employees to hold municipal offices of emolument and which permits a person holding an office of emolument to also serve as a justice of the peace, county commissioner, notary public, as an officer of a soil and water conservation district, or in other specific offices.

Incompatibility

Secondly, with respect to dual civil offices, mayors and councilmembers are prohibited from holding a second public office having duties and loyalties incompatible with those that must be performed as an officer of the city. This rule—which applies to all public offices, whether paid or unpaid—heeds the mandate that no person can serve two masters; full allegiance is required to one or the other.

The general rule regarding incompatible offices was reviewed in *Thomas v. Abernathy County Line I.S.D.*, in which the Texas Supreme Court held that the offices of city councilmember and school board member were incompatible

because if the same person could be a school trustee and a member of the city council or board of aldermen at the same time, school policies, in many important respects, would be subject to direction of the council or aldermen instead of the trustees.

The incompatibility doctrine also prohibits the council from appointing one of its own members to a public office or employing the member as a public employee. A mayor, for example, could not simultaneously serve as a police officer for the city.

Though it may be difficult at times to determine whether two offices or positions are incompatible, a misjudgment could be costly. The courts have held that when an individual who holds an office accepts and is sworn into a second office that conflicts with the first, the individual is deemed to have automatically resigned from the first office.

City Actions that Benefit Mayors and Councilmembers

City councils everywhere routinely make decisions on purchases, rezoning, utility extensions, road construction projects, and other matters that benefit various private interests. Because of the broad scope of the council's powers, it is reasonable to expect that some of its decisions will directly or indirectly impact the individual members of the council making such decisions.

Anticipating that potential conflicts of interest will inevitably arise at the local level, while acknowledging the practical impossibility of flatly prohibiting such conflicts, the Texas Legislature has enacted at least three statutory schemes that require the public disclosure of conflicts between the public interest and a councilmember's private interests (Section 171.001 et seq., Section 176.001 et seq., Local Government Code; and Section 553.002 et seq., Government Code).

The purpose of chapter 171, the conflicts of interest statute, is to prevent councilmembers and other local officials from using their positions for hidden personal gain. The law requires the filing of an affidavit by any councilmember whose private financial interests—or those of relatives— would be affected by an action of the council. Whenever any contract, zoning decision, or other matter is pending before the council, each councilmember must take the following steps:

(a) Examine the pending matter and determine whether the councilmember or a related person has a substantial interest in the business or property that would be beneficially affected by a decision of the city council on the matter.

A person has a substantial interest in a business entity if:

1) the person owns 10 percent or more of the voting stock or shares or of the fair market value of the business entity or owns $15,000 or more of the fair market value of the business entity; or

2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

A person has a substantial interest in real property if the interest is an

equitable or legal ownership with a fair market value of $2,500 or more.

Additionally, a substantial interest of a person related in the first degree by either affinity or consanguinity to the local public official is a "substantial interest" that the official must disclose.

(b) If the answer to (a) is "yes," the councilmember must file an affidavit disclosing the nature of the interest in the matter and/or the nature of the substantial interest of a related person in such matter, if:

1) in the case of a substantial interest in a business entity, the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

The affidavit must be filed with the official record keeper of the governmental entity.

(c) After the councilmember files a disclosure affidavit, he or she must abstain from participating in the discussion of the matter and abstain from voting on it. However, if a local public official is required to file the affidavit and does file the affidavit, that official is not required to abstain in the matter if a majority of the governing body are also required to file and do file affidavits on the same official action.

Pursuant to this statute, the city can purchase goods or services from a business in which a councilmember has a substantial interest if the councilmember files a disclosure affidavit and then abstains from discussing and voting on the decision regarding the purchase.

The city council must take a separate vote on any budget item specifically dedicated to a contract with an entity in which a member of the governing body has a substantial interest, and the affected member must abstain from that separate vote. The member who has complied in abstaining in such vote may vote on a final budget only after the matter in which there was an interest has been resolved.

An officer who knowingly violates the affidavit or abstention requirement commits a Class A misdemeanor which is punishable by confinement in jail for up to one year and a fine up to $4,000.

Local Government Code Chapter 176, a second conflicts disclosure statute, requires that mayors, councilmembers, and certain other executive city officers or agents file a "conflicts disclosure statement" with a city's records administrator within seven days of becoming aware of any of the following situations:

- A city officer or the officer's family member has an employment or business relationship that results in taxable income of more than $2,500 with a person who has contracted with the city or with whom the city is considering doing business.

- A city officer or the officer's family member receives and accepts one or more gifts with an aggregate value of $100 in the preceding 12 months from a person who conducts business or is being considered for business with the officer's city.
- A city officer has a family relationship with a person who conducts business or is being considered for business with the officer's city.

The chapter also requires a vendor who wishes to conduct business or be considered for business with a city to file a "conflict of interest questionnaire" if the vendor has a business relationship with the city and an employment or other relationship with an officer or officer's family member, gives a gift to either, or has a family relationship with a city officer.

An officer who knowingly fails to file the statement commits either a Class A, B, or C misdemeanor, depending on the amount of the contract.

A third conflicts disclosure statute, Chapter 553 of the Government Code, prevents councilmembers and other local officials from using their positions for hidden personal gain related to the city's purchase or condemnation of property in which the city official has a legal or equitable interest.

Whenever a city is deciding whether to purchase or condemn a piece of property, the individual officer should determine whether they have a legal or equitable interest in property that is to be purchased or condemned. If the individual does have a legal or equitable interest in property in such a situation, then the individual needs to file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation. The affidavit is filed with the county clerk of the county in which the official resides as well as the county clerk of each county in which the property is located.

The affidavit must include: (1) the name of the public servant; (2) the public servant's office, public title, or job designation; (3) a full description of the property; (4) a full description of the nature, type, and amount of interest in the property, including the percentage of ownership interest; (5) the date the public servant acquired an interest in the property; (6) the following verification: "I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code;" and (7) an acknowledgement of the same type required for recording a deed in the deed records of the county.

A public official who violates the affidavit requirement after having notice of the purchase or condemnation commits a Class A misdemeanor, which is punishable by up to one year in jail and a fine up to $4,000.

Nepotism

"Nepotism" is the award of employment or appointment on the basis of kinship. The practice is contrary to sound public policy, which is why prohibitions against nepotism are common in all states, including Texas.

The Texas nepotism statute, chapter 573 of the Government Code, forbids the city council from hiring any person who is related to a councilmember within the second degree by affinity or within the third degree by

consanguinity. This prohibition does not apply to a city with a population of 200 or less, or to relatives who were continuously employed by the city for: (1) at least 30 days, if the councilmember is appointed; or (2) at least six months, if the councilmember is elected. When a person is allowed to continue employment with the city because the person has been continuously employed for the requisite period of time, the city council member who is related shall not participate in the deliberation or voting on matters concerning employment if such action applies only to the particular person and is not taken with respect to a bona fide class or category of employees.

The nepotism statute does not apply to unpaid positions.

Since “affinity” and “consanguinity” are the controlling factors in determining nepotism, both terms need to be clearly understood. Affinity is kinship by marriage, as between a husband and wife, or between the husband and the blood relatives of the wife (or vice versa).

Consanguinity is kinship by blood, as between a mother and child or sister and brother.

Two persons are related to each other by affinity if they are married to each other or the spouse of one of the persons is related by consanguinity to the other person. The following relatives of a public official would fall within the prohibited first or second degree of affinity.

Relatives related within the first degree of affinity include a public official’s husband, wife, father-in-law, mother-in-law, sons-in-law, daughters-in-law, stepsons, and stepdaughters.

Relatives related within the second degree of affinity include a public official’s sisters-in-law (brother’s spouse or spouse’s sister), brothers-in-law (sister’s spouse or spouse’s brother), spouse’s grandmothers, spouse’s grandfathers, spouse’s granddaughters, and spouse’s grandsons.

Termination of a marriage by divorce or the death of a spouse terminates relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is treated as continuing to exist as long as a child of the marriage is living.

Two persons are related to each other by consanguinity if one is a descendant of the other or if they share a common ancestor.

Purchasing

Government Code Section 2252.908 provides that, with certain exceptions: (1) a city is prohibited from entering into a contract with a business entity unless the business entity submits a disclosure of interested parties (i.e., discloses a person who has a controlling interest in the business or who actively participates in facilitating the contract for the business) if the contract: (a) requires an action or vote by the city council before the contract may be signed; or (b) the contract has a value of at least $1 million or (c) is for services that would require a person to register as a lobbyist; (2) the disclosure must be on a form prescribed by the Texas Ethics Commission; and (3) a city must, not later than 30 days after receiving a disclosure, acknowledge receipt of the disclosure with the Texas Ethics Commission.

Chapter Nine: Personal Liability of Councilmembers

A legal concept known as "governmental immunity" protects cities from being sued or held liable for various torts (a tort is a wrongful act resulting in injury to a person or property) and causes of action. But there are some exceptions to this general rule. For example, Chapter 101 of the Texas Civil Practice and Remedies Code (also known as the Texas Tort Claims Act) provides that a city may be liable for damages arising from the use of publicly-owned vehicles, premises defects, and injuries arising from conditions or use of property. Thus, a city (as an entity) is sometimes liable for limited damages resulting from the actions of city officials and employees.

But what about mayors and councilmembers? Mayors and councilmembers across the state daily make decisions that impact the lives and property of thousands of people. Can these city officials be held personally responsible for damages resulting from decisions they make (or refuse to make) in their official capacity as members of the city's governing body?

In most instances, mayors and councilmembers will not face personal liability. Like the city itself, mayors and councilmembers are often protected by different types of immunity, the purpose of which is to allow them to make decisions in the public interest with confidence and without fear. However, immunity is not available in all instances. For that reason, it is important for mayors and councilmembers to have a basic understanding of the areas in which they face potential liability.

Liability Under State Law

We start by examining a civil tort suit, a common instance in which the issue of the personal liability of a mayor or councilmember may arise. Generally speaking, Texas courts have held that mayors and councilmembers are not personally liable when the suit arises from the performance of (1) discretionary acts (2) taken in good faith (3) within the scope of their authority. When a mayor or councilmember is protected in this way, it is commonly referred to as official immunity. A "discretionary act" involves personal judgment. The decision about where to place a traffic sign is one example of a discretionary act. An action taken in good faith is one that is taken without intent to do harm. Thus, councilmembers should ensure that discretionary actions are taken in good faith and pursuant to their authority as authorized by relevant state law, ordinances, or policies.

Again, generally speaking, mayors and councilmembers may be held personally liable for torts that arise from ministerial acts. A "ministerial act" is one performed as a matter of duty; an act which a mayor or councilmember must perform. Ministerial acts also include those performed in obedience to state law or federal laws which are so plain and explicit that nothing is left to discretion or judgment. For example, canvassing the results of a city election is a ministerial and non-discretionary duty. An improper ministerial act imperils a councilmember regardless of whether it is performed in good faith. A

ministerial act required by law, but that is not performed at all, could also lead to liability. In sum, a mayor or councilmember could potentially be individually liable for damages to individuals injured because of the failure to properly perform a ministerial duty or negligently failing to perform the duty at all. Personal liability of most city officials is capped at $100,000 for actions brought in state court under the Texas Tort Claims Act.

Additionally, until recently, a mayor or councilmember could not be held personally liable for sexual harassment. In 2021, the Texas Legislature adopted Senate Bill 45, which expanded the definition of “employer” to include “any person who acts directly in the interests of an employer in relation to an employee.” Under this new definition, it is possible that elected officials may be subject to individual liability for sexual harassment if they: (1) know or should have known that the conduct constituting sexual harassment was occurring; and (2) fail to take immediate and appropriate corrective action.

In addition to personal civil liability, a mayor of councilmember fulfilling his or her duties for the city may be subject to criminal liability as the result of a violation of certain state laws. Some of the most common state laws under which a councilmember may face criminal liability include the Open Meetings Act, the Public Information Act, conflicts of interest and financial disclosure laws, purchasing laws, and nepotism laws. In addition, prohibitions found in the Texas Penal Code may be implicated as a result of serving as a mayor or councilmember, including laws dealing with bribery, gifts, honorariums, falsification of government documents, the misuse of information, abuse of official capacity, official oppression, forgery, and theft.

Finally, as an elected official, mayors and councilmembers may face both civil and criminal liability for failure to comply with certain state laws, such as those governing political contributions, political advertising, and campaign contributions.

Liability Under Federal Law

A mayor or councilmember may also face personal liability for violations of a person’s rights under federal law. This usually occurs: (1) as the result of claims alleging violations of constitutional rights; or (2) in an employment context (e.g., a claim brought under the Fair Labor Standards Act or the Family Medical Leave Act).

The law customarily used to take action against city officials for violations of constitutional rights or violations of federal law is Section 1983, Title 42, of the United States Code. It provides:

> *Every person who, under color any statute, ordinance, regulation, custom, or usage, of any State . . . .subjects, or causes to be subjected, any citizen of the United states or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . .*

Various types of policy decisions related to both city employees and citizens could render a mayor or councilmember liable under Section 1983. However, city officials are usually protected by qualified immunity.

Similar to the official immunity defense under state law (described above), a mayor or councilmember may be protected by qualified immunity when sued under federal law. To be covered by qualified immunity, the official must show that the action taken: (1) was discretionary; (2) was within the official's authority to take; and (3) did not violate any clearly established statutory or constitutional right of which a reasonable person would have known.

It is rare that a mayor or councilmember is held personally liable under federal law for the decisions he or she makes as a member of the governing body. Even so, city officials should make sure that they have a reasonable basis for decisions made, and that applicable state and federal law is reviewed before those decisions are made, especially when those decisions impact specific individuals.

In sum, liability questions are notoriously fact-sensitive. The advice of the city attorney should always be sought in regard to any specific liability question.

Chapter Ten: Sources of Information

There is no comprehensive guide to everything there is to know about Texas cities, but there are many sources of information that can be helpful. Several are listed below.

Local Sources

Depending on the amount of time available, information on the finances, services, and other aspects of the city can be obtained by:

- Reading the city's code of ordinances;
- Reviewing the minutes of council meetings held during the past several months;
- Studying the current budget, the previous year's financial report, and other key financial documents;
- Visiting the various city departments to learn how the city conducts its day-to-day operations; and
- Conferring with past and present members of the council, the local newspaper editor, civic leaders, and others who have followed the city's affairs over the years.

Texas Municipal League

The Texas Municipal League is an association of cities that exists for one reason: to serve city officials. TML offers councilmembers and other city officials a broad range of services – including training seminars and conferences, technical assistance, legal advice, and many other services. The League office welcomes all inquiries from its member officials, no matter how ordinary or unusual. The League is also willing to assist members of the press in understanding cities.

National Resources

American Planning Association, 1030 15th Street N.W., Suite 750 West, Washington, D.C. 20005, 202-872-0611. Major publications: *Planning, Journal of the APA*, and *Zoning Practice*. APA also publishes a number of guides to zoning, subdivision development, and other aspects of municipal planning. www.planning.org

American Public Works Association, 1200 Main Street, Suite 1400, Kansas City, Missouri 64105-2100, 816-472-6100. Monthly publication: *APWA Reporter*. APWA also publishes several public works-related manuals. www.apwa.net

American Society for Public Administration, 1730 Rhode Island Ave. NW, Suite 500, Washington, D.C. 20036, 202-393-7878. Bi-Monthly publication: *Public Administration Review* features articles for councilmembers interested in municipal administrative and organizational processes and theory. *Public Integrity*, published bimonthly, addresses ethical issues affecting government and society. ASPA's quarterly newspaper, *PA TIMES*, covers developments in the academic and professional field of public administration. www.aspanet.org

Government Finance Officers Association, 203 N. LaSalle St., Suite 2700, Chicago, Illinois 60601-1210, 312-977-9700. Major publications

include the weekly *GFOA Newsletter* and bimonthly *Government Finance Review*. GFOA also publishes a wealth of excellent operating manuals on the topics of budgeting, debt management, financial forecasting, and related items. www.gfoa.org

International Association of Chiefs of Police, 44 Canal Center Plaza, Suite 200, Alexandria, Virginia 22314, 703-836-6767. Major Publication: monthly *Police Chiefs Magazine.* www.theiacp.org

International Association of Fire Chiefs, 4795 Meadow Wood Lane, Suite 100, Chantilly, Virginia 20151, 703-273-0911. Major publication: *On Scene* newsletter. www.iafc.org

International City/County Management Association (ICMA), 777 North Capitol St. N.E., Suite 500, Washington, D.C. 20002-4201, 202-962-3680. Major publication: *Public Management.* Other publications: *LGR: Local Government Review* (biannual); *SmartBrief* (daily newsletter); and *Leadership Matters* (weekly newsletter). ICMA also publishes a series of manuals on different aspects of city government. www.icma.org

International Institute of Municipal Clerks, 8331 Utica Ave., Suite 200, Rancho Cucamonga, California 91730, 909-944-4162. Major Publications: *IIMC News Digest, Consent Agendas, IIMC Meeting Administration Handbook*, and *Language of Local Government*. IIMC provides training and information to city clerks and city secretaries. www. iimc.com

International Municipal Lawyers Association, 51 Monroe Street, Suite 404, Rockville, MD 20850 202-466-5424. Bimonthly publication: *Municipal Lawyer*. IMLA also publishes a variety of documents of special interest to city attorneys. www.imla.org
International Public Management Association for Human Resources, 1617 Duke St., Alexandria, Virginia 22314, 703-549-7100. Major publications: *Public Personnel Management, HR News*, and *HR Bulletin*. IPMA-HR is a source of excellent information on productivity, employee performance appraisal, and other aspects of municipal personnel administration. www.ipma-hr.org

National Association of Towns and Townships, 1901 Pennsylvania Avenue, NW, Suite 700, Washington, D.C., 20006, 202-331-8500. Major Publication: *Weekly Updates*. NATaT offers technical assistance, educational services, and public policy support to local government officials from small communities. www.natat.org

National Civic League, 190 E. 9th Ave, Suite 200, Denver, Colorado 80203, 303-571-4343. Major Publication: *National Civic Review*. NCL serves as a resource for information on citizen participation in state and local government and provides guides, model charters, and laws on specific subjects. NCL also sponsors the All-America City Award. www.ncl.org

National League of Cities, 660 North Capitol St. NW, Washington, D.C. 20001, 1-877-827-2385. Major Publication: *Cities Speak Blog*. Additionally, the organization conducts two national conventions of city officials, the first of which focuses on city-related federal programs, while the second emphasizes methods of improving municipal operations. www.nlc.org

U.S. Conference of Mayors, 1620 I Street N.W., Washington, D.C. 20006, 202-293-7330. USCM provides current information on federal policy

developments of interest to cities over the
population of 30,000. www.usmayors.org

CITY OF WOODCREEK, TEXAS

RESOLUTION 2021-12-22-1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WOODCREEK, TEXAS ADOPTING RULES OF PROCEDURE FOR THE CONDUCT OF ITS MEETINGS; AND REPEALING ALL OTHER RESOLUTIONS OR PARTS OF RESOLUTIONS INCONSISTENT OR IN CONFLICT HEREWITH.

WHEREAS the City of Woodcreek City Council (City Council) wishes to formally adopt rules of procedure for City Council meetings; and

WHEREAS provide clear, transparent, and comprehensive rules of procedure, which are vital to the efficient administration of City matters.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WOODCREEK, TEXAS:

SECTION 1. The following rules of procedure shall govern all meetings and proceedings of the City Council and the conduct of all members and other persons in attendance at such meetings.

DEFINITIONS

MAJORITY VOTE: Except when governed by specific rules to the contrary, a *majority vote* is the fundamental requirement to pass a motion. A *majority*, simply stated, is *more than half*. And a majority vote refers to more than half of the votes actually cast, not more than half of the votes that could be cast if everybody voted.

TWO-THIRDS VOTE: As a means of balancing the rights of the entire group with the rights of individuals, some decisions require the affirmative consent of at least twice the number of members as are not in favor. This vote is called a *two-thirds vote* and refers to two-thirds of the votes cast.

Rule 1. Meetings, Regular and Special

(A) The City Council shall meet at Camp Young Judaea. All such meetings shall be held on the second Wednesday of each month, commencing at 6:30p.m., unless set for another time or date by resolution of the City Council. In the event a second Wednesday falls on a holiday, the meeting for that day shall be rescheduled as determined by Council by and through a resolution. Any meeting of Council may be recessed from hour to hour for a period not to exceed 24 hours, by an affirmative vote of four (4) or more voting members of the City Council present at such meeting, and such recessed meeting may be held without further posted notice in compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

(B) Special meetings may be held on the call of the Mayor or on the application of three (3) Councilmembers to the Mayor. The agenda items for such meetings shall be determined at the discretion of the person or persons calling the meeting.

(C) The Mayor and City Manager shall be responsible for compiling the agenda for all regular and special meetings. For regular meetings, members of the Governing Body of the City of Woodcreek may request agenda items, and all such requested agenda items shall be accepted and placed on the agenda. If it becomes necessary to postpone placement of the requested item, the Mayor and City Manager must confer with the requesting Councilmember to obtain their agreement.

(D) Meetings will follow Robert's Rules of Order, as revised.

(E) City staff may approach any member of the Council, including the Mayor, with an item for Council to entertain, but that member of Council has discretion to place the item on the agenda. The member of Council then becomes the sponsor of that item once placed on the agenda. The agenda will have a section called "city staff and/or city committee reports" for every monthly regular meeting. Each staff and/or committee member will be responsible for providing report documentation in the agenda packet.

Rule 2. Chairman and Call to Order

The Mayor, or in the Mayor's absence, the Mayor Pro Tem, shall preside at all meetings of the Council. If the Mayor and the Mayor Pro Tem are absent, the Mayor, or a majority of the Council, may appoint a Councilmember to preside. At the hour of the meeting, the Mayor shall call the Council to order, and the City Secretary shall record the roll.

Rule 3. Conduct of Mayor and Councilmembers

Any member of the Council, including the Mayor, who fails to observe decorous and orderly behavior during a meeting, or who disturbs a meeting of Council with such disorderly conduct, is subject to being expelled from such meeting upon motion passed by a two-thirds vote of the Council present at the meeting. Any member reprimanded by motion or expelled from a meeting by motion who commits another breach of decorous or disorderly behavior during a subsequent meeting shall be subject to a reprimand upon a motion approved by two-thirds of the Council present at the meeting. A Councilmember, upon a vote from two-thirds of Council present at the meeting, may be subject of a reprimand, complaint, or investigation.

Rule 4. Handling of Question of Order

All questions of order shall be decided by the presiding officer with the right of appeal such decision by the City Council. The majority of the Councilmembers present, through a motion, may overrule the decision of the presiding officer. When the presiding officer, rules on a point of order and one of the Councilmember states, "I appeal the ruling," or words to such effect, no other business shall be transacted until a vote on the appeal is completed. The presiding officer shall immediately put such question to vote without debate, and, if not, any member of the Council may put the question to a vote.

Rule 5. Procedure for Submitting Agenda Items

For regular council meeting, any and all ordinances, resolutions or other matters, including all written data and supporting documents, except emergency items, to be brought by the Mayor or by a

member of the City Council for consideration, shall be submitted to the City Manager not later than 1:00p.m. of the Monday the week preceding the meeting at which the same is to be considered. Items shall identify the subject matter to be discussed with such notification in compliance with the Texas Open Meetings Act and provide the possible action the sponsor intends the City Council take during the meeting, e.g., discussion, update, and/or take appropriate action. All items shall be accompanied by supporting documents intended to be considered by the City Council.

For special meetings, the member or members calling the meeting shall submit any and all ordinances, resolutions or other matters, including all written data and supporting documents to the City Manager not later than 1:00p.m. one week (7 days) before the scheduled special council meeting at which the same is to be considered. Items shall identify the subject matter to be discussed with such notification in compliance with the Texas Open Meetings Act and provide the possible action the sponsor intends the City Council take during the meeting, e.g., discussion, update, and/or take appropriate action. All items shall be accompanied by supporting documents intended to be considered by the City Council.

The name of the sponsor of the agenda item shall be listed with that item on the agenda. The sponsor of an item is given the opportunity to speak first about their item during discussion and speak last to that item.

Rule 6. Motion to Table

Since the Council has regularly scheduled meetings, a motion to table, when carried, does not permanently defeat an ordinance, resolution, motion, or other measure. Motions laid on the table are merely temporarily laid aside and may be taken from the table at any time. This motion is for the sole purpose of taking up more urgent business that requires the council or governing body's immediate attention. The motion to "Lay on the Table" is carried by majority vote and is not debatable or amendable and does not have interrupting privileges. Once tabled, the motion shall be on the next agenda, now listed under "Unfinished business." Council may not debate nor take any action that would affect the tabled question until a subsequent in-order motion to "Take from the Table" is moved, seconded, and carried. At the following Council meeting the chair will automatically bring up for consideration the Unfinished business before moving to the regular agenda. If the tabled motion continues to be 'tabled', after three months the motion dies.

The motion to "Lay on the Table" should not be confused with the motion to Postpone to a Certain Time or with the motion to Postpone Indefinitely. The purpose of these motions is to postpone or suspend debate on a question for reasons other than to consider more urgent business.

Rule 7. Closing of Debate

If, during debate upon any ordinance, resolution, motion or other matter before the Council, any member wishing to end debate, the member, after seeking and receiving recognition from the chair, may move to end debate, commonly called "question" or "calling the question." This motion requires a second. This motion is non-debatable. Immediately after the second, the chair takes the vote regarding the motion to end debate. It takes two-thirds of the voting members present in favor of ending debate to close discussion on the original motion being considered. If two-thirds of the voting members end the discussion, then the chair immediately takes a vote on the pending motion and any possible amendments to that motion without any further debate or discussion. Provided however, debate may not be closed

until such time as each councilmember has been given opportunity to speak on the agenda item in an amount of time not to exceed three (3) minutes.

Rule 8. Citizens' Right to be Heard

Any citizen shall have a reasonable opportunity to be heard at any and all meetings of the City Council in regard to: (1) any and all matters to be considered at any such meeting, or (2) any matter a citizen may wish to bring to the Council's attention. No member of the Governing Body may discuss or comment on any citizen public comment, except to make: (1) a statement of specific factual information given in response to the inquiry, or (2) a recitation of existing policy in response to the inquiry. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting per Texas Local Government code Sec. 551.042.

Citizen comments will be allowed at the beginning of every meeting, or alternatively, before an item on the agenda on which the citizen wishes to speak is to be considered. All citizens will be allowed to comment for three (3) minutes per person and shall be allowed more time at the Mayor's discretion. In addition, citizens may pool their allotted speaking time. To pool time, a speaker must present the names of three (3) individuals present in the audience who wish to yield their three minutes. Citizens may present materials regarding any agenda item to the City Secretary at or before a meeting, citizens attending any meeting are requested to complete a form providing their name, address, and agenda item/concern, but are not required to do so before speaking and presenting it to the City Secretary prior to the beginning of such meeting. Comments may only be disallowed and/or limited as per Government Code § 551.007(e).

Citizens may submit written public comments not exceeding 300 words in length to the City Secretary not later than 1:00p.m. of the Monday preceding the meeting at which the citizen would like the public comment received. If the written public comment is submitted by this time, it shall be read into the public record for the upcoming meeting.

Rule 9. Suspension of Rules of Procedure

Any of the rules of procedure may be suspended (by a two-thirds vote of the voting councilmembers present) to allow consideration of a matter unless doing so would violate the U.S. Constitution, Texas Constitution, and/or Federal or State Law.

Rule 10. Rules of Procedure

Except where in conflict with applicable law, the most recent version of Robert's Rules of Order shall govern the proceedings of the City Council.

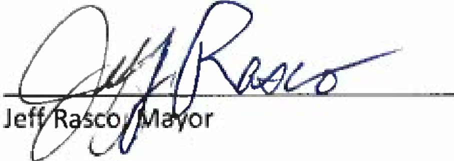
SECTION 2. It is hereby officially found and determined that the meeting at which this Resolution was considered was open to the public as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION 3. City of Woodcreek resolutions or parts of resolutions inconsistent or in conflict herein, specifically Resolution No. 13-111302, are to the extent of such inconsistency or conflict, hereby repealed.

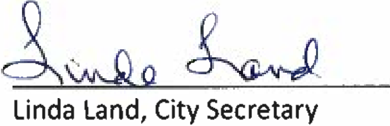
SECTION 4. This Resolution shall be effective immediately upon its passage.

Passed and approved, this, the 22nd of December 2021 on a roll call vote of the City Council of Woodcreek, Texas.

City of Woodcreek:



Jeff Rasco, Mayor



Linda Land, City Secretary

TOP LEGAL QUESTIONS

Received By

TML LEGAL SERVICES

Texas Municipal League Legal Staff
(Updated August 2019)

Texas Municipal League
1821 Rutherford Lane, Suite 400
Austin, Texas 78754
512-231-7400
legalinfo@tml.org
www.tml.org

About the TML Legal Services Department

The Texas Municipal League Legal Services Department provides legal assistance to TML member cities. We answer general questions; participate in educational seminars; provide support services for the legislative department; and prepare handbooks, magazine articles, and written materials including legal opinions and amicus briefs. Since our staff of five lawyers serves over 1,160 member cities, there are limits on the types of assistance we can provide. For more information on the Legal Services Department, please go to www.tml.org, and click on "Policy," then "Legal Research."

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Introduction

Cities are formed for the purpose of managing the needs of people who live and work in close quarters. Cities provide basic services, such as streets, law enforcement, and utilities, as well as enact and enforce ordinances to protect the citizens of the community and foster a better living environment. City government in Texas, as in most of the United States, was founded on, and continues to evolve from, the premise that local communities know best how to run their local affairs. The following are some of the most common questions received by the Texas Municipal League Legal Services Department. As this is a brief overview of the area, and not intended as legal advice, local counsel should always be consulted prior to taking any action. Please contact the TML Legal Services Department at 512-231-7400 or legalinfo@tml.org with questions or comments. And without further *a due*:

Can citizens vote on property taxes?

City officials considering imposing a property tax often ask if citizen approval of property taxes is necessary. In addition, officials sometimes ask if they can go to the voters anyway for political "cover" because property taxes tend to be very controversial.

Assuming the adopted rate doesn't exceed certain statutory amounts, the answer to both questions is no. According to the Texas Tax Code: "The governing body of each taxing unit…shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted." TEX. TAX CODE § 26.05. The decision to adopt a tax rate in the first instance belongs only to the city council.

However, cities are required to receive voter approval if they adopt property tax rates exceeding certain thresholds. For cities over 30,000 in population, in addition to a handful of cities under 30,000 in population with a large property tax base, the trigger for an automatic election to approve the property tax rate is called the "voter-approval rate." The voter-approval rate brings in 3.5 percent more maintenance and operations tax revenue than the previous year on existing properties, and cities can include "banked" amounts from the three preceding years if the city adopted a rate lower than the voter-approval rate in any of those years. *See* TEX. TAX CODE § 26.04(c).

Most cities under 30,000 in population must keep their adopted property tax rate below the "de minimis rate" to avoid an automatic election. The de minimis rate is the rate necessary to generate an additional $500,000 in property tax revenue over the previous year. *See* TEX. TAX CODE § 26.012 (8-a).

If a city adopts a rate exceeding either the voter-approval rate or de minimis rate, as applicable, it must order an election for the November uniform election date to receive voter approval. *See* TEX. TAX CODE § 26.07. In some smaller cities the voters may be able to petition for an election under certain circumstances. *See* TEX. TAX CODE § 26.075.

Beyond the mandatory election requirements when cities adopt rates exceeding specific amounts, a home rule city could potentially hold an election on the imposition of a property tax if required to do so by the city charter. The attorney general opined that a court would likely conclude that Chapter 26 of the Tax Code does not conflict with or preempt a city charter provision that requires voter approval before city property taxes may be imposed. See Tex. Att'y Gen. Op. No. GA-1073 (2014).

Of course, cities are not prohibited from gauging the will of the public when it comes to property taxes or any other issue. A city could conduct a non-binding poll or survey to find out whether the public supports imposition of property taxes. Some cities conduct such polls through inserts in utility bills, for instance.

Finally, it is sometimes asked whether home rule cities with the power of initiative and referendum may have their tax rates challenged by those charter-imposed processes. The answer is likely not. Texas cases have held that ordinances that rely on careful application of facts and figures are generally not subject to home rule voter initiative or referendum. *Denman v. Quin*, 116 S.W.2d 783 (Tex. Civ. App.—San Antonio 1938, writ ref'd).

Can we submit an ordinance to citizen referendum?

Citizen referendum and initiative are powers that only home rule cities possess, and then only if the city's charter provides for it. Thus, a city council of a home rule city would have the authority to call a referendum on an issue, including an ordinance, if the city's charter allowed for such an election. *See Quick v. City of Austin*, 7 S.W.3d 109, 123 (Tex. 1998); *Glass v. Smith*, 244 S.W.2d 645, 648—49 (Tex. 1951); Tex. Att'y Gen. Op. No. GA-0222 (2004).

For general law cities, the answer is different because the calling of an election must be authorized by a particular state statute. *See Countz v. Mitchell*, 38 S.W.2d 770, 774 (Tex. 1931) (stating that "[t]he right to hold an election cannot exist or be lawfully exercised without express grant of power by the Constitution or Legislature"); *Ellis v. Hanks*, 478 S.W.2d 172, 176 (Tex. Civ. App.—Dallas 1972, writ ref'd n.r.e.) (stating that the right to hold an election "must be derived from the law"); Tex. Att'y Gen. Op. No. GA-0001 (2002) (stating that "generally the right to hold an election depends upon statutory authorization").

Because there is no Election Code provision or other state statute that authorizes general law city councils to submit general ordinances to the electorate through a referendum election, a general law city may not do so.

A general law city is free to conduct a poll or hold a public hearing to gauge the preferences of the voters. The results of such a poll or hearing are not binding on the council, nor could the council make it binding on itself.

Cities sometimes ask whether a non-binding election referenda may be placed on an official election ballot. The Secretary of State believes the answer is generally no, and cites attorney general opinions Nos. LO-94-091 (1994) and H-425 (1974) for that conclusion. In fact, placing an unauthorized proposition on a ballot may be considered a misappropriation of public funds. Of course, a home rule charter could arguably provide for such authority.

How can we increase collections on delinquent utility bills?

First, cities may use late fees to encourage utility customers to pay their bills in a timely manner. A late charge on bills for utility service is neither interest nor penalty, but is a cost of doing business assessed against a delinquent customer. Tex. Att'y Gen. Op. No. H-1289 (1978). The late fee should be authorized by ordinance, and should be reasonable. Reasonableness will generally be determined by the degree to which the amount of the late fee relates to the costs the fee is meant to recoup. With regard to a utility bill, the city's cost of collection, absent the fee, plus any other city costs resulting from the tardiness of the payment, would be the costs the fee is meant to recoup. *Id.*

Next, a city may require varying utility deposits for customers as it deems appropriate in each case. TEX. LOC. GOV'T CODE § 552.0025(c). Due to the additional work related to collecting late fees and placing a lien on a property, a city should have a clear and consistent policy for the shut off of utilities due to a late payment, and for collecting an adequate deposit to cover an average month of service.

A city can discontinue utility service to a customer whose account is delinquent provided that due process is satisfied. Due process requires that the customer be given notice and an opportunity for a hearing before service is terminated. *Memphis Light, Gas & Water Div. v. Craft,* 436 U.S. 1 (1977). The notice must state the reasons for discontinuance, such as payment being overdue, and that service will be discontinued if payment is not made by a certain date. The notice must be reasonably calculated to inform customers of a procedure for protesting the proposed termination of service. Giving customers the opportunity for an informal consultation with designated city personnel can constitute a due process hearing. The designated officer or employee must have the authority to resolve the dispute and rescind the discontinuance order if the officer or employee determines during the hearing that the order was issued in error. This administrative procedure is necessary prior to termination of services in order to afford reasonable assurance against the erroneous or arbitrary withholding of essential services.

Cities that own more than one utility have an additional tool to encourage payment of utilities bills. Cities that own more than one utility or provide solid waste disposal may suspend service of any city-owned utility or service until the delinquent claim is fully paid. TEX. HEALTH & SAFETY CODE § 364.034(d).

Cities should be aware of the limitation on their authority set out in Section 552.0025 of the Local Government Code. Pursuant to this section, a city may not require a customer to pay for utility service previously furnished to another customer at the same service connection as a

condition of connecting or continuing service. Also, a city may not require a customer's utility bill to be guaranteed by a third party as a condition of connecting or continuing service. For example, if the city contracts directly with the renters, not the property owners, then the city is not able to collect from the property owners.

Finally, if a utility bill is unpaid, a city may by ordinance impose a lien against an owner's property, unless the property is a homestead that is protected by the Texas Constitution. TEX. LOC. GOV'T CODE § 552.0025(d). To impose a lien, a city must adopt an ordinance setting out the city's intention to do so. The authority to impose utility liens has certain limitations. For example, a water lien may not be imposed for delinquent utility bills where:

1. Service is connected in a tenant's name after the property owner has given notice to the city that the property is rental property. TEX. LOC. GOV'T CODE at § 552.0025(e).
2. Service is connected in a tenant's name prior to the effective date of the ordinance imposing the lien. *Id*. at 552.0025(f).
3. The property involved is a homestead. *Id*. at §552.0025(d).

A city's utility lien, when perfected, is superior to all other liens except a bona fide mortgage lien recorded before the utility lien. TEX. LOC. GOV'T CODE § 552.0025(h).

How do we abandon or close an existing or platted street?

A city council has the authority to close a street within the city limits, subject to certain procedural requirements. Section 311.008 of the Texas Transportation Code specifically authorizes the governing body of a general law city to abandon or close a city street or alley by ordinance when it receives a petition signed by all the owners of real property abutting the street or alley. Section 311.007 authorizes a home rule city to vacate, abandon, or close a street, and no petition is required.

A city is usually required, by Chapter 272 and Section 253.008 of the Local Government Code, to sell real property by sealed bid or public auction. But Section 272.001(b)(2) provides an exception to the required notice, sealed bidding, and obtaining fair market value, when the city sells city streets to abutting property owners.

Roads are found in unlikely places. For example, city officials are frequently asked by citizens to transfer ownership of undeveloped roads platted underneath their house. In a general law city, after the city receives a petition from the land owners on both sides of the street, the council has the option to close the street and transfer all city rights to the land to the homeowner. A home rule city may close the street on its own motion.

After satisfying statutory requirements, many city councils set application fees and specific criteria for approving closure. In addition, some cities require the applicant to provide notice to surrounding landowners, and bear the costs of any required turnaround area or emergency exit. Depending on its size, some cities require city staff to conduct studies of how a road closure will

effect traffic patterns, report on the accident history for the area, and identify alternative traffic calming and traffic control solutions to address a traffic problem.

Is it permissible for a city to make a donation?

The issue is not whether it is okay to make a donation or give a gift, but whether an expenditure of public money serves a valid public purpose. If it is purely a charitable donation, it is prohibited by the Texas Constitution. If it is an expenditure of public funds for the achievement of a legitimate public purpose, it is acceptable.

As a general rule, a gratuitous donation or gift by a city is prohibited by the Texas Constitution, art. III, §52, and art. XI, §3, which, in part, state that the legislature may not authorize any county, city, or other political subdivision of the state to lend its credit or grant public money or anything of value in aid of an individual, association, or corporation. The purpose of these provisions is to prevent local governments from appropriating public money for private purposes.

However, the fact that private interests are *incidentally* benefited by a public expenditure does not invalidate an expenditure for a legitimate public purpose. *Barrington v. Cokinos,* 338 S.W.2d 133, 145 (Tex. 1960); Tex. Att'y Gen. Op. No. GA-747 (2009). In other words, if a city determines that an expenditure accomplishes a valid public purpose, the fact that one or more individuals or corporations might benefit does not invalidate the expenditure. The key question is whether a valid public purpose is being *directly* accomplished by the expenditure. Numerous courts have been asked to invalidate or uphold particular expenditures based on whether a public purpose was being served. See *Brazos River Authority v. Carr*, 405 S.W.2d 689, 693 (Tex. 1966); *Zimmelman v. Harris County*, 819 S.W.2d 178, 184 (Tex.App.— Hous. [1st Dist.] 1991, extension of time to file for writ of error overruled); *Key v. Commissioners Court of Marion County*, 727 S.W.2d 667, 669 (Tex.App. — Texarkana 1987); *Parks v. Elliott*, 465 S.W.2d 434, 438 (TexCivApp — Houston [14th Dist.] 1971, writ refused n.r.e.).

The test established by several attorney general opinions is that the donation must go to a legitimate municipal purpose, the city must receive adequate consideration for its donation, and the arrangement must have sufficient controls to guarantee that city money is being used for a municipal public purpose. Tex. Att'y Gen. Op. No. DM-394 (1996), Tex. Att'y Gen. Op. No. JC-439 (2001), Tex. Att'y Gen. Op. No. JC-582 (2002), Tex. Att'y Gen. Op. No. LO 98-024 (1998).

The determination of whether a particular expenditure accomplishes a public purpose must be made by the city council. Some expenditures, such as those for street repair or police protection are easily deemed to serve a public purpose, while others, such as contributing to Meals on Wheels or Crimestoppers, are more difficult. Cities may not expend public funds simply to obtain for the community the general benefits resulting from the operation of the corporate enterprise. *Barrington*, 338 S.W.2d at 145; *City of Corpus Christi v. Bayfront Assoc., Ltd.*, 814 S.W.2d 98 (Tex. App. — Corpus Christi 1991, writ denied).

The council's determination as to public purpose is subject to judicial review. According to the attorney general's opinions, what is a public purpose "cannot be answered by any precise definition" beyond "if an object is beneficial to the inhabitants and directly connected with the local government it will be considered a public purpose." Tex. Att'y Gen. ORD-660 (1999), Tex. Att'y Gen. Op. No. JC-212 (2000). However, if the council goes on record recognizing the expenditure as a valid public purpose, the courts are not likely to overturn that determination. Courts are hesitant to second guess the legislative determinations of local governments. Accordingly, in the absence of fraud on the part of the council, or a total lack of evidence that an expenditure serves a public purpose, a court is not apt to declare a particular city expenditure to be invalid. *See* Tex. Att'y Gen. Op. GA-0706 (2009).

Once a legitimate public purpose is identified, the city must consider whether contractual obligations or other forms of formal control are necessary in order for the council to ensure that the city receives its consideration — the accomplishment of the public purpose. Tex. Att'y Gen. Op. No. LO 94-008 (1994), Tex. Att'y Gen. Op. No. DM-394 (1996), Tex. Att'y Gen. Op. No. JC-439 (2001), Tex. Att'y Gen. Op. No. JC-582 (2002), Tex. Att'y Gen. Op. No. LO 98-024 (1998), Tex. Att'y Gen. Op. No. GA-88 (2003).

What notice is required by the Texas Open Meetings Act?

The Texas Open Meetings Act (Act) requires written notice of the date, hour, place, and subject of all meetings. TEX. GOV'T CODE § 551.041 (*See also* § 551.056 and § 2051.152 relating to internet posting of meeting notices). The agendas for all meetings subject to the Act must be posted at least 72 hours before the meeting. A city that maintains a website must post the agendas of the city council within that timeframe on the website, and it must also post the adopted minutes of each city council meeting.

Any action taken in violation of Act's notice requirements is voidable. TEX. GOV'T CODE § 551.141; *Swate v. Medina Community Hospital*, 966 S.W.2d 693, 699 (Tex.App. — San Antonio 1998, pet. denied). This means that an action in violation of the Act may be voided by a court pursuant to a lawsuit filed for that purpose. *See Collin County v. Home Owners' Association for Values Essential to Neighborhoods*, 716 F.Supp. 953, 960 (N.D. Tex. 1989), *City of Bells v. Greater Texoma Utility Authority*, 744 S.W.2d 636, 640 (Tex.App. — Dallas 1987, no writ). If some, but not all, actions in a meeting are in violation of the Act, only those actions in violation may be voided. *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176, 182—183 (Tex.App. — Corpus Christi 1990, writ denied).

While the date, hour, and place of a meeting are self-explanatory, whether the agenda gives the general public sufficient notice of the subjects to be discussed is often a source of confusion for city officials. The agenda serves to give the general public access to decision making by their governing body, and the specificity of the subjects listed on the agenda depends upon the situation. For example, a posted agenda listing "personnel" as a subject to be discussed may be sufficient notice in one situation, but not in another. The Supreme Court of Texas has held that a

subject listing of "personnel" was not sufficient notice of a discussion surrounding the hiring of a new superintendent of a school district. *Cox Enterprises, Inc v. Board of Trustees*, 706 S.W.2d 956, 959 (Tex. 1986). The hiring of a new superintendent is a matter of great public interest, held the court, and "personnel" was not specific enough to notify the general public of the discussion to be held in executive session. *Id*. The same was held to be true for the termination of a police chief. *Mayes v. City of De Leon*, 922 S.W.2d 200 (Tex.App. – Eastland 1996, writ denied). While the posting of "personnel" may be sufficient for less publicized positions, such as clerks, the TML Legal Services Department advises that more specific notice, listing the reason for the discussion and/or action, and the employee's or officer's name or position, is the better practice.

Phrases such as "old business," "new business," "regular or routine business," or "other business" do not address the subjects to be discussed in any way, and have been declared insufficient notice to the general public for the purposes of the Act. Tex. Att'y Gen. Op. No. H-662 (1975) at 3. In addition, "presentation," "mayor's report," or "city manager's report" is not sufficient where a presentation is to be made by a city employee or official. In that case, the governing body has the ability to ascertain what the city employee or official will discuss prior to the meeting. Thus, the specific subject matter of the presentation should be posted. *Hays County Water Planning P'ship v. Hays County*, 41 S.W.3d 174, 180 (Tex.App. – Austin 2001, pet. denied); Tex. Att'y Gen. Op. No. GA-668 (2008).

The phrase "public comment" may be used in a posted agenda to provide notice of a period in which members of the public may address the governing body regarding subjects not listed on the agenda. The city is not generally expected to post notice of the subjects to be discussed in this case because the city has no way of knowing what subjects members of the public may wish to address. Tex. Att'y Gen. Op. JC-0169 (2000). City officials may respond to questions asked during the public comment period only with factual statements, a recitation of existing city policy, or by placing the subject on the agenda for a future meeting. *Id*.; TEX. GOV'T CODE § 551.042.

Posting that certain subjects will be discussed in executive rather than open session is not required. Tex. Att'y. Gen. Op. No. JC-0057 (1999). However, all subjects that are to be discussed in executive session must be described on the agenda in a manner that will provide sufficient notice to the public (i.e., they must be just as detailed as open meeting agenda items). In addition, if a city has historically indicated on its posted agenda which subjects are to be discussed in executive session, and then changes that practice, the city must give adequate notice to the public. *Id*. Many governing bodies include a statement at the end of the agenda informing the public that the body may go into executive session, if authorized by the Act, on any posted agenda item. Such a statement serves as additional notice to the public of the body's intentions.

Cities should be aware that any major change in the way that agenda items are listed, even if valid under the Act, can affect the validity of the notice. For example, if the phrase "Discussion/Action" is historically used on the posted agenda to indicate when a governing body intends to take action on a measure, then a posting of "Discussion" with no notice of the change in posting procedures renders any action taken by the council on that subject voidable. *River*

Road Neighborhood Association v. South Texas Sports, 720 S.W.2d 551 (Tex.App. – San Antonio 1986, writ dismissed); *see also Hays County Water Planning P'ship*, 41 S.W.3d at 180. Without proper notice of the change, the general public has no way of knowing that there has been a change in posting procedures.

Finally, a city is not required to notify an individual that he or she will be discussed at a meeting. The posted notice must be adequate, but no letter to the person or similar action is necessary in most cases. The purpose of the posted agenda is to provide notice to the general public, not to replace due process. *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 764-765. *See Retterberg v. Texas Department of Health*, 873 S.W.2d 408 (Tex.App. — Austin 1994, no writ).

Do I have to post notice of a city job opening?

Generally, there is no law that requires a city to post or advertise a job opening. Nevertheless, the best way to prevent having an Equal Employment Opportunity Commission (EEOC) discrimination complaint or lawsuit filed against an employer is to advertise a job opening and then ensure that the city hires the applicant that is best qualified for the position. Federal, state, and sometimes, local laws prohibit hiring practices that discriminate on the grounds of age, disability, race, color, religion, sex, pregnancy, citizenship, military service and national origin. A city's hiring practice of merely advertising an opening to a certain geographic area, or merely by word of mouth, for example, may be used as evidence of discriminatory intent if a claim is filed against the city. To avoid a discrimination claim, an employer should advertise a job opening so that it reaches a large cross-section of the population. Advertising in a general circulation newspaper and on the internet are good examples of places to post a job opening. Posting jobs internally that are promotional opportunities for current employees is usually a good idea and accepted as proper as long as it is pursuant to a consistent policy of doing so. If a city does not have a hiring policy, including a policy regarding the advertisement of a job opening, the city should seriously consider adopting one. Before advertising a job vacancy, an employer should ensure it contains a written job description that provides objective qualifications and responsibilities necessary to perform the job. The description should be devoid of any reference to sex, race, national origin, or any other protected class. In addition, a job description should include the essential functions of the position and other requirements, such as education, skills, and work experience. Once a job description is in place, it should be used as a template for the job advertisement.

By taking the time to adopt a hiring policy and to advertise a job opening to a wide range of people, an employer increases its chance of hiring the best qualified person for the job. In addition, an employer may avoid a discrimination claim or lawsuit.

Can I terminate this employee?

Cities often struggle with the question of when and how to fire a poor performing employee. Despite being an "at-will" employment state, where anyone can be fired for any nondiscriminatory reason, many federal and state laws protect employees. These laws often keep a city from firing an employee for fear of litigation for discrimination. Sometimes it seems that there are some people you just can't fire, no matter how incompetent or obnoxious they are. Many times supervisors hold back on firing an employee in fear of a lawsuit. They ask themselves, "How can I safely fire a poor performer who's pregnant, or on medical leave, or who just filed a worker's compensation claim?" The reality is that any time someone is terminated she can sue the city for discrimination or the violation of some right. However, there are a number of steps you can take to minimize the risks associated with terminating an employee. The following provides some basic information to consider prior to terminating an employee:

(a) Employment-at-will: First, determine whether the employee is "at-will" or whether the employee has a contract, a collective bargaining agreement, or is subject to civil service. Also, the Local Government Code puts some limitations on Type A cities on how they can terminate certain employees who are also officers. TEX. LOC. GOV'T CODE § 22.077. If one of these issues arises then the procedure outlined by these items should be followed.

(b) Documentation: Make a paper trail. This is one of the most important items involved in terminating an individual. Usually employees are not terminated for a one-time offense, but for poor performance based on violations of personnel policies. Ideally, there will be objective documentation detailing what performance measures the employee has not met or personnel policies he or she has violated. Written documentation that shows that the employee was informed of the problem and is signed by the employee is often best. Even if there is a possible discriminatory claim based on some quality of the employee, this kind of documentation is good evidence if sued. Also, if an employee is aware of problems he or she may be less likely to take action against the city when adverse action is taken against the employee. Finally, keep in mind that there are special documentation requirements for police officers. *See id.* §§ 614.021-023.

(c) Consistency: Ensure that similarly-situated employees are treated the same. If one person in the city library is late everyday and is never disciplined and another person is terminated for being late, that is a recipe for a discrimination claim. Keep an eye on how every employee is treated and ensure that your personnel policies and discipline procedures lend themselves to objectivity and consistency. However, if there could be a rational basis for treating some employees differently if they are in different departments or have different duties.

(d) Discrimination and Retaliation: Are there any legitimate claims that the employee or applicant could make? Could an injured employee make a claim under the Family Medical Leave Act, the Americans with Disabilities Act, or Workers' Compensation? Are they part of another protected class? Look at the above acts plus USERRA, the Texas Whistleblowers Act, the Age Discrimination in Employment Act, and other state and federal laws before taking action.

Certain other laws may apply to special situations, such as the termination of police officers and/or firefighters. In addition, if your city is a member of the TML Intergovernmental Risk

Pool, it is recommended that you contact the "Call before You Fire" program at (800) 537-6655 before you take any major action.

Can I talk to other city councilmembers outside of a posted meeting?

It depends. Any gathering of members of a governmental body, such as a city council, is subject to the requirements of the Open Meetings Act (including 72 hours notice, an agenda, and minutes or a tape recording) if the following two conditions are met: (1) a quorum participates; and (2) public business is discussed. TEX. GOV'T CODE § 551.001(4); Tex. Att'y Gen. Op. No. JC-313 (2000); Tex. Att'y Gen. Op. No. GA-896 (the Open Meetings Act actually has two definitions of a "meeting," but the two-element test is the easiest way to understand when the Act applies). For example, a regular meeting of a city council, where agenda items are discussed and formal action is taken, is clearly a meeting. If a quorum of members deliberates about public business outside of a meeting, they are in violation of the Act and can be charged with the criminal offense of having an illegal "closed meeting." *Id*. at § 551.144.

In *Asgeirsson v. Abbott*, 696 F.3d 454 (5th Cir. 2012)(pet denied, 133 S. Ct. 1634, 185 L. Ed. 2d 616 (2013)), several city official challenged the closed meeting offense as unconstitutional in violation of their First Amendment right to freedom of speech. In 2013, the U.S. Supreme Court denied the petition for writ of *certiorari* (i.e., request to hear the case) in the case, which brought eight years of litigation to a close. The legal result of the court's decision is that a previous Fifth Circuit Court of Appeals opinion upholding the closed meeting offense is the law of the land in Texas. The Fifth Circuit opinion held that the provision is constitutional because it is aimed at prohibiting the negative "secondary effects" of closed meetings. According to the court, closed meetings: (1) prevent transparency; (2) encourage fraud and corruption; and (3) foster mistrust in government.

Another criminal provision was added to the law in 2019. That provision repealed and replaced the so-called "criminal conspiracy" provision in the Act, which provided that a "member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter." In *State v. Doyal*, PD-0254-18, 2019 WL 944022 (Tex. Crim. App. Feb. 27, 2019), reh'g denied (June 5, 2019), the Texas Court of Criminal Appeals struck down the criminal conspiracy provision as unconstitutionally vague. The Court found that the statute lacked specificity, and it called upon the legislature to draft a new, constitutional version.

In response, the Eighty-Sixth Legislature passed S.B. 1640, which rewrote the provision and renamed it "prohibited series of communications." Section 551.143(a) now reads that it is an offense if a councilmember:

1. **knowingly** engages in at least **one communication among a series of communications** that each occur **outside of a meeting** authorized by this chapter and that concern an issue within the jurisdiction of the governmental body in which **the members engaging in the**

individual communications constitute fewer than a quorum of members but **the members engaging in the series of communications constitute a quorum of members**; and

2. **knew at the time** the member engaged in the communication that the series of communications:
   a. involved or would involve a **quorum**; and
   b. **would constitute a deliberation once a quorum** of members engaged in the series of communications.

The elements above can be met even if the quorum of members isn't physically present in the same location and the discussion doesn't take place at the same moment in time. A violation of Section 551.143 is punishable by a fine of not less than $100 or more than $500, confinement in the county jail for not less than one month or more than six months, or both fine and confinement.

Under the new statute, it appears that two councilmembers may speak about city business outside of a formal meeting so long as they do not constitute a quorum and are not aware at the time of a series of communications that would ultimately involve a quorum. The passage of the new law calls into question many prior attorney general opinions and court cases that analyzed fact patterns by conflating the criminal closed meeting offense with the prior criminal conspiracy offense. For example, the following describe the legality of certain actions under Section 551.144 (criminal closed meeting) and the predecessor to Section 551.143 (criminal conspiracy). Interpretations based on the old criminal conspiracy provision aren't controlling based on the new statute, but they continue to provide some guidance:

- Members of a governmental body may violate the Act by signing a letter on matters relevant to public business without meeting to take action on the matter in a properly posted and conducted open meeting. The mere fact that two councilmembers visit over the phone does not in itself constitute a violation of state law. *Hitt v. Mabry*, 687 S.W.2d 791 (Tex. App. — San Antonio 1985, no writ). However, if city councilmembers are using individual telephone conversations to poll the members of the council on an issue or are making such telephone calls to conduct their deliberations about public business, there may be the potential for criminal prosecution. Physical presence in one place is not necessary to violate the Open Meetings Act. Tex. Att'y Gen. Op. No. DM-95 (1992)(the reasoning in the opinion is based on both closed meeting and unconstitutional criminal conspiracy provision); *see also* Tex. Att'y Gen. Op. No. JC-0307 (2000)(this opinion was largely based on the unconstitutional criminal conspiracy provision).

- An individual member of a governing body does not violate the Act when he or she communicates in writing to a staff member indicating a desire to have an item placed on the agenda and sends a copy to other members of the board. Tex. Att'y Gen. Op. No.MW-32 (1979).

- Electronic communications could constitute a deliberation that must comply with the Open Meetings Act because: (1) "verbal exchange" means the expression of something in words, which does not need to be spoken, and (2) councilmembers do not need to be in each other's presence to constitute a quorum. Tex. Att'y Gen. Op. No.GA-896 (2011). The definition of "deliberation" was subsequently amended in 2019 to include a "written exchange."

The practical result of al this is that city attorneys still have trouble advising on the legality of speaking with other councilmembers outside of a properly-posted open meeting.

How do we move our city limits sign, i.e., how do we annex property?

Annexation has always been, and will probably always be, one of the most contentious issues in municipal law. The annexation laws were very complicated because there had been so many piecemeal, compromise bills throughout the years. House Bill 347 by Phil King (R – Weatherford) became effective May 24, 2019, and ends most unilateral annexations by any city, regardless of population or location. Specifically, the bill makes most annexations subject to three consent annexation procedures that allow for annexation: (a) on request of the each owner of the land; (b) of an area with a population of less than 200 by petition of voters and, if required, owners in the area; and (c) of an area with a population of at least 200 by election of voters and, if required, petition of landowners. It authorizes certain narrowly-defined types of "consent exempt" annexations (e.g., city-owned airports, navigable streams, strategic partnership areas, industrial district areas, etc.) to continue using a service plan, notice, and hearing annexation procedure. A detailed paper on the state of the law following the passage of the bill is available here.

Can a city mandate drug testing of all its employees or job applicants?

The TML Legal Department receives many calls from cities that either: (1) desire to implement a drug testing policy for all their employees; or (2) already have such policy in place. City officials are often surprised to learn that, unlike a private employer, a city's ability to require city employees to undergo a drug test is limited by the Fourth Amendment of the United States Constitution. Because the collection and testing of urine constitutes a "search" under the Fourth Amendment, a city may only require an employee to undergo drug testing if: (1) the city has individualized suspicion of the employee's wrongdoing; or (2) a "special need beyond the need for law enforcement" exists. *See Chandler v. Miller*, 520 U.S. 305 (1997); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995) (citing *Skinner v. Ry. Labor Execs. Ass'n.*, 489 U.S. 602 (1989).

A city may test an employee for drugs if the city has individualized suspicion that the employee is under the influence of drugs. *See Chandler,* 520 U.S. at 313. Whether individualized suspicion exists is a fact-specific inquiry. Before requiring an employee to undergo a drug test,

the city should be able to articulate specific observations that led to the individualized suspicion, such as speech, behavior, conduct, or odor that suggests that an employee is under the influence.

Drug testing of employees without individualized suspicion, also referred to as "random drug testing," is permitted only if a city has a "special need, beyond the normal need for law enforcement," for requiring the testing, and that such "special need" outweighs the employee's privacy interest. *See Skinner*, 489 U.S. 602; *Nat'l Treasury Emps. Union v. Von Raab*, 489 U.S. 656 (1989). Applying this "special needs" standard, a city will only be able to randomly drug test city employees who hold "safety-sensitive" positions "fraught with such risks of injury to others that even a momentary lapse of attention can have disastrous consequences." *Skinner*, 489 U.S. at 628. The courts have determined that employees holding the following safety-sensitive positions may be randomly drug tested: (1) CDL drivers who are subject to federal Department of Transportation regulations; (2) law enforcement employees who carry firearms or who are directly involved in drug interdiction (*Von Raab*, 489 U.S. at 679); (3) public transporters in industries in which there is a documented problem with drug or alcohol related incidents (*Skinner*, 489 U.S. 602); (4) operators of heavy machinery, large vehicles or hazardous substances (*Skinner*, 489 U.S. 602; *Aubrey v. Sch. Bd. of Lafayette Par.*, 148 F.3d 559 (5th Cir. 1988)); and (5) employees working in high-risk areas such as highway medians (*Bryant v. City of Monroe*, at 593 Fed. Appx. 291, 297 (5th Cir. 2014)). Additionally, the court has upheld post-accident drug testing of safety-sensitive positions without individualized suspicion of wrongdoing. *Id*. at 298. A city that desires to implement a random drug testing policy should first articulate a "compelling interest" beyond the need for law enforcement that justifies such testing, and then determine which employees may legitimately be randomly tested. If a "compelling interest" beyond the need for law enforcement cannot be identified, the city should not perform random drug tests.

With respect to drug testing all job applicants, no Texas court has addressed whether a city can require such testing. However, other federal courts have struck down pre-employment drug testing of non safety-sensitive positions. *See e.g. Am. Fed'n of State, County and Mun. Emps. 79 v. Scott*, 717 F.3d 851 (11th Cir. 2013), *cert. denied*, 572 U.S. 1060 (2014) (mandatory drug testing of all job applicants struck down); *Lanier v. City of Woodburn*, 518 F.3d 1147 (9th Cir. 2008) (post-job offer drug testing of a library page was unconstitutional as applied to that position because the page's duties were not safety-sensitive). Additionally, the court has concluded that an employee's submission to drug testing, on pain of termination, does not constitute voluntary consent. *See Scott*, 717 F.3d at 873. A city that has or desires to implement a policy requiring pre-employment drug testing should consult with local counsel regarding this matter.

Who can enforce city ordinances?

City ordinances may be enforced via citations from peace officers, or through notices of violation from a code enforcement officer or complaints by citizens filed with the municipal court.

Many cities give certain employees, including code enforcement officers and animal control officers, the power to issue a "notice of violation" on behalf of the city in cases where there is an alleged ordinance violation. The notice usually includes information such as: (1) the text of the ordinance being violated; (2) the conduct that violates the ordinance; and (3) how to come into compliance. The notice serves as a warning to the alleged violator, letting him know that he is in violation of the ordinance. Typically, it also provides for a period of time in which he may rectify the situation. In addition, a notice of violation will often include a warning that, if the situation is not brought into code compliance within a certain period of time, a complaint will be filed in municipal court. A complaint is a sworn allegation charging the accused with the commission of an offense under either a state law or a city's ordinance. Subsequent to receiving a sworn complaint regarding an ordinance violation, the court may issue a summons requiring the alleged violator to appear before the court. TEX. CODE of CRIM. PROC. arts. 45.014(a) and 15.03(a). If the alleged violator does not appear on the date listed in the summons, a warrant may be issued for his arrest. TEX. CODE of CRIM. PROC. art. 45.026.

As a general rule, anyone may file a complaint in municipal court alleging a violation of a state law or a city ordinance. TEX. CODE of CRIM. PROC. art. 21.011. Under Texas Code of Criminal Procedure Article 45.019, in order to be acted on by the court, a complaint must be sworn to by an "affiant." An affiant is any credible person who is acquainted with the facts of the alleged offense. The complaint may be sworn before any officer authorized to give oaths. TEX. CODE of CRIM. PROC. art. 45.019.

Any citation, including one for a Class C misdemeanor, is issued in lieu of an arrest. Thus, the most conservative interpretation of state law holds that only a peace officer certified by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) is authorized by statute to issue a true citation. Peace officers are granted the power to issue citations in lieu of arrest by Texas Code of Criminal Procedure Article 14.06(b) and Texas Transportation Code Sections 543.002-543.005. Thus, the most conservative advice is that no one but a certified peace officer may issue a citation compelling an individual to appear in court on a certain day. That advice holds true for both a violation of state law or a city ordinance.

The TML Legal Services Department gives only the most conservative advice. In this case, that advice is to only allow TCLEOSE-certified peace officers to issue citations. However, city officials should be aware that an argument can be made that Texas Local Government Code Chapter 51 allows for the designation by ordinance of code enforcement officers, animal control officers, or other designated city employees to issue citations for code violations. On this matter, as with others, TML attorneys defer to the advice of local legal counsel.

Can a councilmember place an item on the agenda?

Generally speaking, no state law addresses agenda preparation. However, the attorney general has opined that, absent a written policy, each member of the governing body should be allowed to place items of his or her choosing on the agenda prior to a meeting. *See generally* Tex. Att'y Gen. Op. Nos. JM-63 (1983), DM-228 (1993). In a city without an agenda setting policy, the

mayor or city secretary would not control the preparation of the agenda for the city council. *See* Tex. Att'y Gen. Op. No. JM-63 (1983) (stating that the county commissioners court as a whole has the authority to determine its agenda, and not the county judge or county clerk).

A city council is free to adopt a reasonable written policy governing agenda preparation. Many home rule cities have charter provisions addressing agenda setting that would govern. The net effect of any adopted policy cannot be to preclude a councilmember from placing an item on the agenda for public discussion. Tex. Att'y Gen. Op. No. DM-228 (1993). As a result, an item arguably could only be removed from the agenda by the councilmember who placed it on the agenda, or by majority vote of the city council at an open meeting. If an item is on the agenda, but a majority of council does not wish to discuss the item, then the council can move not to discuss it pursuant to any applicable rules of procedure.

Some agenda setting policies require a certain number of councilmembers to request an item be placed on the agenda. Because the Open Meetings Act prevents a quorum of city council from discussing city business outside of an open meeting, it is important to ensure that any policy requires no more than two councilmembers to agree to place an item on an agenda. Past case law indicates that it is not a violation of the Open Meetings Act for councilmembers to discuss whether or not to place an item on an agenda. *See Harris County Emergency Serv. Dist. #1 v. Harris County Emergency Corps*, 999 S.W.2d 163 (Tex. App. — Houston [14th Dist.] 1999, no writ). But recent developments under the Open Meetings Act, most notably the indictment of councilmembers in the City of Alpine for discussing agenda preparation outside of an open meeting, casts significant doubt on the ability of a quorum of city council to discuss what should be placed on an agenda. For this reason, a policy should require no more than two councilmembers to agree to place an item on a council meeting's agenda.

Most cities have policies on how to place items on an agenda, and we recommend cities adopt such a policy to avoid confusion. Please contact the TML Legal Department for an example agenda setting policy.

Does a mayor or city councilmember have full access to city records?

A current member of the governing body who requests information from the city in his or her official capacity has full access to the requested information. The Public Information Act (Act) is not implicated when a request is made in a mayor or councilmember's official capacity, as the release of the documents is not viewed as a release to the general public. Tex. Att'y Gen. Op. No. JM-119 (1983).

Should a city receive such a request, the exceptions to disclosure that might otherwise apply to an open records request from a citizen would not apply to a mayor or councilperson. *Id*. In other words, information that would typically be considered confidential under the Act would need to be released to a mayor or councilperson requesting the information in their official capacity. Furthermore, because the Act would not control the handling of the request, charges for expenses

associated with fulfilling the request that are usually assessed pursuant to the Act could not be imposed upon the mayor or councilmember.

If, however, a member of the governing body requests city records in his or her individual capacity for personal use, then the request would need to be treated like any other open records request from a member of the public. The exceptions to disclosure under the Act would apply, and the custodian of records could not release protected information to the mayor or councilmember. Open records charges could be assessed against the mayor or councilmember if the information is requested in an individual capacity.

Because a release of information to a mayor or councilmember requesting in their official capacity is not a release to the public, the recipient must be cautious in maintaining the documents in the same way they are maintained by the governmental body as a whole. The Act imposes criminal provisions for the release of confidential information. *See* TEX. GOV'T CODE § 552.352. As a result, a member of the governing body who receives confidential information must ensure that it remains confidential. Disclosing confidential information would constitute official misconduct, and would be considered a misdemeanor punishable by either a fine of up to $1,000, confinement in county jail for up to six months, or both. *Id.*

Several bills have been filed to address this issue, but as of yet none has passed.

Conclusion & Other Resources

This paper is meant to provide an overview of the most common legal questions asked of the TML Legal Services Department. Remember that there are a multitude of tools available to Texas cities to protect, preserve, and revitalize their communities. There are numerous city, federal, state, and private organizations that are excited and willing to share their knowledge and experience. Cities should take full advantage of the wide range of resources that are available. The following is a non-exhaustive list of some agencies and organizations that may be of assistance:

Texas Municipal League Legal Department
www.tml.org
legalinfo@tml.org
512-231-7400

Texas Secretary of State's Elections Division
www.sos.state.tx.us
800-252-VOTE

Texas Comptroller's Office
www.cpa.state.tx.us
800-531-5441

Council Liaisons 411

Goal:

To facilitate two-way communication between City Council and all City boards, panels, committees, and commissions.

Role:

Working in coordination with the chair of the board, panel, committee, or commission, assist in generation of agenda items and packet materials for both City Council meetings and the meetings of the respective board, panel, committee, or commission.

Attend designated board, panel, committee, or commission meeting to answer questions during discussion or clarify motions and requests sent by Council.

Provide discussion and reports on items sent from their respective boards, panels, committees, and commissions to City Council.

Guidelines:

ALL City boards, panels, committees, and commissions shall function autonomously. They will set their own agendas and run their own meetings. Liaisons are NOT to be running their assigned boards, panels, committees, and commissions, nor are they to be setting agendas. They are to be resources to their respective City body.

Liaisons shall NOT influence voting or sway discussion beyond factual statements or clarification on items sent from Council. Liaisons are NOT members of the board, panel, committee, or commission; nor are they "ex officio." Liaisons do not have any voting power beyond their role on City Council.

Liaisons should share only the discussion, concerns and/or requests from the full body of Council on an item sent to their designated board, panel, committee, or commission. Their representation on the board is not to be used to pursue their own goals or as a second chance to voice their concerns or opinion on an item beyond a City Council meeting.

If asked, liaisons are permitted to share their own opinion or judgement-based information during a meeting or on an agenda item, but they should refrain from offering this type of advice or influence without being first requested.

When representing their respective board, panel, committee, or commission to City Council in the form of a report or while answering questions on an item sent to Council, liaisons shall remain objective and factual. Councilmember liaisons shall work to support the efforts of their board, panel, committee, and commission and advocate for their work, but are not obligating their vote on City Council in support or against any item simply because they are the Council liaison for the board, panel, committee, or commission from which it came.

Communication Flow:

Agenda packets, and the materials included, are a primary focus for liaisons.

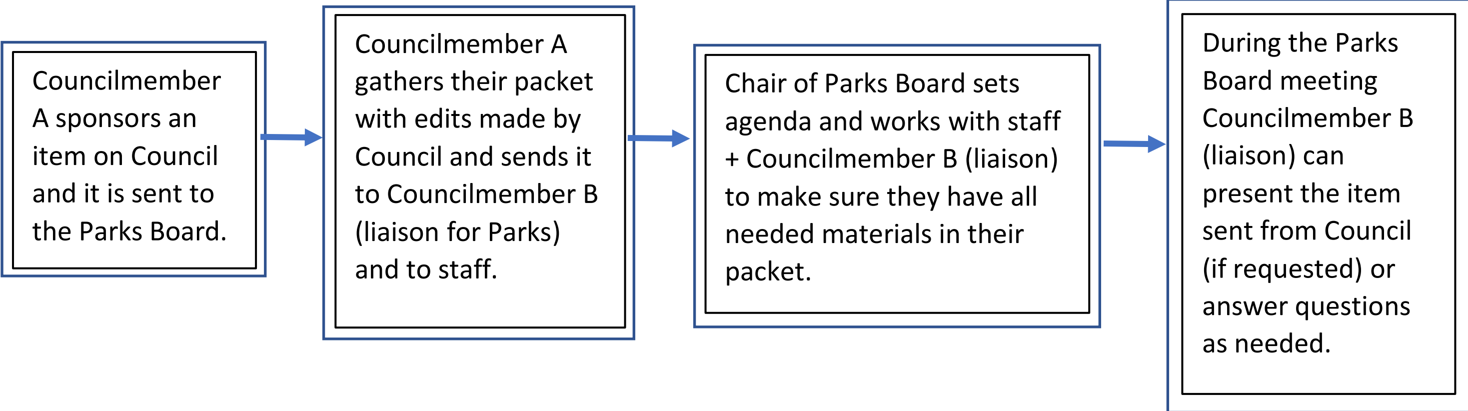
The chair of any board, panel, committee, or commission shall make every effort to send a draft of their proposed upcoming agenda to their designated liaison so that the liaison can collect and provide additional information and materials as needed. The purpose of this collaboration is to improve and facilitate communication on items that are sent between said boards, panels, committees, and commissions and the City Council. If desired, the Chair may ask assistance in drafting the agenda.

Liaisons shall remind the chair of their designated board, panel, committee, or commission about pending business sent from Council and in turn shall monitor any items sent from their designated board, panel, committee, and commission to be placed on the Council agenda.

City Staff will be responsible for communication between City Council and all boards, panels, committees, and commissions. They are responsible for tracking the flow of city business. However, the designated liaison is there to support this effort, provide additional information for packets when needed, and to help facilitate discussion during meetings. Staff, Chair, and Liaison shall work to keep all “in the loop” by copying on email and making all other efforts to keep all informed.

EXAMPLE OF THIS COMMUNICATION FLOW:

Council to Board



Board to Council