

# 1

## 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 2002 Census of Government figures, Texas has 1,196 cities, 254 counties, 1,089 school districts, and 2,245 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.

#### 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. 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 under Chapter 229 of the Local Government Code. 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. Any city over 5,000 inhabitants in which the citizens have adopted a home rule charter is a home rule city. 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 cities 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 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, most 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 Municipalities

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.

General law cities operate under one of two forms of government: aldermanic or commission.

In a Type B general law municipality 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 municipality.

Any municipality operating under the commission form of government can change over to the aldermanic form of government, and vice versa.

### Type A General Law Municipalities

Type A general law municipalities are the larger general law municipalities. 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.

Type A general law municipalities operate under one of two plans of government: aldermanic or commission. A municipality with the aldermanic form of government operates in accordance with statutes applicable to Type A general law municipalities.

The governing body of a municipality operating as a Type A general law municipality is known as the "city council" and varies in size depending on whether the municipality has been divided into wards. If the municipality has been divided into wards, the council consists of a mayor and two councilmembers from each ward—whatever the number. If the municipality 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 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 officers as it deems necessary.

### Type C General Law Municipalities

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

Any municipality 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 Sections 25.001, et seq., Local Government Code:

- ( 1 ) Upon presentation of a petition signed by at least 20 percent of the number of 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.
- ( 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 pay-

roll 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. 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.

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 ) Providing council meeting agendas and attendance at 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 municipality operating under the commission or aldermanic form of government. 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 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 inhabitants 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. Subject to compliance with the federal Voting Rights Act, 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

The inherent power to unilaterally annex adjoining areas is 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.

There is no state law prohibiting home rule cities from annexing adjoining territories; therefore, annexation can be exercised as an inherent home rule power, provided statutory requirements are fulfilled.

The following excerpt is typical of a charter provision relating to unilateral annexation powers:

The City Council may by ordinance annex territory lying adjacent to the city with or without the consent of the inhabitants in such territory or the owners thereof, not inconsistent with the procedural rules prescribed by law applicable to the cities operating under charters adopted or amended under Article XI, Section 5, of the Constitution of the State of Texas.

The power of unilateral annexation is important for several reasons. First, it enables a city to guide the development of land surrounding the city. Also, it permits a city to maintain a strong economic base by extending its boundaries to bring in taxable properties and other resources required to finance municipal services.

Dramatic evidence of the importance of unilateral annexation exists in other states where cities do not have that power. One source summed it up as follows:

Liberal state annexation policies in certain parts of the South (for example, Jacksonville), and West (for example,

Houston) have permitted cities in those regions to share the benefits of growth in surrounding areas. If San Antonio, Texas, for example, had the same boundaries that it had in 1945, it would contain more poverty and unemployment than Newark, New Jersey.

According to Census statistics, Texas' larger cities are among the fastest-growing in the U.S. These same figures also show, however, that many of these same cities actually would have lost population during the past two decades if they had not expanded through annexation.

In 1999, the Texas Legislature enacted the first major revision of municipal annexation laws since 1963. Many of the changes apply to home rule cities when unilaterally annexing an area containing one hundred or more separate tracts of land upon which one or more residential dwellings are located on each tract. The changes require cities to include such properties (and certain others) in a three-year annexation plan prior to the annexation to provide notice to property owners and service providers in the area, to compile a comprehensive inventory of services provided in the area, to negotiate with property owners of the area regarding provision of services, and to participate in arbitration to resolve disputes over provision of services. Despite the changes, authority to annex unilaterally remains strong in Texas.

## 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 obey the state's constitution and statutory requirements. Examples include state statutes that require every city to pay unemployment compensation benefits to its former employees, or that require cities over 10,000 population to pay longevity compensation to police officers and firefighters.

All cities are prohibited from taking certain actions. For example, the Texas Election Code prohibits regular city elections on any day except one of those prescribed.

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 over 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.

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.

## 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:

- ★ A description of the city's governmental and proprietary powers;
- ★ 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, assessing and collecting taxes, and conducting annexations;
- ★ Popular controls over the city government, such as elections, referenda, initiative, and recall; and
- ★ Provisions relating to procedures for amending the charter.

## 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' 351 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 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 usually is 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, the council serves as the legislative body. The council sets policy. It approves the budget and sets the tax rate. 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.

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. 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. 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 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.