
INTRODUCTION

Thank you for your interest in your community.

Incorporation is a very easy, but large, step for a community. All you need is 201 persons living in an area of not more than 2 square miles, with at least 50 qualified voters who will sign a petition to request an incorporation election. The community needs to carefully consider the advantages and disadvantages as it begins to study the question. The procedures to incorporate can be found in the first few chapters of the *Texas Local Government Code*. *The Local Government Code* may be borrowed from any law office or you may purchase a copy for about \$30.00 from West Publishing Company, 1-800-328-9352. It may also be found by going to the State of Texas Home Page and looking up Texas Statutes. Most of the Texas Statutes are found there.

The most important thing to keep in mind is that the scope of services that a city actually provides are determined by the governing body that is elected by the citizens after the incorporation. There are lots of activities and programs that a city may undertake, but there is no law that says that a city must provide these services. However, if a city does decide to provide services, there are many regulations that must be met in the provision of services.

This publication is a compilation of a series of papers that I have used over the years.

1. **Advantages and Disadvantages of Incorporation of a City.** This chapter outlines the minimum requirements of incorporation and the procedures to incorporate should that option be selected. It then reviews the advantages and disadvantages. Keep in mind that what may seem to be an advantage to me may be a problem to another. The key is to gather and study all of the facts, then evaluate the question for yourself. What is best for our community?
2. **Reasons for Incorporation and How to Do It.** This chapter lists some of the most common reasons for proceeding with incorporation then goes into more detail into the legal requirements of the incorporation process. Specific steps are referenced in the *Local Government Code*. Here we give a brief description of the three types of general-law municipalities and the steps for incorporation of each. Though the process is similar, there are distinct differences. This chapter also includes samples of various forms that may be used. Even with these samples, you will need to have a qualified attorney review each step, forms to be used, and, to advise the incorporating committee as it proceeds
3. **Responsibilities of Cities and the Roles of the Mayor, Councilmembers and City Staff.** This chapter describes in a little more detail the differences between the types of cities and lists some of the more common functions performed by cities. The chapter explains the basics of operation of a city, and then reviews the roles of the various officers of a city. Always keep in mind that incorporation will have no effect on school districts or other special districts such rural fire prevention

districts, water districts or water supply corporations, property owners associations, privately owned facilities, etc.

4. **Checklist for Newly Incorporated City.** Once a city incorporates, there are some basic steps that should be taken. This chapter lists some of the more basic steps and offers some suggestions. Many of the suggestions are statutory and we have identified the location of the particular statute. Most of the references are from the *Texas Local Government Code* unless otherwise identified.
5. **Funding Sources and Other Questions for a New City.** This chapter provides answers for some basic questions regarding the operation of a city. What is the role of the county for a city? Where does a city get funds to perform those functions deemed necessary? What kind of taxes can be levied? When can a city expect to receive tax revenue? When can a new city start enforcing laws? There are some other miscellaneous questions and answers that are usually important to a new city, but again, this is only a guide. The new city must rely on its own legal counsel for specifics as to its operation.
6. **Petition Prescribed by Law Outside Code.** I have included the requirements of a petition for most purposes including incorporation. (*Taken from Chapter 277 of the Texas Election Code.*) These requirements are mandatory. Failure to meet these requirements will only result in the petition being thrown out. This happened in a central Texas community a short while back.
7. **Taxation Powers of Municipalities.** A copy of Chapter 302 of the *Texas Tax Code* is included to identify the levels of taxation that can be adopted by the different types of cities. The actual levels of taxes that are levied are determined by the elected governing body each year. A Type B General Law Municipality may levy a tax, not to exceed \$.25. A Type A general-Law Municipality may levy a tax up to \$1.50; and, a city over 5,000 may levy a tax not to exceed \$2.50. A Type C general-law municipality that is under 500 population acts as a Type B city while a Type C city that is over 500 population acts as a type A General-law municipality.
8. **Checklist for Newly Incorporated City and Small Town Reconnaissance.** This lists some of the needed steps for a new city and lists some of the more commonly adopted ordinances. There is no requirement that any of these be adopted; the list is here for ideas and suggestions. As physical facilities are among the most basic of municipal functions, I have included a checklist that can be used as a guide to evaluate the facilities that are currently available. This can then be a basis on which the new community can begin planning for the future.
9. **Definition of Resident.** While the *Local Government Code* limits voting to residents, the definition of a resident is found in the *Election Code*.

There are no requirements for a city to perform any of these functions. However, most cities have found many of these to be needed by their citizens. After you and others have had an opportunity to go over this handbook, please call me with any questions.

Should there be a desire to proceed toward incorporation of a city, I recommend that a broad-based committee be formed to study the entire issue. Some communities have found it advantageous to include among the committee members some that appear to be opposed to the idea. A person who is opposed to an idea may force others to see all sides of the issue. On the other hand, the person who started out opposed may become more favorable to the idea after the issue has been studied.

The committee should look at the various services that are needed in the community. It should explore the levels of funding that may be needed to accomplish these services and the possible sources of these funds. It is a good idea to contact the Central Appraisal District of your county to determine the level of property evaluations that can be anticipated for the city should it incorporate. Are there any retail establishments within the area proposed? If so, the committee should talk to them relating to possible sales tax should the city adopt the sales tax as a funding mechanism? The committee should look at the three types of General-law municipalities and determine which would be most suitable for the city.

The committee should very carefully plan the boundaries for the city. Remember that unless the proposed city has more than 2,000 persons, the city will be limited to two (2) square miles of territory. This *not* two (2) miles square. The two square miles do not have to be in straight lines, but must contain only territory that is to be used strictly for municipal purposes. If the proposed area lies in two counties, the petition may be filed with the county judge of either county.

Should the community that desires to be incorporated find that it really would like to have more than two square miles, but not have the required 2,000 inhabitants, it may want to look at the procedure that has been used at least twice. The Lago Vista development at Lake Travis contained approximately 5,000 acres, but at the time had only about 1,200 inhabitants. To accomplish their goal of a single city of Lago Vista, the study committee divided the area into five separate cities. All five held their election and were incorporated as separate cities. The five then proceeded to follow the steps found in Chapter 62 of the *Local Government Code* and consolidated the cities, always assuring that the largest was Lago Vista, until there was only one city.

After this issue has been studied and there is a desire to proceed, it may be possible for this office to have someone meet with the community in a town meeting type setting. Discussions may include incorporation and to go over the advantages and the disadvantages of incorporating a city, and to answer questions from the citizens. It does not matter to the State whether a community does or does not incorporate. The State only wants the citizens to understand what they are doing.

John Clary, Manager
Local Government Services
P.O. Box 13941
Austin, TX 78771-3941
Phone 1-800-544-2042, or 512-475-3844
E-mail Address is jclary@tdhca.state.tx.us.
The Department's Web Site is www.tdhca.state.tx.us

I.

ADVANTAGES & DISADVANTAGES OF INCORPORATION OF A CITY

ADVANTAGES & DISADVANTAGES OF INCORPORATION OF A CITY

There are a lot of reasons that cause a community to think about incorporating into a city. Some of the reasons are:

1. To enable the community to set its own rules and regulations.
2. To establish specific services such as fire, police, traffic controls, etc.
3. To control land use.
4. To control building construction.
5. To control subdivision of land.
6. To establish a tax program or to prevent a tax program from being established.
7. To qualify for various grants from state or federal agencies.
8. To prevent another city from annexing the community.

Generally, none of these specific reasons, in itself, is a valid justification for incorporation and the establishment of a city government. On the other hand, if the community is ready to embark on a program of providing municipal-type services to itself, incorporation is a means of banking together to provide these services for the benefit of the total community.

MINIMUM REQUIREMENTS

To incorporate, the community must have at least 201 citizens. At least 50 of the 201 citizens must be qualified voters and live within a two square mile area. Should there be more than 2,000 but less than 5,000 population, the incorporation may be as much as four square miles. Should the community contain 5,001 to 9,999 population, it may incorporate up to nine square miles. The area designations are maximum; the incorporation may contain less at the various population levels.

A community may not incorporate within the Extra Territorial Jurisdiction (ETJ) of an existing incorporated city without the consent of the latter. This ETJ is an area just outside the city limits and is an area over which the city may exercise some control to promote health, safety and general welfare of the city. The ETJ extends from the existing city limits distances as follows:

Up to 5,000 population	½ mile
5,000 to 24,999	1 mile
25,000 to 49,999	2 miles
50,000 to 99,999	3 ½ miles
Over 100,000	5 miles

PROCEDURES TO INCORPORATE A CITY OR TOWN

The community must follow certain procedures to incorporate. They are as follows:

1. It must assure that there are at least the minimum number of persons residing within the area considered.
2. Then, it must have an engineer or surveyor develop a “metes and bounds” description of the area to be incorporated (draw a line around the specific area) and prepare a map showing the territory and the proposed city limits.
3. With the map in hand, the community must circulate a petition requesting the county judge to call the election. To incorporate as a village or town Type B General Law municipality with less than 2,000 population, the petition must be signed by 50 qualified voters. To incorporate as a Type A General Law municipality, the community must have 600 inhabitants or one or more manufacturing establishments and the petition must be signed by 50 voters. To incorporate as a Type C municipality, the petition must be signed by 10 % of the voters.

Note: We strongly encourage the community to have an attorney check all of the procedures and instruments to avoid any chance of missing a requirement that could void the action.

4. The completed petition is then presented to the county judge who, after verifying the data, must call the election. The election, held at county expense, is open to the qualified voters within the territory described in the petition.
5. Upon the completion of the election, the votes are canvassed by the county judge. If a majority of those voting are in favor of the incorporation, the judge shall sign an order that the town is incorporated.

6. The judge then calls an election to elect the first slate of officers, except in the corporation of a Type C City in which the officers are elected at the same time as the election to incorporate.

RESPONSIBILITIES OF AN INCORPORATED CITY

An incorporated city assumes the duties and responsibilities for governing itself. The level of services provided by the city is dependent upon the desires of the governing body known as the city council, board of aldermen, or city commission.

The statutes provide that:

1. the city council shall meet at least once each month;
2. meetings be regularly scheduled at a fixed time and place;
3. a quorum must be present for the conduct of business and any questions be decided by a majority vote of those present and voting; and,
4. the mayor always presides, if present.

The specific powers of the General Law city are spelled out in the state statutes. The city council has power to pass ordinances for the good of government, peace and order, trade and commerce, health and safety of the citizens. The cities of Texas, compared to other cities in other states, have a very high level of freedom of operation.

ADVANTAGES OF INCORPORATING A CITY

A city has been described as a large corporation, which has been organized to provide services. The city council is the board of directors. The mayor is like the chairman of the board, the city manager - - administrator - - is the executive director and the citizens are the stockholders.

Some of the key advantages to incorporating are as follows:

1. **Self-determination**. An incorporated city may adopt for itself such rules and regulations that it determines are in the best interest of the city. There is a lot to be said about running your own show. The key is that the local community selects its own people to make the rules and run the city program.
2. **To establish standards for safety purposes**. An incorporated city can establish safety codes such as building and electrical codes so that there is less danger of a person or property being damaged by another.

3. **To cope with conflicting uses of property.** An incorporated city may establish land use regulations to prevent one person's indiscriminate use of property from damaging another person's property or injuring others.
4. **To provide services.** An incorporated city can determine for itself the type and level of services that it needs and then initiate the provision of such services.
5. **To establish your own level of taxation.** The locally elected city council determines the level of taxation for the city. Remember that a city has no direct control over the county, school district or any other special district.
6. **To qualify for federal or state grants.** Many of the federal or state grant programs are available only to general-purpose local governments. Some of the grant programs available are:
 - a) Community Development Block Grants from the Texas Department of Housing and Community Affairs. These grants are targeted to the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low to moderate income. The grant program is very competitive with one out of every five applications being successful.
 - b) Environmental Protection Agency funds, through the Texas Water Development Board, are available to assist in eliminating stream pollution. It is extremely hard to qualify unless the area is incorporated as a city and has a pollution problem.
7. **To become eligible for some specific program.** One such program is sale of alcoholic beverages or sale of liquor by the drink.
8. **To keep government close to the people.** This is a key advantage. We still believe that the people are best served by the level of government that is close to the people.

DISADVANTAGES OF INCORPORATING A CITY

1. **Someone must pay the bill.** As the city council, which is elected by the voters, sets its regulations or determines it wants services provided, it must also determine how to pay for the services or to provide for the enforcement of the regulations. And, the cost of the services or the enforcement almost always falls on the local residents.
2. **Loss of other support.** Many activities now provided or funded by others, such as county road maintenance, may become the city's sole responsibility.

3. **Volunteers seem to dry up.** It seems that often citizens in an unincorporated area will give of time and resources, but when the town incorporated, this contribution begins to dry up. There sometimes prevails an attitude of "let the city do it," and this attitude seems to grow stronger as the organization gets larger.
4. **City may be liable for damages.** The city becomes a corporation and is eligible to sue and to be sued. For example, prior to the late 1970s, the Civil Rights Act did not apply to cities, thus prior to 1978, only 279 cases had been filed across the nation. Now new cases are filed almost daily. The City of Midland has been held liable for damages in excess of \$2 million for failure to clear an obstruction of brush, which made a blind corner at an intersection of a street with an unopened street.
5. **Another layer of government.** The incorporation of a city creates one more level of government over a group of people. Many of these people moved out to the unincorporated area to be free from government.
6. **Point of responsibility.** One living in an unincorporated area knows that he, as a rule, must handle any problem by himself, but when the city incorporated, there is someone else to turn to. Keep in mind that, many times, citizens develop needs and look to the city for the solutions. It does not take many irate citizens to make a city council think the entire city is unhappy.
7. **Strings along with the help.** With the state or federal grants come specific strings, standards, and bureaucracy. While most of the strings represent federal laws or standards, some of these require action that may not necessarily be that which the community would have elected on its own.
8. **Along with government come taxes.** While there are a few cities, and most of these are in somewhat remote locations or have unusual circumstances, that do not have any taxes, by far, the majority do end up having to levy taxes to pay for the municipal programs and services adopted by the City Council.
9. **No guarantee of quality of services.** In fact, many of the smaller cities and towns have difficulty providing a level of services that is adequate to meet the needs of the people, and then the services are not always equally provided.

II.

REASONS FOR INCORPORATION AND HOW TO DO IT

REASONS FOR INCORPORATION AND HOW TO DO IT

Before any community incorporates, great care and study should be given to the reasons for incorporation. Many communities have a single purpose; some may have more than one goal that they believe can best be accomplished by incorporation. Some of the most identified goals are:

1. To receive a water or sewerage grant.
2. To vote either "wet" or "dry" for alcohol sales.
3. To keep another city from annexing the territory.
4. To vote either for or against taxes.
5. To control zoning.
6. To control mobile homes.
7. To control sub-divisions.
8. To establish police and/or fire service.

There are many other reasons, but the above are common. None of them in itself is a valid reason to establish a city government.

If only a single city service is needed, consideration should be given to having that service provided by an existing unit of government such as a nearby city, county or special district. A special district such as a municipal utility district, water district, sewer district or hospital district may be considered. Vast contracting powers are now available through the Interlocal Contracting Act.

For a community to embark on furnishing all the services demanded of a city, careful, advance planning is needed. While only a single purpose for the incorporation may identified now, as time goes on other services will be demanded and most of these services will cost money. Taxes must be collected and city officials and employees paid. Many cities incorporate, grow, and become active cities, but there are some that incorporate, and after a flurry of interest and activity, tire and slowly cease to function. There are only 1,100 or so active cities in Texas, although over 1,200 are incorporated.

If a community can receive needed and demanded city services only by incorporation, and is prepared to finance and organize a viable city government, then they should incorporate. If the needs can be met by means other than incorporating a city, we would question the need to try to organize the city.

The steps listed under the section "Incorporation of a New City, Town or Village under the General Laws of Texas" should be followed as a guide. The community is strongly encouraged to secure competent legal advice as it proceeds through this process. One note to further emphasize and stress: **EACH INCORPORATED TOWN OR CITY MUST HAVE AN ACCURATE MAP DESCRIBING THE NEW AREA.** This is very important.

PLEASE NOTE THAT ALL CODE REFERENCES SHOWN AS "CHAPTER ----" OR SHOWN IN PARENTHESIS () REFER TO *THE LOCAL GOVERNMENT CODE OF THE STATE OF TEXAS.*

INCORPORATION OF A NEW CITY, TOWN OR VILLAGE
Under the General Laws of Texas

A. GENERAL

Sec. 42.041, Vernon's Local Government Code provides:

"A municipality may not be incorporated in the extraterritorial jurisdiction of an existing municipality unless the governing body of the existing municipality gives its written consent by ordinance or resolution."

The extraterritorial jurisdiction of any existing city depends on the population of such city, and is defined as "the unincorporated area, not a part of any other city, which is contiguous to the corporate limits of any city" within a certain distance of the corporate limits. These distances are: for a city having a population of less than 5,000 inhabitants - 1/2 mile; 5,000, but less than 25,000 - 1 mile; 25,000, but less than 50,000 - 2 miles; 50,000 but less than 100,000 - 3-1/2 miles; 100,000 or more - 5 miles. Sec.(42.021).

In addition to the distance granted by the above section, there is always the possibility that the extraterritorial jurisdiction (ETJ) of any city may extend a little farther at places along the perimeter of the extraterritorial boundaries. The ETJ of a municipality may expand beyond the distance limitations imposed by Section 42.021 to include an area contiguous to the otherwise existing ETJ of the municipality if the owners of the area request the expansion. (42.022)

So, in planning to incorporate a new city, town, or village, first check to see that none of the area proposed to be incorporated lies within the extraterritorial jurisdiction of an existing city, town or village. If it does lie within the extraterritorial jurisdiction of an existing city, town or village, written permission will have to be secured from the governing body of such city, town or village before such territory may be incorporated.

General-law cities are now identified as a **Type A** general-law municipality (5.001), **Type B** general-law municipality (5.002), both of which operate under the aldermanic form of government, or **Type C** general-law municipality (5.003), which operates under the commission form of government.

A municipality incorporated in any manner other than a Type A general-law municipality may change to the larger corporation, a Type A general-law municipality, if it has 600 or more inhabitants or contains one or more manufacturing establishments (LGC 6.011). Any general-law municipality, with a population of less than 5,000, by first holding an election on the question, may adopt the City Manager Plan (LGC 25.021).

Under the aldermanic form of government, the governing body consists of a mayor and, in most cases, five aldermen. Often the aldermen are called councilpersons or councilmembers. In the event that the city is divided into wards, the governing body shall be a mayor who is elected at large and 2 aldermen from each ward who are elected by the qualified voters of the ward (22.031).

The larger corporation or **Type A** general-law municipality carries the term "city" or "town". The **Type B** general-law municipality carries the term "town" or "village". These are general statements since a Type B general-law municipality may incorporate with up to 9,999 population. Note that the word "town" is used in describing both the larger and the smaller incorporated municipality.

In determining whether we are describing the larger corporation, look for the word "city" or "cities" coupled with the word "town." For the smaller corporation, look for the word "village" coupled with the word "town." The smaller corporation, Type B, has a maximum tax rate of 25¢ per \$100 assessed valuation, while the larger corporation, Type A, has a maximum tax rate of \$1.50 per \$100 valuation. A Type C general-law municipality with less than 500 inhabitants will act as a Type B city and one with over 500 inhabitants will act as a Type A.

The maximum area of a newly created municipal corporation must not exceed two square miles (1,280 acres) where the population is less than 2,000 inhabitants, nor more than four square miles when the population is more than 2,000 but less than 5,000, nor more than nine square miles when the population is more than 5,000 but less than 10,000 (5.901).

**B. INCORPORATION OF A TOWN OR VILLAGE TYPE B
GENERAL-LAW MUNICIPALITY - ALDERMANIC FORM**

Chapter 7 (7.001 through 7.008) provides that a town or village containing more than 200 but less than 10,000 inhabitants may be incorporated in the manner described. Note that Section 7.001 states that a community must contain between 201 and 9,999 inhabitants. This means that at least 201 men, women and children must live within the area to be incorporated. There must be at least 50 qualified voters living in the area, since that is the minimum number of voters who are residents in the area who must sign the petition (7.003). The 71st Legislature in 1989 amended the statutes to raise the number of qualified voters to sign an incorporation petition from 20 to 50.

A petition signed by at least 50 voters who reside in the area, directed to the county judge of the county in which the town or village is situated, is prepared. This petition or application states the boundaries of the proposed town or village, the name by which it is to be known (such as: "Town of,____, City of _____" or "Village of _____"), and requests that an election be held in such area to determine whether a majority of the qualified voters residing therein desire to be incorporated. The application must be accompanied by a plat of the proposed town or village, including therein no territory except that which is intended to be used strictly for municipal purposes (7.002).

Upon receiving the petition, if satisfactory proof is made that the town or village contains the requisite number of inhabitants, meets the territorial requirements, and has the requisite number of signatures, **the judge shall sign an order calling an election for that purpose.** The notice of the election must be posted at three public places in the town or village, and at least 10 day's notice of the election is given (7.005). The order of the judge names the presiding judge for the election, who in turn selects two other judges and two clerks to assist in holding the election (7.004). Every person who is 18 years of age or over, and who has resided within the proposed limits of the town for 30 days next preceding the election, and who is a qualified voter, may vote in such election (7.006). The ballots contain the words "For Incorporation" and "Against Incorporation."

The officers holding the election must submit the election returns to the county judge within 10 days after the election. If a majority vote in favor of incorporation, the county judge, within 20 days after receipt of the returns, shall sign an order declaring that the town is incorporated within the described boundaries, which order is entered in the minutes of the Commissioners Court. A certified copy of the judge's entry, together with the plat of the town or village is recorded in the deed records of the county (7.007). Strange as it may seem, there is no requirement that notice be given to any office at the State level.

After the town or village is declared incorporated, the county judge shall immediately call another election to elect the first slate of officers (23.021). (For towns and villages incorporating as **Type C** general-Law municipalities, a mayor and two commissioners will be elected at the same time as the incorporation election is held.) Since this election will be governed by the Texas Election Code, and since candidates must file their applications for a place on the ballot at least 45 days before Election Day, sufficient time should be allowed between the order calling the election and the deadline for filing. Since this is the first election of officers, and there is no mayor with whom to file the application, candidates should file with the county judge. In the first election there will be elected a mayor, a marshal and 5 aldermen, elected from the city at large. These officers serve until the next annual election, which in most Texas cities, will be held on the first Saturday in May.

The mayor, alderman and all other officers elected at the first election under this chapter, regardless of the time of such first election, **shall hold their offices until their successors shall have been duly elected and qualified at the next succeeding annual election**, according to the provisions of the succeeding article (23.025).

In lieu of one-year terms of office, the board of aldermen may provide by ordinance for two-year staggered terms of office for the mayor and aldermen. If such an ordinance is adopted, the mayor and two aldermen, determined by lot at the first meeting of the board of aldermen following the next annual election after the adoption of the ordinance, shall serve two year terms. The remaining aldermen hold office for an initial term of one year. Thereafter, all members of the board of aldermen hold office for terms of two years and until their successors have qualified (23.026).

The annual election of officers of towns and villages incorporated under the provisions of this chapter shall, in most cases, be held on the first Saturday in May. The mayor, or in case of his inability or refusal to act, any two aldermen shall order such annual election by notices posted for at least twenty days at three public places within the corporate limits (23.023). (While this provision says 20 days, the Election Code references 45 days to file for office.) The returns of such election shall be made to the town or village council, and certificates of election given by the mayor or person acting as such to the persons elected to the various offices of such corporation.

The governing body of a town or village, operating under the aldermanic form of government, is called the "Board of Aldermen." Such Board can appoint any other officers that the town or village may need, such as a city secretary, treasurer, assessor and collector, etc. (23.051).

A town or village incorporated in any manner other than a Type A general-law municipality may change to a Type A municipality if the municipality: (1) has 600 or more inhabitants; (2) contains one or more manufacturing establishments within its corporate limits; or, (3) is incorporated under any law of the Republic of Texas. This may be done, after posting notice, at a regular meeting of the governing body by a 2/3 vote of such body, entered in the minutes, and certified copy of the same under the corporate seal, signed by the mayor and secretary, is filed in the county clerk's office. The corporation may at the same time change its name to "City of _____" (6.012).

**C. INCORPORATION OF A CITY OR TOWN TYPE A
GENERAL-LAW MUNICIPALITY - ALDERMANIC FORM**

A municipal corporation, under the aldermanic form of government, may commence its corporate existence as a larger city or town under the provisions of Chapter 6, Sec. 6.001. In this case the proposed city must have a minimum population of 600 inhabitants, and 50 qualified voters

must sign the petition. The application or petition must contain the same information as the application mentioned in Chapter 7, and must be accompanied by a plat showing the boundaries of the proposed city. The action of the county judge in calling the election, and canvassing the returns is identical with the procedure described above under "Incorporation of a Town or Village - Aldermanic Form."

The governing body of the larger corporation, operating under the aldermanic form of government, is called the "board of aldermen" The board of aldermen is composed of a mayor, elected from the city at large, and a certain number of aldermen. If the city is divided into wards, there shall be two aldermen from each ward. The least number of wards in a city is two wards. Therefore, there will be a minimum of four aldermen. At least three general-law cities in Texas have four wards, with eight aldermen as members of the board of aldermen. If the city is not divided into wards, then five aldermen are elected from the city at large (22.031). Frequently the board of aldermen will be called the city council.

Officers in a Type A general-law municipality hold office for terms of two years with the terms staggered so that there will be overlapping terms. At this time, most general-law municipalities hold their annual election on the 1st Saturday in May of each year. If a municipality is divided into wards, at the initial election for officers, a mayor and two aldermen from each ward shall be elected. The two aldermen from each ward shall draw lots at the first regular meeting of the governing body to determine which alderman serves for one year and which serves for two years. If the municipality is not divided into wards, the governing body by ordinance may determine the member and the manner of deciding which aldermen elected at the initial election for officers serve for one year and which serve for two years (22.034).

Most cities in Texas operating under Type A general-law municipality elect five aldermen from the city at large. Where this is done, it is customary for the terms of office of the mayor and two aldermen to expire in one year, and the terms of office of the remaining three aldermen to expire in the succeeding year. Since the division of the city into wards, describing the boundaries of each is accomplished by ordinance passed by the board of aldermen, and since no board of aldermen exists at the time of incorporation, a city incorporating under Chapter 6, Sec. 6.001 - 6.003 commences with a mayor and five aldermen elected from the city at large. At the first meeting of the board of aldermen, the city council determines which of their number shall hold office until the next annual election, and which shall hold office until the second succeeding annual election. Thereafter, the mayor and aldermen hold office for terms of two years, the offices being placed on the ballot at each annual election as terms expire.

Other officers for the larger city or town are: treasurer, secretary, city attorney, marshal, assessor and collector, city engineer, and such other officers and agents as the board of aldermen may from time to time direct. Any or all of these officials may either be elected or appointed as provided for by ordinance. The board of aldermen may confer the powers and duties of one or more of these officers upon the other officers of the city (22.071).

**D. INCORPORATION OF A CITY, TOWN OR VILLAGE - COMMISSION FORM
OR TYPE C GENERAL-LAW MUNICIPALITY**

A city, town or village under the commission form of government is known as a Type C general-law municipality and has a governing body composed of a mayor and two commissioners, the whole body being known as the "Board of Commissioners." This is without regard to whether the corporation is a city or town, or is a town or village. Also, without regard to the classification of the corporation, officers are elected for 2-year terms of office.

Under the commission form of government, the Board of Commissioners appoints a clerk, treasurer, and assessor and collector of taxes. The Board of Commissioners may appoint a city attorney and such police force and such other officers as they deem necessary, fix the salaries, define their duties, abolish any office it creates, and discharge any officer, clerk or employee it appoints (24.051 - 24.053, 141.003, 341.002). The mayor and each commissioner must make bond in the sum of \$3,000.

To incorporate as a town or village, or to incorporate as a city or town, under the commission (Type C general-law municipality) form of government, the petition or application to the county judge is the same as that found for incorporation under the aldermanic form described above with the exception relating to the number of required signatures which is noted below. Notice this difference between the aldermanic form and the commission form: the dividing line between the larger and smaller municipalities under the aldermanic form of the government is 600 inhabitants (6.011), while the dividing line between the larger and smaller municipalities under the commission form (Type C) is 500 inhabitants (8.021).

While the original articles of Title 28 V.A.C.S. had different requirements for changing from an aldermanic form to a commission or for incorporating as a commission form of government, the "non-substantive revision" melded the two into one and in fact changed the requirements so that now to incorporate as a Type C general-law municipality, the residents must file a petition signed by at least 10% of the qualified voters of the community. Please note that this is different from the requirements of either a Type A or Type B general-law municipality. Notice of the election to incorporate must be published in a newspaper in the community before the 30th day before the date of the election or if there is no newspaper, the notice must be posted in at least three public places in the community at least 30 days preceding the date of the election.. The ballots read "For Commission" and "Against Commission." Section 8.004 requires the county judge to appoint two election judges, one of whom is designated as the presiding judge, and two election clerks.

At the election at which a community votes to incorporate as a Type C general-law municipality, a mayor and two commissioners must be elected.(24.021) The election of any of the candidates to the office of mayor or offices of commissioners depends on a majority vote in favor of incorporation (24.021 - 24-023). The officers elected at the first election serve until the date of the first regular election for municipal officers (24.021). Thereafter the mayor and commissioners serve for 2-year terms.

E. CITY MANAGER PLAN - ANY GENERAL-LAW CITY, TOWN OR VILLAGE

Any general-law municipality, having a population of less than 5,000 inhabitants, after it is incorporated and functioning under the aldermanic or commission form of government may adopt the city manager plan. A special election must be held (25.021). If a majority vote in favor of this plan of government, the governing body shall appoint a city manager within 60 days thereafter, and by ordinance fix his salary. The administration of the city's business is placed in his/her hands, but the governing body continues to act as the legislative and policy making body of the city. The City Manager need not be a resident of the city when appointed, shall give bond for faithful performance of his duties, and serves at the pleasure of the governing body.

F. PROVISIONS APPLICABLE TO ANY CITY, TOWN OR VILLAGE

A city, town or village which has adopted either the aldermanic or the commission form of government is not required to continue with that form for the remainder of its corporate existence. Under Sections 8.002 - 8.025 and 24.071 a city may switch from one form to the other, after a special election has been called for that purpose, at which a majority of the qualified voters of the municipality have voted to change to the other form. But keep in mind that a Type B or Type C municipality with 600 or more inhabitants and/or one or more manufacturing establishments within its corporate limits may change to a Type A general-law municipality by a 2/3 vote of the governing body.(6.011)

Article XI, Sec. II, Texas Constitution, authorizes a city, town or village operating under the general laws to provide by majority vote of the qualified voters at an election called for that purpose, for a longer term of office than two years for its officers, either elective or appointive, or both, but not to exceed four years.

G. GOVERNING A NEW CITY

After the city incorporates and the governing body is seated, the board of aldermen or board of commissioners, as applicable, is the responsible for the affairs of the city. The governing body approves ordinances, adopts the budget, confirms the appointments, sets the policies, and determines the direction of the city.

The mayor presides over the city governing body, provides the leadership for the governing body and the city as a whole, is signatory for the city, and in the absence of another formal executive position, is the chief executive officer of the city.

The governing body, working as a whole, plans the programs of the city, sets the policies, adopts the regulations, and confirms the mayoral appointments.(LGC 22.010) The governing body may not direct staff or provide administration of the affairs of the city.

The city staff executes the policies, performs the tasks, provides the information for the governing body, and in general gets the job done. The staff may not determine policies for the city.

This takes teamwork, respect for the roles and responsibilities of all, effective communication both up down and across the lines of authority and cooperation by all.

On the next pages are some sample forms that may be used as a guide in preparing petitions, the notice of election, etc. Please note that these are only samples. Ms. Karen Brophy, attorney with the firm of Bickerstaff, Heath, Smiley, Pollan, Keever and McDaniel, has prepared a sample time line that covers the steps of incorporation and a copy is included in Chapter IX.) **IT IS IMPERATIVE THAT A QUALIFIED ATTORNEY REVIEW THE FORMS AND APPROVES THE FINAL FORM BEFORE THEY ARE USED AND PROVIDES A SECOND REVIEW BEFORE THE FORMS ARE FILED.**

APPLICATION FOR ELECTION OF INCORPORATION OF THE
CITY OF _____
As a Type A General-Law Municipality

TO THE HONORABLE _____, COUNTY JUDGE OF _____ COUNTY.

We, the undersigned inhabitants of the unincorporated community of _____, desire that the City of _____ be incorporated, and we pray that an election be ordered on the question of the incorporation of said City of _____ as provided in Chapter 6 of the Local Government Code and any other applicable Statutes of the State of Texas.

We certify that each of the undersigned is a person who has attained the age of 18 years and who has resided within the limits of the town of _____ for more than 30 days next preceding the date of this application and is a qualified elector under the laws of this state.

The boundaries of the proposed City of _____, when incorporated, shall be as follows:

(Here set out boundaries)

We accompany this application with a plat of the proposed City of _____, and we include therein no territory except that which is intended to be used strictly for city purposes.

The name by which the City of _____ will be known, when incorporated, will be the City of _____.

Dated this ____ day of _____, 20__.

PLEASE REFER TO THE ELECTION CODE FOR REQUIREMENTS FOR A VALID PETITION.

(A valid petition must contain: (Copy of the Section 277 from the Election code is in Chapter VI of this manual.)

Signature of person signing

Signer's printed name

Signer's voter registration number, if the area to be incorporated is from more than one county, the county of registration must be shown.

Signer's residence address

the date of signing)

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

FORM NO. 2

ORDER OF ELECTION TO INCORPORATE
THE CITY OF _____
AS A TYPE A GENERAL-LAW MUNICIPALITY

THE STATE OF TEXAS:

COUNTY OF _____:

Whereas, on the ____ day of _____, AD. 20__, an application was presented to me for an election to be held in the community of _____, _____ County, Texas, to determine whether or not the City of _____ shall be incorporated as a city of 600 inhabitants or over under Chapter 6 of the Vernon's Texas Codes Annotated, Local Government Code of the State of Texas, and amendments thereto, and/or one or more Manufacturing establishments to be known when incorporated by the name of the City of _____ and composed of and including the territory within the boundaries described as follows:

(Here set out description of boundaries)

and, Whereas, satisfactory proof has been made to me, and I find that the said town of _____ contains 600 inhabitants or more and that said application bears the signatures of 50 qualified voters or more in said town, and is in every respect in conformity with the law.

NOW, THEREFORE, I, _____, in my official capacity as a county judge of _____ County, Texas, do hereby order that an election be held within the said community of _____ County, to determine whether or not the Town of _____ shall be incorporated as a city of 600 inhabitants or more under Chapter 6 of the Local Government Code as amended.

_____ is hereby appointed Presiding Officer for said election and he/she shall select two Judges and two Clerks to assist him/her in holding the same and he/she shall, within ten days after said election has been held, make due return thereof to the County Judge of this County as is required by law holding such elections.

All persons who have attained the age of 18 years and who are legally qualified voters of this State and who have resided within the above defined area for 30 days next preceding said election shall be entitled to vote at said election and all voters desiring to support the proposition of incorporation shall place an X in the block on the ballot form beside the words:

"FOR INCORPORATION"

And those opposed to the proposition of incorporation shall place a X in the block on the ballot form beside the words:

"AGAINST INCORPORATION"

The sheriff of this county shall post notice of said election by posting three notices thereof in three public places within the boundaries of said above defined area ten full days prior to the date fixed for said election.

Dated this _____ day of _____ A.D., 20__.

County Judge

County, Texas

FORM NO. 3

ORDER DECLARING RESULTS OF AN ELECTION HELD IN THE

CITY OF _____

Whereas, an election was duly held in the town of _____ on the ___ day of _____, AD., 20 __, to determine whether the hereinafter described territory should be incorporated under Chapter 6 of the Local Government Code of the State of Texas for municipal purposes to be known as the City of _____, and returns of said election duly made and it appearing from said returns that a majority of the votes were cast at said election in favor of incorporation, there being _____ votes for incorporation and _____ votes for no incorporation.

It is, therefore, adjudged and decreed that said election resulted in favor of such incorporation, and I, _____, County Judge of _____ County, Texas, do hereby declare that said territory hereinafter described is duly incorporated as a Type A general-law municipality for municipal purposes and shall be known as the City of _____.

The territory so incorporated is described by metes and bounds as follows:

(Here set out metes and bounds of the city)

This order is made and entered upon the records of the Commissioners' Court of _____, County, Texas, this _____ day of _____, AD. 20 __, and a certified copy of the same, together with the plat of said territory incorporated, shall be recorded in the proper record of deeds of said _____ County.

Witness my hand, this ___ day of _____, AD., 20__.

County Judge

County, Texas

(NOTE: The above forms are for incorporation of large city or town, under the aldermanic form of government or a Type A general-law municipality. Section 6.011 requires that to incorporate as a city

or town there must be at least 600 inhabitants in the area to be incorporated, at least 50 qualified voters who reside in the area must sign the petition, The procedure to be followed to incorporate a Type A city is the same as that found in Chapter 7, for small town and villages. Hence, the reference in Form No. 2 relates to 600 inhabitants and 50 qualified voters.

To incorporate as a small town or village, now known as a Type B general-law municipality, under Chapter 7, change the number of inhabitants to read "more than 200 inhabitants", but the number of petitioners continues to be 50 so the petition will read "fifty or more qualified voters who are residents of said town", You will also need to change all references from Chapter 6 to Chapter 7, and the name of the municipality to "Town of _____" or "Village of _____"

To incorporate as a Type C general-law municipality and operate under the commission form of government, refer to Chapter 8, Local Government Code, as amended, and depending on whether the municipality will be incorporated as a larger city or town or as a small town or village, use the proper population bracket as found in the appropriate statute.) The petition to form a Type C general-law municipality needs to be signed by 10% of the registered voters.

As indicated above, these are only examples to be used as a guide. Please have a qualified attorney review all forms and documents prior to submission.

III.

RESPONSIBILITIES OF CITIES & THE ROLES OF THE MAYOR, COUNCILMEMBERS, AND CITY STAFF

RESPONSIBILITIES OF CITIES & THE ROLES OF THE MAYOR, COUNCILMEMBERS, AND CITY STAFF

Over the years people have found that certain functions and services can be better provided if they join together and, as a unit, provide a "government" to establish rules and regulations and to provide certain services for all. In Texas one of the smallest units of government, but in fact the one that has the most impact on individuals and their daily lives, is called a city or town.

ORGANIZATION OF TEXAS CITIES

The creation of cities and towns is authorized by the Texas Constitution and modified by the state statutes. **Cities of 5,000 population or less are incorporated under the general-laws of the state. Cities over 5,000 population may, by majority vote at an election held for that purpose, adopt or amend a home-rule charter,** subject to certain limitations.

General-law cities have no charter, but operate under the general-laws of the state. There is a popularly accepted statement that cities operating under the general laws may only do those things specifically authorized by the statutes while home-rule cities may include within their charters any authority or power not expressly prohibited by the State Constitution or statutes.

Texas cities, both home-rule and general-law, have a great deal of latitude for independent operation. They have ordinance making powers, authority to regulate utilities; authority to establish building regulations, land use controls, and many other powers and privileges. Home-rule cities have some specific powers and privileges not available to general-law cities. These include:

- ◆ The presumption by the courts that the acts of the city are legal.
- ◆ The power to adopt any form of government desired (subject to the approval of the US. Justice Department under the Federal Voting Rights Act).
- ◆ The power to create offices and to prescribe qualifications (the Texas Election Code limits age and residence requirements).
- ◆ The power to abate a nuisance outside of the city limits.
- ◆ The power to unilaterally annex without the restrictions placed on smaller general-law cities.
- ◆ The power to adopt a tax rate of \$2.50 per \$100 valuation, however the city's home rule charter may prescribe a limit lower than the \$2.50.

MUNICIPAL FUNCTIONS

Other than the general requirement that cities are responsible for the health and safety of its citizens, there is no law, which requires a city to perform or not perform certain functions. However, There are numerous requirements tacked on by the federal or state governments that may place responsibilities on the local governments, but provide no financial support to perform the required services or programs. These are called "unfunded mandates." In the

event that a city elects to perform functions, the city needs to look closely at any regulations or other requirements that must be met in the performance of those functions. Municipal functions are divided into two general categories: Governmental and Proprietary. While the lists below were developed for the Tort Claims Act, they provide a guide for cities to identify functions generally provided for their citizens.

Governmental Functions are those ordinarily deemed necessary to protect the health and safety of the citizens or which are required by state law and generally include:

- ❖ police and fire protection and control
- ❖ health and sanitation services
- ❖ street construction and design
- ❖ bridge construction and maintenance and street maintenance
- ❖ cemeteries and cemetery care
- ❖ garbage and solid waste removal, collection, and disposal
- ❖ establishment and maintenance of jails
- ❖ hospitals
- ❖ sanitary, or now being called wastewater, and storm sewers
- ❖ airports
- ❖ waterworks
- ❖ repair garages
- ❖ parks and zoos
- ❖ museums
- ❖ libraries and library maintenance
- ❖ convention centers, or coliseums
- ❖ community, neighborhood, or senior citizen centers
- ❖ operation of emergency ambulance service
- ❖ dams and reservoirs
- ❖ warning signals
- ❖ regulation of traffic
- ❖ transportation systems
- ❖ recreational facilities, including but not limited to swimming pools, beaches, and marinas
- ❖ vehicle and motor driven equipment maintenance
- ❖ parking facilities
- ❖ tax collection
- ❖ fireworks displays
- ❖ building codes and inspection
- ❖ zoning, planning, and plat approval
- ❖ engineering functions
- ❖ maintenance of traffic signals, signs, and hazards
- ❖ water and sewer service
- ❖ animal control
- ❖ community development or urban renewal activities undertaken by municipalities under Chapters 373 and 374 of the *Texas Local Government Code*.

(Section 101.0215 of the Texas Civil Practice and Remedies Code)

Proprietary Functions - those functions or operations which a municipality may, in its discretion, perform in the interest of its inhabitants and may include:

- ❖ operation and maintenance of a public utility such as gas or electric; (types not water and wastewater or other services included in the list of governmental functions above)
 - ❖ amusements owned and operated by the municipality; and
 - ❖ any activity that is abnormally dangerous or ultra hazardous.
- (Section 101.0215 of the Texas Civil Practice and Remedies Code).**

LIABILITY OF CITIES

The city is responsible for its actions and for the actions of its employees. Cities may sue and be sued, but the state has placed limits on the amount of liability for damages arising from those functions described as governmental. There is no limit on the amount of liability for claims arising from proprietary functions.

The maximum limits for monetary damages caused in performance of a governmental function for a municipality are \$250,000 for each person and \$500,000 for a single occurrence for bodily injury or death; and \$100,000 for each occurrence of injury to or destruction of property. **(Section 101.023 of the Texas Civil Practice and Remedies Code).**

While the state has incorporated a long list of governmental functions, there is no requirement that any city perform these functions or provide these services. **The decision as to what programs or projects that are to be provided or operated by the city is left to the governing body which is elected by the citizens of that city.**

TYPES OF CITIES

Cities, towns and villages in Texas are created in one of three statutory methods:

1. **GENERAL-LAW CITIES** are those incorporated under the General laws of the State. *The Texas Local Government Code* identifies three types of general-law municipalities:

Type A general-law municipalities are the larger cities or towns and must have had, at the time of incorporation or at the time they were changed to a Type A City, more than 600 inhabitants or one or more manufacturing establishments. Prior to the recodification of the state statutes in 1987, these were identified as being incorporated under Chapters I-10, Title 28, Revised Civil Statutes of Texas, 1925 as amended V.T.C.S. A city operating as a Type A general-law municipality may continue to do so even though its population may fall below 600. A Type A general-law municipality having a population of 5000 or less may levy a tax not to exceed \$1.50 per \$100 value. (Section 4, Article 11 of the Texas Constitution.)

Type B general-law municipalities are the smaller towns or villages, which must have had a population of more than 200 but less than 10,000 to have been incorporated. These were previously identified as being those incorporated under Chapter II, Title 28 V.T.C.S. A Type B general-law municipality has the same authority, duties, and privileges as a Type A general-law municipality, unless the Type B general-law municipality in exercising the authority or privilege or performing the duty would be in conflict with another provision of this code or other state law that relates specifically to Type B general-law municipalities. (LGC 51.035) Some attorneys call this the "borrowing provisions." Towns and villages (Type B general-law municipalities) may levy a tax of not more than \$.25 per \$100.00 value. **(TEXAS TAX CODE ANN. §302.001.)**

Type C general-law municipalities are those cities, towns or villages which operate with a commission form of government and were previously identified as being incorporated under Chapter 12, Title 28, V.T.C.S. They too must have had more than 200 inhabitants at the time of incorporation. A Type C general-law municipality with less than 500 inhabitants operates as a Type B municipality while a Type C general-law municipality with over 500 inhabitants but less than 4,999 inhabitants operates as a Type A municipality, unless the authority conflicts with another statute specifically relating to a Type C general-law municipality. (LGC 51.051).

Type C general-law municipalities with a population of less than 500 are restricted to a maximum tax rate of \$.25 per \$100 property valuation, while one with a population of more than 500 may adopt a tax rate of up to \$1.50 per \$100 valuation. (Texas Tax Code Ann. Section 302.001) A Type C general-law municipality with an assessed property valuation of \$500,000 or more may by 2/3 vote of the governing body adopt a tax rate of up to \$1.50 per \$100 valuation. (LGC 51.052)

2. **HOME-RULE CITIES.** The state constitution authorizes cities more than 5,000 inhabitants to adopt a home-rule charter. The Home-rule charter will specify the type of government and will identify specific powers of the city, the type of city government, and the specific roles of the mayor, councilmembers and staff. A home-rule municipality, which falls below 5,000 population, does not lose its Home-rule charter and may continue to operate under that charter.
3. The third category of cities is those with **SPECIAL CHARTERS GRANTED BY THE LEGISLATURE prior to 1912.** Most students of Texas municipal government treat special charter cities as home-rule cities. Many special charter cities have now adopted their own home-rule charter, however there are some that still operate under the special charter.

OPERATION OF CITIES

A home-rule city may select any term desired to designate its governing body. The most common terms are city council or city commission.

The official name for the governing body of a Type A or B general-law municipality is Board of Aldermen, but many cities use the term city council.

Unless a Type A general-law city has adopted a ward system in which there will be two aldermen from each ward, the board of aldermen will consist of five aldermen and a mayor. A quorum for a Type A general-law municipality is a majority of the number of alderman for that city not including the mayor, however at a called meeting or a meeting to consider the imposition of taxes, two-thirds of the number of aldermen constitutes a quorum. (LGC 22.039)

The governing body of a Type B general-law municipality shall consist of a mayor and 5 aldermen. A quorum for a Type B general-law municipality is the mayor and three aldermen or four aldermen if the mayor is absent. (LGC 23.028)

The Type C general-law municipality has a city commission form of government which will consist of the mayor and two commissioners. A quorum for a Type C general-law municipality is the mayor and one commissioner or two commissioners if the mayor is absent.

The successful operation of any organization depends upon a definite description and understanding of the duties and responsibilities and the relationships of the various positions within the organization. A municipal organization is similar to a private corporation, but because the governing body is elected, and elective positions sometimes connote nonexistent relationships, it is particularly important that each member fully understands and accepts their roles.

As indicated, home-rule charters identify the specific roles for the various officers and staff of home-rule cities, but in general the roles are similar to the roles of these persons in general-law municipalities. The roles described below relate specifically to general-law municipalities and generally to home-rule cities. The term councilmember or city council applies to the city council, city commission or board of aldermen.

THE MAYOR

The mayor is the highest elective office in municipal government. With the exception of those home-rule cities with charters, which prescribe for the election of councilmembers and the council choosing one of its members to be mayor, **the mayor is elected as mayor.**

The mayor presides over the council and is expected to provide leadership to the council and to the city as a whole. The mayor is the ceremonial head of the city and represents the city at official and ceremonial functions.

The mayor of any general-law municipality may vote only in case of a tie vote among the aldermen, but with five aldermen there is no tie unless one is absent or abstains from voting. Earlier determinations held that the mayor of a Type B city had a vote as a member of the Board of Aldermen, and if all six members were present, it took four votes to approve any resolution or ordinance, however the "borrowing provisions" (LGC 51.053) may negate that authorization. The mayor of a Type C general-law municipality probably comes under the same provisions and may vote only to break a tie. There are attorneys who hold that the mayor of the Type C municipality may also make or second motions as well as vote on all motions, but again, this may have been negated by the "borrowing provisions."

The mayor of all cities share legislative responsibilities with the council in:

- **identifying the needs of the city**
- **setting policy goals**
- **adopting rules, regulations, ordinances, etc.**
- **evaluating the extent to which municipal policy meets the goals**

In a General-law City, in the absence of a city manager or a city administrator, **the mayor serves as the administrator and is responsible for:**

- **the operation of the city and direction of city employees (22.042)**
- **the enforcement of the laws of the city (22.042)**
- **the preparation of the annual budget (LGC 102.001)**

- **the appointment of officers and employees (LGS 22.010)**

While the mayor is responsible for the appointment of officers of the city, with the exception of positions of a housing authority board, all mayoral appointments are subject to confirmation by the city council, unless a home-rule charter provides otherwise.

The mayor of a general-law municipality may veto an ordinance or resolution and return it to the governing body with a statement of his objections, but the council can override the veto by a simple majority vote. To override the veto, the council would need to have the item placed back on the agenda of the next meeting. This authority is specifically spelled out for a Type A general-law municipality, and in the absence of other authority or limitations, the mayors of the other two types of municipalities should have the same veto authority. (LGC 52.003)

The mayor of a general-law city is the signatory for the city and as such must sign all ordinances, resolutions, contracts, etc., ***after they have been approved by the council.*** The signatory authority for a city, which has a home-rule charter, will in most cases be spelled out in that charter. While the mayor of a general-law city is the signatory for the city, **the mayor may not sign any contract nor make a commitment of the city unless authorized by a resolution by the city council.**

The mayor of any city has extraordinary powers in case of emergency or disaster.

In a general-law city, in the absence of a municipal judge the mayor is ex officio judge.

The mayor who works with the city council and seeks the councilmembers' individual and collective advice and counsel, who shares recognition, who coordinates with the city staff and listens to their input and recommendations, who provides leadership to the city and listens to the concerns and interests of the citizens can be very effective and dynamic. Yet one that has his/her own agenda, who likes to hog the limelight, who derives pleasure from embarrassing city staff, and who endeavors to flaunt authority may succeed temporarily, but in most cases will soon lose respect and effectiveness. When the mayor, council members, or city staff for that matter, fall into the pattern of the latter description, the real losers are the citizens and the city as a whole.

THE COUNCILMEMBER

The councilmember, alderman or commissioner, as applicable, has a distinct role to play in city government in that the council, meeting as a whole, must approve all ordinances, adopt the budget, confirm the appointments, set the policy and determine the direction of the city. **In short, the council is responsible for the total performance of the city government, but the council must take care to assure that all actions are reasonable and prudent.**

The primary duty of the councilmembers is that of policy making, a role shared with the mayor. This role requires:

- **identifying the needs of the city**
- **formulating programs and services to meet the needs as far as possible within the resources available**
- **adopting the ordinances, rules, policies, and regulations**
- **providing the resources required to support the programs and services**

- evaluating and measuring the effectiveness of the programs and services

Sitting as the governing body, the city council:

- is responsible for the health and safety of the citizens
- establishes the goals and objectives of the city
- exercises regulatory power by adopting rules, regulations, laws, and establishing formal policies for the city
- establishes the city's annual program of service by adopting the budget, which directs the expenditure of funds. (The mayor, city manager, or city administrator prepares the budget, but the city council adopts the budget, establishes the levels of appropriations, sets the level of taxes, and establishes the revenue sources to finance the appropriations.)
- must balance out the needs of the city with the ability of the tax payers to pay
- sees that the city gets the best possible value for the dollars expended
- is responsible for city employees, their performance and conduct
- anticipates problems and prepares contingency plans
- confirms the appointments proposed by the mayor. (The council may reject a mayoral appointment, but may not substitute its selection in the place of the one rejected. The mayor must come back with another appointment.)
- may override any veto proposed by the mayor of a Type A municipality
- elects one of its members to be mayor pro-tem; the mayor pro-tem does not become "mayor," he/she remains a councilmember and may introduce motions, second motions, vote, etc. while presiding in the place of the mayor
- in the absence of both mayor and mayor pro-tem, in order to conduct business, the remaining members of the council, assuming there is a quorum present, may elect from their members a presiding officer and conduct business as normal.

AS AN INDIVIDUAL THE COUNCILMEMBER MAY NOT DIRECT EMPLOYEES, DETERMINE PRIORITIES, MAKE ASSIGNMENTS, OR MAKE DECISIONS FOR THE CITY, BUT SITTING AS A MEMBER OF THE COUNCIL, HE/SHE JOINTLY WITH THE COUNCIL AS A WHOLE, IS TOTALLY RESPONSIBLE FOR THE OPERATION OF THE CITY AND ALL ACTIONS MUST BE REASONABLE AND PRUDENT.

THE CITY MANAGER AND CITY STAFF

The staff and employees of a city perform key roles. They are the ones who enforce the laws, fight the fires, maintain the water system, fix the chug holes, clean the parks, keep the records, prepare the reports, and perform the myriad of other tasks that fall to the lot of the city. The staff does the work, performs the services, compiles the data, prepares the reports, and provides the information for the city council.

In order for the staff to perform effectively, there must be a central point of authority. This is the city manager or the city administrator, or in the absence of any other formal position, the mayor is the administrator. Sometimes the mayor delegates the administrative role to the city secretary, the utility superintendent, or to another staff member. In other situations the administrative role may fall to some staff member by default.

Whatever the title, someone must oversee and coordinate the performances of the various employees. This person must translate the city council's policies into action and must

consolidate the reams of information and transmit it back to the city council in a manner that can be understood by the council. The city manager or city administrator and the city staff as a whole must play a key role in keeping the council informed about program and employee concerns and particularly budget and financial performances. **The manager or administrator must be prepared to advise the city council concerning needed changes in city policy or the need to establish city policy, but the manager does not make city policy decisions.**

SUMMARY

- ❖ The mayor presides over the city council and provides the leadership.
- ❖ The city council, working as a whole, plans the program, sets the policy, adopts the ordinances, authorizes contracts and approves the budget.
- ❖ The city manager or administrator and the city staff execute the policy, perform the tasks, provide information for the council, and get the job done.
- ❖ This takes teamwork, respect for roles and responsibilities, effective communication both up, down, and across the lines of authority, and cooperation of all.

City government is the level where action happens. It is both exciting and challenging to be a member of city government. We commend you on your participation in city government, and we want to help you in any way possible to make your service to your city both rewarding and successful. Do not hesitate to call us at the

Texas Department of Housing and Community Affairs
Local Government Services
P.O. Box 13941
Austin, TX 78711-3941

You may call us at 512-475-3844 or use our toll free number, 1 (800) 544-2042. The Department's Internet address is www.tdhca.state.tx.us The email address for John Clary, principal editor of this manual, is jclary@tdhca.state.tx.us

MUNICIPAL OBLIGATIONS

CITIES MUST HAVE:

- A Budget Officer
- Select a depository
- Provide insurance for liability and property
- Provide an Engineer for Public Works and Construction
- Provide Defense for Police Officers
- Meet Handicapped Requirements

CITIES CAN:

- Codify Ordinances
- Adopt and Enforce Zoning Regulations
- Condemn Property for Violations of Health Standards
- Levy Property Taxes without going to the public for them to vote.
- Establish and Regulate Health Standards
- Operate Utilities, Police, Fire, Etc.
- Exercise Power of Eminent Domain

CITIES MUST HOLD PUBLIC HEARINGS BEFORE:

- Adopting Subdivision Regulations
- Adopting Zoning Regulations
- Adopting a Comprehensive Plan
- Annexing Property
- Adopting the Annual Budget
- Raising Taxes (There are special exemptions for small cities.)
- Levying Assessments for Street or Other Public Imp.
- Sale of Park Land
- Condemnation of property

IV.

CHECKLIST FOR NEWLY INCORPORATED CITY

John Clary
TDHCA,

The following checklist is a guide for action that may be used by the city council of a newly incorporated city. Please note that the term "city council" will be used although the official term may be board of aldermen, city commission, or city council." Remember, these are only guides. For definitive directions, the city should consult with its attorney.

1. **Council meetings- All meetings must be open to the public unless they meet the specific criteria for a closed meeting.**
 - a. Council must meet once each month and should by resolution designate the time and place where the meetings will be held. The council may meet at other locations should there be a need.
 - b. There must be an agenda for each council meeting. The agenda must be posted at least 72 hours prior to the meeting at a location available to the public at all times day or night. **No action can be taken on any item unless the item is on the posted agenda (Chapter 551, Texas Government Code).**
 - c. The city council should adopt rules of order and procedure. Usually the council will adopt Robert's Rules of Order. Keep in mind that the mayor, if present, must preside.
 - d. A quorum for a Type A city is a majority of the number of aldermen established by Section 22.031 of the Local Government Code (LGC). A municipality that is divided into wards will have two aldermen from each ward, and a municipality that is not divided into wards will have five aldermen (22.031 and 22.039); however at a called meeting or a meeting to impose taxes, the quorum is two-thirds of the number of aldermen.
A quorum for a Type B city is the mayor and 3 aldermen or 4 aldermen if the mayor is absent (23.028 LGC).
A quorum for a Type C city shall be the mayor and one commissioner.
2. **Determine terms of office.**

The term of office for the mayor and aldermen of a Type A general-law municipality is two years unless a longer term is established under Article XI, Section 11, of the Texas Constitution (22.035).

The term of office for mayor, alderman, and marshal in a Type B general law municipality will be one year, but the governing body may provide by ordinance 2-year staggered

terms with the mayor and two aldermen determined by lot, serving a two year term and the other three aldermen serving an initial term of one year, and subsequent terms will be two years (23.026).

The term of office of the mayor and commissioners of a Type C general-law municipality will be two years unless a longer term is established under Article XI, Section 11, of the Texas Constitution (24.023).

3. Determine the staffing required:

- a. designate a city secretary;
- b. select a city attorney;
- c. select other staff as needed.

4. Select a mayor pro-tem that will perform the duties of the mayor if the mayor fails or is unable or refuses to act (23.027).

5. Select a permanent mailing address.

There must be a permanent address either at a permanent city hall building or a post office box. Use of the mayor's home would be fine until there is a new mayor, and then it all falls apart as a former mayor for years may continue to receive correspondence addressed to the city.

6. Obtain necessary supplies.

a. Minute book. A spiral binder may be fine for notes of the meeting, but the city needs, as soon as possible, to acquire a permanent hard-back binder for the permanent minutes. Most cities use a binder in which the pages may be removed for typing the minutes rather than hand written records. Most of these binders will, upon proper sealing will provide a large measure of protection against fire or damage.

b. Resolution book.

This also should be a hard-back binder with removable pages. Always remember that resolutions are indications of the will of the council and they are not ordinances.

c. Ordinance book.

This is the third hard-back binder that should be maintained by the city in order to permanently record all ordinances, which are the determination of law or a regulation. The city council may pass a resolution indicating their support of an issue, but it passes an ordinance establishing a speed limit, placing a stop sign, or adopting a budget, levying taxes, etc.

d. Other supplies could include:

- (1) city seal;
- (2) cash receipts/disbursement journal;
- (3) receipt book;
- (4) appropriate ledgers for financial information;
- (5) stationery;
- (6) tape recorder to record meetings;
- (7) office equipment such as typewriter (now it almost has to be a computer), adding machine, calculator, etc.;

(8) gavel for mayor.

7. **Designate an official city newspaper for publication of notices, etc.** (52.004, 52.011, and 52.012).
8. **Select an official city depository.**
Chapter 105, Local Government Code contains the procedures to be followed in selection of a depository.
9. **Designate persons authorized to sign checks.** Funds of the municipality may be paid out only on checks of the treasurer, and unless the municipality operates under a charter that provides otherwise, the treasurer may draw checks only on a warrant signed by the mayor and attested by the City Secretary (105.074 LGC). Therefore the council should name a city secretary and an assistant city secretary who may act in case of the absence of the city secretary. The mayor pro-tem may sign in the absence of the mayor.
10. **Establish the city's fiscal year.**
We encourage the city to set its fiscal year to begin October 1 and to end September 30, thus the city may need to have an interim budget at least until the start of the first full fiscal year.
11. **Adopt a temporary or interim budget for whatever period is required.** Remember that no funds can be expended unless they are covered by the budget, except in emergency (102. LGC). While the new city may not need much money, we have identified several things that it must acquire either by purchase or by donation.
12. **Establish an official city map** (41.002 LGC). The map prepared for the incorporation election may be sufficient, but now the city's Extraterritorial-Jurisdiction must be shown.
13. **Provide for bond and security to be executed by the marshal** (23.024 LGC).
We recommend that all of the officials including the city secretary be bonded.

You should also check to find out what qualifications the marshal must secure, i.e., does the marshal have to be certified as a peace officer by the Commission on Law Enforcement Officer Standards and Education?

14. **Send copy of the order of incorporation as filed by the judge, map of city, permanent address, names of mayor and aldermen to:**
 - a. Louise Stewart
Bureau of the Census
Geography Department
Washington, D.C. 20233
 - b. Department of Transportation
Planning and Program Division
Attn: Martin Broad
P.O. Box 149217

Austin, TX 78714-0217

c. Carole Keeton Rylander
Comptroller of Public Accounts
L.B.J. State Office Bldg.
Austin, TX 78774

d. Secretary of State
Statutory Filing Division
P. O. Box 12887
Austin, TX 78711-2887

Texas Department of Insurance
Engineering Services
P.O. Box 149104 Mail Code 103 - 3A
Austin, TX 78714-9104

Other offices which should be notified of the city's existence, but do not necessarily need maps, etc., include: (they do need the permanent address and phone number of the city and the name of the mayor and city councilpersons as well as other officers)

Texas Municipal League
1821 Rutherford Lane, Suite 400
Austin, Texas 78754-5128

Adjacent or neighboring cities

Applicable Council of Governments

Texas Department of Housing and Community Affairs
Local Government Services
P.O. Box 13941, Capital Station
Austin, Texas 78711-3941

15. **Although the membership fees may stress the young city, we encourage it to join the applicable council of governments and the Texas Municipal League as quickly as financially feasible. The materials and assistance from these agencies will be of tremendous value.**
16. **Since money does not grow on trees and even existing cities are hard pressed for resources, we encourage the new city to investigate several possible sources for help or for revenue. Some of the prominent ones include:**
 - a. Contracting with utilities which provide services to your community and requiring the utility to pay to the city a gross receipts tax (street rental charge) for the use of the city streets and rights-of-way. This is called issuing a franchise.

- b. Holding an election to adopt the 1¢ city sales tax. Information may be obtained from the Office of the Comptroller or from the Texas Municipal League (TML). The City may want to look at other sales tax options at the same time.
 - c. Negotiating with the County Commissioners' Court for provision of services as possible. The county may be able to provide services such as:
 - (1) street maintenance;
 - (2) law enforcement;
 - (3) garbage collection and disposal;
 - (4) health inspections including septic tanks, if applicable;
 - (5) emergency medical services;
 - (6) etc.
 - d. Entering into formal mutual aid agreements and /or interagency contracts and service contracts with the applicable fire protection agency, EMS service, law enforcement agency, and other services as needed.
17. **As time moves on, the city will want to obtain from the Central Appraisal District of the applicable county or counties estimates of the taxable value, so it can have knowledge of the type of tax revenue that could be available to fund municipal services.**
18. **Consult with the city's attorney and appropriate insurance carriers concerning acquisition of at least liability insurance.** By all means, the city should investigate the Texas Municipal League Insurance Program and its policies and their coverage prior to making any commitments.
19. **Evaluate need for ordinances.** Certainly the city would not want to go all out, but there are a number of ordinances that the city may want to consider:
- a. Nuisance ordinance relating to noise, trash, etc.
 - b. Health regulations and particularly classifying health nuisances and providing processes for abatement.
 - c. Traffic regulations.
 - d. Street numbering systems.
 - e. Anti-littering.
 - f. Subdivision regulations.
 - g. Land-use controls.
 - h. Fire prevention.
 - i. Construction standards.

j. Sanitation regulation.

Chapter VIII contains additional ordinances which might need to be considered.

20. **Conducting needs assessment to determine areas of concern.**
21. **Developing long-term goals and short-term objectives which should constitute steps toward accomplishment of the goals.** The goals need not be elaborate, in fact the principal goal may be to prevent changes. In this latter case, the objective would be steps to hold the line and to maintain status quo. Keep in mind that it is hard to stop change.
22. For further information or assistance, please contact the Texas Department of Housing and Community Affairs, Phone (512) 475 3844 or (800) 544 4042.

V.

FUNDING SOURCES AND OTHER QUESTIONS FOR A NEWLY INCORPORATED CITY

FUNDING SOURCES AND OTHER QUESTIONS FOR A NEWLY INCORPORATED CITY

WHAT KIND OF FUNDS WILL BE AVAILABLE TO THE NEW CITY?

A. What local funds can be generated by the city?

1. Ad valorem (Property) Tax (See discussion on page 3 of this Chapter.)
2. Sales tax, if there are any retail establishments in the community, (must hold election to adopt 1¢ sales tax). See discussion on page 3.
3. Franchise Taxes
 - a. Electric
 - b. Telephone
 - c. Natural Gas
 - d. Cable Services

Cities ordinarily enter into long-term contracts called franchises authorizing the utilities to provide services, and the franchise tax or street rental is paid to the city for the privilege of using the city's streets. The city needs to be very careful in this area as the state and federal governments proceed to deregulate utilities and as the Internet continues to develop.

4. Can the city begin immediately begin collecting traffic fines?

Not really, the city must first adopt traffic laws and other laws deemed necessary, then train the marshal or establish a police department and train the personnel before it begins to enforce the laws that it has adopted. The law enforcement officers may enforce some state laws, but the new city needs to be very cautious about enforcing laws until the its officers are qualified to operate. City can keep fines for violations of city ordinances up to a limit as established by the State. (Keep in mind that part of all fines must be forwarded to state comptroller.)

5. Service charges.

The city may levy charges for any services provided by the city. Ordinarily these will be operation of a water or sewer system, collection and disposal of solid wastes, licensing of contractors and inspection of construction, etc.

B. Does the county provide help to the new city?

1. Counties do not ordinarily provide any funds to help a city, but there are times at which there may be a service that the county could provide to the citizens that reside within the bounds of the city. (Keep in mind that the fact of incorporation of a city or town does not take the area out of the county, nor does it reduce the level of taxes paid to the county.)
2. A county may, at county's discretion, continue to provide service to new incorporated city, i.e., Maintain roads and streets, provide law enforcement through the sheriff, provide ambulance service, etc. If the county does provide service, it is advisable to enter into a contract as described below.
3. Interlocal Contracts
 Incorporated communities may contract with other cities, a county or counties, other public or private agencies etc., for services. For example, an incorporated city may contract with the applicable county to maintain streets, provide services, etc. The terms of the contract would have to be acceptable to both the city and the county. These are called interlocal contracts and are authorized by the State.

C. What kind of programs does the State have that will help a new city?

The State of Texas does not provide much direct financial assistance to incorporated cities but the state does administer some federal grant programs that the city would have to make application and join into competition.

1. Texas Department of Housing and Community Affairs. The Texas Department of Housing and Community Affairs (TDHCA) administers the Small Cities Community Development Block Grants of the U.S. Department of Housing and Urban Development. These grants must benefit low and moderate income persons. The grants may be used for water, sewer, streets, housing rehabilitation, etc. The funds are federal funds but are passed through the State Agency.

The Department also administers the HOME program of grants for renovation and repair of dwelling units. These are also very competitive, but very good programs.

2. Water Development Board. The Board has loans, and in some qualifying areas limited grants, for water and sewer improvements.
3. Parks and Wildlife. The Agency has grants for outdoor recreation. These require the local entity to provide 50% matching funds.
4. Criminal Justice. Very limited, must conform to criminal justice plan for region.
5. The State does have a number of agencies that can offer advice, information, training, and similar assistance to cities. Some that we would point out include the Texas Department of Housing and Community Affairs, the Texas Department of Economic Development, The Attorney General's Office, The Comptroller's Office, The Texas Department of Health, The Texas Natural Resource Conservation Commission, The

Texas Water Development Board, The Texas Commission on Law Enforcement Officer Standards and Education, Texas Department of Insurance, etc.

- D. With all of the funds available at the Federal level, will it be possible for a new city to get federal help?
1. The Federal Government has Economic Development Administration grants and loans for job creation. Projects must be EDA eligible and the applicant must be eligible for EDA assistance. These funds are very limited and it is difficult to get a grant, but it is possible.
 2. Rural Development (Formerly Farmers Home Administration) has Loans and some grants for community facilities such as water, sewer, community centers, fire equipment, etc.
 3. Department of Housing and Urban Development. As noted above, many of these funds go through TDHCA, but they do have housing programs that may be of interest for the cities.
 4. There are other funds and programs that may be available under certain circumstances, but the city would need to have someone look at these on a case by case basis.

WHAT KIND OF TAXES CAN A CITY LEVY?

A. Ad valorem Taxes or property taxes.

The governing body of a city under 5,000 population may levy an ad valorem tax of up to \$1.50 per \$100 of appraised value in a Type A General Law Municipality and up to \$.25 in a Type B General Law Municipality. The city commission of a Type C General Law Municipality that has more than 500 population or \$500,000 or more of assessed valuation may adopt the powers of a Type A general-law municipality and may levy a tax of up to \$1.50 for each \$100 in appraised or taxable value. A Type C city not meeting those requirements will be limited to the same power as a Type B general-law municipality and thus will be limited to a 25¢ tax rate.

In Texas, the average city tax is about 60¢, but there is no rule of thumb about what the city tax levy should or will be. Each individual city must determine its needs, then it must determine where to find the funds to support the level of program desired and possible within the level of resources available. For thinking purposes, here are some figures of what various properties would pay at various tax rates. \$10,000 value home @ 60¢ would pay \$60.00 per year. This would be about \$4.17 per month. A \$30,000 value home or business at 60¢ tax would pay \$180.00 per year (\$15.00/mo.). If 600 homes or businesses averaged paying \$180.00 each, the city would net would gain about \$108,000 in taxes, assuming everyone paid 100%. Unfortunately this is not always the case.

We would recommend that a new city not plan on more than 80% collection for the 1st year of taxation. Most established cities may be able to plan their budget on a collection rate of 92 to 94 %

B. When can a city expect to receive property tax dollars?

The property tax is based on property within the jurisdiction on January 1 of each year. Thus if a city is incorporated at the November election of any year and the city council is elected in January of the next year the council may begin to plan, but it can not receive ad valorem tax dollars until October. Of course the council must work with the Central Appraisal District of the county to determine the value of taxable property and make arrangements to have the tax bills sent out and taxes received. If the incorporation election is held in May, it will be October of the next year before taxes may be collected by the city.

C. When can a city start collecting Sales Taxes?

A city may adopt the 1¢ city sales tax, but first the city must hold an election for the voters to approve the adoption of the sales tax and report the action to the Office of the Comptroller. Merchants will then be directed to adjust the amount of sales tax they collect and remit it to State Comptroller's Office. That office will retain a small fee for the collection and forward the remainder to the city. Under certain conditions, cities may now adopt extra 1/2¢ sales tax for special purposes such as economic development, lowering property taxes, establishing a crime control district, emergency services, etc. It could take up to six months, and in some cases even longer, to hold elections and start collecting the sales tax and even more time to have the checks processed and funds returned to the city. (Please see the time table in Chapter IX.)

Should there be interest, we encourage you to contact the Comptrollers Office at 1 (800) 531 5441 Ext. 4911.

MISCELLANEOUS QUESTIONS:

If the community votes to incorporate, when will the city begin to function as a city?

The procedure for incorporating as a Type "C" General law municipality provides that the mayor and two commissioners be elected at the same time as the election for the incorporation. Thus, after the election, the County Judge, and the County Commissioners Court if desired, would canvass the votes. The Judge will then sign an order declaring the results of the election, and certify the officers, if the majority of the voters favored the incorporation. If a majority of the voters did not favor the incorporation, the election of officers is voided and they are not installed. As soon as the judge certifies the election of the mayor and commissioners and they can be sworn into office, they must assume responsibility for the affairs of the city.

The procedure for incorporating as a Type A or Type B general law municipality provides, in the event that the voters approved the incorporation, the judge will then to call a second election to elect the first slate of officers which will include a mayor and five aldermen. (Some attorneys contend that officers for a Type A or B general law municipality may be elected at the same time as the incorporation election, and cities have done so, but this office is of the

opinion that there should be two elections. Each community should follow the advice of its legal counsel.) Following the canvass of the votes for the first officers, the judge then must certify the winners, and will arrange for the swearing them in as officers.

The new mayor should then call a meeting of the new city council, board of aldermen, or city commission, as appropriate. The new city governing body will immediately assume responsibility for the affairs of the city.

The new governing body must do some housekeeping duties:

1. acquire a permanent mailing address;
2. determine the time and place of the regular monthly meeting;
3. designate a city secretary or clerk;
4. select a depository for city funds;
5. select a city seal;
6. select an official newspaper;
7. begin planning the program for the city.

Who determines what actions and what programs the new city will undertake?

What the city does or does not do will be determined by the governing body that is elected by the voters. The governing body may move very rapidly to establish regulations, etc. or it may be very slow and deliberate, taking time to study each issue, and take action only needed or at the last resort.

Does the new city need to get approval from the State to enact ordinances or set regulations?

The city does not need to get permission from the State to act, but if the city does desire to act, in most cases there will be rules, regulations, or standards that must be met. For example, the city does not have to get permission from the State to establish a police department, but if the city does elect to establish a police department, the officers must be certified by the State. If the city is to operate a water system, the operators must be certified by the State and the system must meet State standards. The city does not need to get approval to act, but if it does act, most actions must comply with State, and in many cases, federal requirements.

Can the new city expand and annex new territory?

The city may begin to annex additional area at any time, but the city must follow procedures prescribed by the State Statutes. Keep in mind that the only way that a city under 5,000 population may annex territory is by request of the property owners or voters, except in cases where the city is over 1,000 population and provides water or sewer to the area to be annexed. The Legislature in 1999 adopted very strong requirements on annexations of parcels on which there are 100 or more tracts on which one or more dwelling units exist.

When can the city begin to enforce building codes, traffic regulations, subdivision regulations, health codes, etc.?

Only after the city adopts ordinances, rules, regulations, etc. can the city begin to enforce these rules. We strongly encourage the city governing body to be very cautious about adopting ordinances, regulations, etc. It is important that the city not move faster than the citizens are ready to accept. It is also important not to adopt regulations that the city cannot or does not intend to enforce.

Does the city have to hire staff?

The city does not have to hire staff. Many cities function well with volunteer help, but at the same time there are many functions and duties for which it may be difficult to find volunteers. Another concern is that some times volunteers can become over zealous in accomplishing worth while tasks and thus expose the city to liabilities. Staff must be carefully selected and then properly trained to perform assigned duties.

Can a city receive contributions?

Cities are governmental bodies and thus qualify as tax exempt under the Internal Revenue Code. The city can receive any and all donations and contributions, but the city needs to be careful about any strings that may be attached to the contributions.

One last reminder. A city is a political subdivision and is subject to all of the rules and regulations placed by the State and federal governments. The city governing body must comply with the laws relating to open meetings, open records, conflict of interest, equal opportunity, etc. The city can sue and be sued. Texas cities have a wide latitude of discretion, but each must be very careful of its actions and the actions of its agents.

We encourage all new incorporated cities to contact us at The Texas Department of Housing and Community Affairs and take advantage of the various papers, publications, and other assistance available from this agency. We may be reached by phone at (512) 475 3845, 475 3844 or 1-800-544-2042. The mailing address is

Texas Department of Housing and Community Affairs
Local Government Services
P.O. Box 13941
Austin, Texas 78711-3941

Other sources of information are the Regional Council, The Texas Municipal League, the Municipal Affairs Section of the Attorney General's Office, The Office of the Comptroller of Public Accounts, and neighboring cities.

VI.

CHAPTER 277 – ELECTION CODE

PETITION PRESCRIBED BY LAW OUTSIDE CODE

CHAPTER 277. PETITION PRESCRIBED BY LAW OUTSIDE CODE

- Sec. 277.001. Applicability of chapter
- Sec. 277.002. Validity of petition signatures
- Sec. 277.021. Meaning of qualified voter
- Sec. 277.003. Verifying signatures by statistical sample
- Sec. 277.004. Effect of city charter or ordinance

Sec. 277.001. Applicability of chapter. This chapter applies to a petition authorized or required to be filed under a law outside this code in connection with an election, except a petition for:

- (1) a local option election held under the Alcoholic Beverage Code:
- or
- (2) an election held under Section 26.07 or 26.08, Tax Code.

Sec. 277.002. Validity of petition signatures. (a) For a petition signature to be valid, a petition must:

- (1) contain in addition to the signature:
 - (A) the signer's printed name;
 - (B) the signer's voter registration number and, if the territory from which signatures must be obtained is situated in more than one county, the county of registration;
 - (C) the signer's residence address; and
 - (D) the date of signing; and
 - (2) comply with any other applicable requirements prescribed by law.
- (b) A voter registration number is not required to appear on the petition in the signer's own handwriting.

The secretary of state has consistently interpreted this section as requiring only the signature to appear on the petition in the signer's own handwriting.

Requirement of "Texas" to appear in residence address, see note under Sec. 141.063.

Lack of authority of appellate court in original mandamus proceeding to resolve factual issues involving validity of petition signatures, see note under Sec. 273.061.

Sec. 277.003. Verifying signatures by statistical sample. If a petition contains more than 1,000 signatures, the city secretary or other authority responsible for verifying the signatures may use any reasonable statistical sampling method in determining whether the petition contains the required number of valid signatures, except that the sample may not be less than 25 percent of the total number of signatures appearing on the petition or 1,000, whichever is greater. If the signatures on a petition circulated on a statewide basis are to be verified by the secretary of state, the sample prescribed by Section 141.069 applies to the petition rather than the sample prescribed by this section.

Section 277.004. Effect of city charter or ordinance. Any requirements for the validity or verification of petition signatures in addition to those prescribed by this chapter that are prescribed by a home-rule city charter provision or a city ordinance are effective only if the charter provision or ordinance was in effect September 1, 1985.

VII.

CHAPTER 302 TEXAS PROPERTY TAX CODES TAXATION POWERS OF MUNICIPALITIES

SUBCHAPTER A. PROPERTY TAXES TEXAS PROPERTY TAX CODE

Section

- 302.01 Property Taxes Authorized: Purposes.
302.02 Other Taxes Not Considered: Certain Home-Rule Municipalities

[Sections 302.003 to 302.100 reserved for expansion]

SUBCHAPTER B. GENERAL PROVISIONS RELATING TO EXCISE TAXES

- 302.101. Occupation Taxes.
302.102. Tax Collection Powers.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. PROPERTY TAXES

§ 302.001. Property Taxes Authorized; Purposes

(a) A Type A general-law municipality may levy property taxes for current expenses, for the construction or purchase of public buildings, water works, sewers, and other permanent improvements in the municipality, including municipal schools and school sites, and for the construction and improvement of municipal roads, streets, and bridges in the municipality.

(b) A type B general-law municipality may levy property taxes at an annual rate not to exceed 25 cents for each \$100 of property valuation.

(c) A home-rule municipality may levy special or general property taxes for lawful purposes.

Added by Acts 1987, 70th Leg., ch. 191, § 1, eff. Sept. 1, 1987.

Revisor's Note

(1) This chapter uses the terminology and classification system for cities; that are adopted for use by the Local Government code. A Type A municipality is a city or town that operated under Chapters 1-10, Title 28, Revised Statutes (V.A.C.S. Articles 961-1124a.) A Type B municipality is a town or village that operated under Chapter 11, Title 28, Revised Statutes (V.A.C.S. Articles 1133-1153). A Type C municipality is a city or town that operated under Chapter 12, Title 28, Revised Statutes (V.A.C.S. Articles 1154-1164a). A home-rule municipality is a municipality that has amended its charter to operate as a home-rule municipality under Article XI, Section 5, of the Texas Constitution.

(2) Section 51.051, Local Government Code (former V.A.C.S. Article 1163), governs the powers of Type C municipalities and provides that in such a municipality having more than 500 but less than 5,000 inhabitants, the governing body has the powers of a Type A municipality, but if the municipality has more than 200 but fewer than 500 inhabitants, the municipality has the powers of a Type B municipality. That article applies to the taxation powers under this title. Therefore, except as provided in Section 302.101(a) of this title, no mention is made of the tax powers of Type C municipalities.

(3) Except for the maximum tax rate provided for Type C municipalities having more than 200 but not more than 500 inhabitants and provided for Type B municipalities, the maximum tax rates for other cities are omitted from this code because the maximum tax rates are provided by the constitution. Article XI, Section 4, of the Texas Constitution provides a maximum tax of 1 ½ percent of taxable property for cities of 5,000 or less. This is the same limitation as in former V.A.C.S. Articles 1026 and 1027. Article XI., Section 5, of the Texas Constitution provides a maximum tax rate of 2 ½ percent of taxable property in cities having a population of more than 5,000. This limitation is the same as the limitations in former V.A.C.S Articles 1028 and 1165

VIII.

CHECKLIST FOR NEWLY INCORPORATED CITY AND/OR SMALL TOWN RECONNAISSANCE

CHECKLIST FOR NEWLY INCORPORATED CITY AND/OR SMALL TOWN RECONNAISSANCE

Administration and Management

1. Minute book, ordinance and resolution book.
2. City seal
3. Receipt book -- bookkeeping system.
4. Notice of meetings. (Notice of meetings must be posted 72 hours in advance of the meetings.)
5. Agenda. No action may be taken unless item is clearly indicated on the posted agenda.
6. Swearing in of officials - oath of office.
7. Appointment of city staff (City Marshal - City police must qualify as certified peace officer. City secretary should be certified as per 22.074, but this is not required.)
8. Bond for all officials minimum of \$3,000, but any who handle money should be bonded at least twice the largest limit of funds available at any time. (24.052)
9. Designate city depository
(105.002 - 105.092)
- 10.. Designate official newspaper (52.004).
11. Availability of information, COG, TML, Federal and State programs books.
12. Income sources
 - a) Property tax
 - b) Sales tax
 - c) Utility franchise or street rental charges

- d) Service charges - water, sewer, sanitation, other
(Check adequacy of fee and recovery of cost)
- e) Fines
- f) Hotel and motel tax
- g) Transfer of funds from Utility Department to City General Fund

13. Set up municipal court

14. Ordinances (basic needs): (Once a city determines the need for a specific ordinance or regulation, member cities may obtain from the Texas Municipal League, samples of ordinances of similar cities at no cost.)

- a) Set fiscal year
Tax levy - rate - fixing time and manner of tax payment.
- b) Providing for overlapping terms of aldermen.
- c) Budget (102.002 - 102.010)
No funds may be spent except in strict compliance with the budget.
- d) Creation of city departments.
- e) Occupation taxes (Limited to 1/2 of charges by the State).
- f) Installation of traffic control devices and speed limits
(No traffic control device nor speed limit can be enforced unless established by ordinance, and all traffic controls must comply with the Traffic Code developed by the Texas Department of transportation.
- g) Blind corner.
- h) Regulation of peddlers - door to door sales.
- i) Livestock, both keeping within city and running at large.
- k) Anti-littering.
- l) House numbering.
- m) Weedy lots or other nuisances.
- n) Fireworks regulations.
- o) Creation of municipal court.

- p) Dispensing with city marshal - Impose duties on chief of police.
 - q) Creating municipal judge other than the mayor.
 - r) Adopting rules and order of business for the city council.
 - s) Establishing fire limits.
 - t) Junk car removal.
 - u) Arson reward.
 - v) Flood plain ordinance.
 - w) Subdivision Regulations
 - x) Minimum standards for construction:
 - 1. Building code
 - 2. Electrical code
 - 3. Plumbing code
 - 4. Heating and air conditioning codes
 - 5. Other
 - y). Land use regulations
 - z) Adoption of city sales tax
 - aa) Franchise or street rental ordinances for private utilities operating within city
15. Assessment of needs of the community, developing alternative solutions, establishment of priorities and development of plans to address the priorities.

Physical Facilities Reconnaissance

1. **Water Supply**

- a) Source of water, wells, lake. What is the projected safe yield in critical conditions? How does this compare with current maximum usage
- b) Treatment plant (licensed operators - condition).
- c) Distribution system.
 - 1. Main supply line
 - 2. Feeder mains

3. Pressure
4. Storage capacity
5. Fire hydrants
6. Condition of distribution lines
- 6a. Adequacy of valves
7. Equipment and tools.

2. **Sewer System**

- a) Treatment plant, condition, rating, licensed personnel
- b) Outfall and trunk lines
- c) Collectors
- d) Coverage of system
- e) Manholes
- f) Equipment and tools

3. **City Buildings**

- a) City hall
- b) Library
- c) Police Department - Jail
- d) Maintenance shops, garage, others
- e) Community Center

4. **Parks -- and/or potential open space areas. Recreation centers.**

5. **Cemetery**

6. **Streets**

- a) Condition (paved as well as unpaved)
- b) Alleys
- c) Residential
- d) Collectors and arterial
- e) Number unpaved

- f) Traffic control devices (No traffic control device can be installed unless authorized by ordinance.)

7. Storm Drainage

- a) Underground storm sewers
- b) Curb and gutter
- c) Ditches
- d) Creeks and rivers
- e) Floodplain areas

8. Solid Waste Collection and Disposal

- a) Land fill operation/dump/other/tractor
- b) Trucks and equipment
- c) Containers - commercial
- d) Collection - at curb, tub out, bags, can, barrels
- e) Brush disposal

9. Dog Pound - Animal Pick up and Disposal

10. Fire Station and Equipment - (ambulance), check by-laws, volunteer fire department

- a) Paid or volunteer personnel
- b) Number of personnel available at any time
- c) Number of trucks and type
- d) Condition of equipment
- e) By-Laws and/or standards for volunteers or other personnel

11. Emergency Medical Services

- a) Paid or volunteer personnel
- b) Equipment

- c) Condition of equipment
- d) By-laws and or standards for volunteers and other personnel

12. **Airport**

- a) Runway - paved, or not, condition
- c) Lighting
- d) Fixed Base Operator
- d) Hangars

Planning

(Use Reconnaissance Survey-Community Data Summary
as Base for Planning)

1. Complete Community Reconnaissance Survey Form
2. Land use plans and controls
3. Subdivision standards and regulations

Social Service Delivery

1. Library Services -- county assistance, bookmobile, other
2. Health Services -- clinic, inspection, public nursing
3. Recreation
4. Office of Economic Opportunity or Community Action Agency programs
5. Welfare Problems
6. Private Civic Organizations and efforts.

Economic Development

- I. Chamber of Commerce

2. Industrial Foundation
3. Industrial Park.
4. Tax Abatement Programs
5. Tax Incentive Financing
6. Tax Increment Financing
7. Industrial Revenue Bonds
8. Economic Development Sales Tax Adopted
9. Economic Development Plan

Formally adopted and generally accepted

Leadership assignments

Staffing in place

Funding available

IX.

TEXAS ELECTION CODE

DEFINITION OF RESIDENT AND TIME TABLES

ELECTION CODE DEFINITION OF RESIDENT

Sec. 1.015. Residence. (a) In this code, "residence" means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence.

(b) Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by this code.

(c) A person does not lose the person's residence by leaving the person's home to go to another place for temporary purposes only.

(d) A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home.

(e) A person who is an inmate in a penal institution or who is an involuntary inmate in a hospital or eleemosynary institution does not, while an inmate, acquire residence at the place where the institution is located. Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

ELECTION TIMELINES

1. Circulate petition. Signatures are valid for 180 days.
2. Submit the petition to County Judge.
3. County Judge reviews petition and if he determines it valid will order an election not later than 45 days before the election date. Department of Justice pre-clearance needs 60 days. Making a November, 2000 election is impractical.
4. Uniform election dates, election Code 41.001
 - January 20, 2001
 - May 5, 2001
 - August 11, 2001
 - November 6, 2001
5. If incorporation election succeeds, County Judge shall call an election of the mayor and governing body.

Note: A general election of the officers of a city may not be held on the January or August election dates. Election Code 41.001 (d)

SALES TAX

1. A municipality may adopt a sales tax at an election of the voters of the city. Tex. Tax Code 321.101
2. The election is called by a majority vote of the governing body or upon a petition signed by a number of equal to 20% of the number of votes in the most recent regular municipal election. 321.401
3. The election is held on the first succeeding uniform election date for which sufficient time exists to hold an election. 321.403
4. The tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter after the date the comptroller receives notice of the action. 321.102

If the council is elected in May 2001, and calls an election before June 27, 2001, to be held August 11, 2001, and notice is given to the Comptroller prior to October 1, the sales tax would begin January 1, 2002.

X.

SUMMARY

SUMMARY

City government is the level where action happens. It is both exciting and challenging to be a member of city government. We commend you on your participating in city government, and we want to help you in any way possible to make your service to the city both rewarding and successful. We encourage all newly incorporated cities to contact us at The Texas Department of Housing and Community Affairs and take advantage of the various papers, publications, and other assistance available from this agency. We may be reached by phone at 1-800-544-2042. The mailing address is:

Texas Department of Housing and Community Affairs
Local Government Services
PO Box 13941
Austin, Texas 78711-3941

Other sources of information are the Regional Council, the Texas Municipal League, the Municipal Affairs Section of the Attorney General's Office, and neighboring cities.

P:\LGS\JKAVANAU\DOCS\MANUALS\ADDISINC