

7

Chapter Seven Ordinances and Resolutions

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

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

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

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

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

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

- (1) Any council enactment that regulates persons or property and imposes a fine for violations must be in the form of an ordinance. This requirement is based on the principle that there must be a printed law and citizens must have some notice that it is in effect before they can be subjected to a fine.
- (2) An enactment must always be in the form of an ordinance if the state law authorizing the particular action requires an ordinance. Examples include the creation of a planning and zoning commission or setting the tax levy for the next fiscal year.
- (3) An ordinance is required to amend or repeal an existing ordinance.

Compatibility of Ordinances with State and Federal Laws

An ordinance is void if it conflicts with the U.S. Constitution, the Texas Constitution, or a federal or state law. Also, even though an ordinance might be valid at the time it was passed, if a law subsequently enacted by the state legislature conflicts with the ordinance, the ordinance is void.

An ordinance is invalid if the courts determine that the state legislature intended to preempt the field with regard to the subject addressed in the ordinance. Conversely, if an ordinance supplements and is in harmony with the law, the ordinance will be sustained. But if the legislature has preempted the field, no ordinance except those specifically authorized by statute may be enacted in such field.

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

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

Reasonableness

An ordinance that is arbitrary, oppressive, capricious, or fraudulent will be invalidated by the courts. The courts can inquire into the validity of ordinances. The courts usually will not substitute their judgment for that of the city council; but if an ordinance is not in compliance with lawful requirements, the courts may overturn it.

Form of the Ordinance

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

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

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

The following ordinance illustrates these seven components:

Ordinance No. 125

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

CAPTION

WHEREAS, because of the conditions prevailing in the City of Anywhere, the general welfare requires that the water resources available to the City be put to the maximum beneficial use and that the waste or unreasonable use be prevented; and

PREAMBLE

WHEREAS, lack of rain has resulted in a severe reduction in the available water supply to the City, and it is therefore deemed essential to the public welfare that the City Council adopt the water conservation plan hereafter set forth.

NOW THEREFORE:

ORDAINING CLAUSE

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

SECTION 1. AUTHORIZATION.

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

SECTION 2. APPLICATION.

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

BODY

SECTION 3. CONSERVATION REQUIREMENTS.

From May 1 to September 30 of each year and upon implementation by the City Manager and publication of notice, the following restrictions shall apply to all persons:

(a) Irrigation utilizing individual sprinklers or sprinkler systems of lawns, gardens, landscaped areas, trees, shrubs, and other plants is prohibited except on a designated day which shall be once every five days, and only then during the hours of 8:00 p.m. and 12:00 noon. Provided, however, irrigation of lawns, gardens, landscaped areas, trees, shrubs or other plants is permitted at anytime if: (i) a hand-held hose is used; (ii) a hand-held, faucet filled bucket of five (5) gallons or less is used; or (iii) a drip irrigation system is used.

(b) The washing of automobiles, trucks, trailers, boats, airplanes and other types of mobile equipment, the refilling or

adding of water to swimming and/or wading pools and the use of water for irrigation of golf greens and tees is prohibited except on designated irrigation days between the hours of 8:00 p.m. and 12:00 noon.

(c) The washing or sprinkling of foundations is prohibited except on designated irrigation days between the hours of 8:00 p.m. and 12:00 midnight.

(d) The following uses of water are defined as "waste of water" and are absolutely prohibited: (i) allowing water to run off into a gutter, ditch, or drain; (ii) failure to repair a controllable leak; and (iii) washing sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas except to alleviate immediate fire hazards.

BODY (CONTINUED)

SECTION 4. PENALTY.

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

PENALTY CLAUSE

PASSED AND APPROVED this ___ day of _____, 20__

/s/ _____
Mayor

ATTEST:

/s/ _____
City Secretary/ Clerk

APPROVED AS TO FORM:

/s/ _____
City Attorney

CONCLUSION