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Chapter Two

Roles and Responsibilities of Officers In General Law Cities

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

Office of the Mayor in a General Law City

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

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

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

Legislative Responsibilities

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

Under the law, the mayor is the presiding officer of the city council. In this capacity as presiding officer, the mayor's actual powers in legislative matters can be greater than those of other councilmembers. For example, the mayor can influence the flow of debate through the power to recognize councilmembers for motions or statements. Also, the mayor rules on questions of procedure at council meetings, and those rulings are binding unless successfully challenged by a majority of the governing body. Finally, the mayor of a Type A city can formally object to ordinances and other resolutions passed by the council. If the mayor objects to an ordinance or resolution before the fourth day after it is placed in the city secretary's office, it must be reconsidered by the governing body. If approved, it becomes effective (Local Government Code Section 52.003).

Appointive Powers

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

Law Enforcement and Related Duties of the Mayor

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

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

Judge of the Municipal Court

In every general law city where no separate office of judge of the municipal court exists by ordinance, the mayor is ex officio judge of the court (Government Code Section 29.005). A mayor serving as the ex officio municipal judge must still receive the annual training required of all municipal judges.

Signatory Duties

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

Ceremonial Duties

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

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

Administrative Duties

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

Limitations on the Mayor's Powers

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

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

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

Qualifications of Office

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

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

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

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

Term of Office

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

general law municipality operating under the commission form of government, the mayor's term of office is two years (Local Government Code Section 24.023).

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

Vacancies

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

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

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

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

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

Absences from Council Meetings

In a Type A general law city, the mayor is a "member" of the city council (Local Government Code Section 22.031). Under Section 22.041 of the Local Government Code, "if a member of the governing body is absent for three regular consecutive meetings, the member's office is considered vacant unless the member is sick or has first obtained a leave of absence at a regular meeting."

Removal

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

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

Compensation

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

In general law cities operating under the aldermanic form of government, no maximum salary amount is fixed for the mayor. The governing body can set the mayor's compensation at any level it chooses (Local Government Code Sections 141.001 and 141.002).

Only one limitation exists: The mayor cannot receive a pay increase that was approved during the term for which he or she is elected. Such increase will become effective only after the next general municipal election at which the office of mayor is filled (Local Government Code Section 141.001).

Expense Reimbursement

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

Office of Mayor Pro Tem

The mayor pro tempore is a member of the council who performs the mayor's duties during the mayor's incapacity or absence. The mayor pro tem is selected by majority vote of the council from among its own membership. The mayor pro tem's term is one year. The mayor pro tem retains the right to vote on all matters before the council (and not just to break a tie) while performing the duties of the mayor (Local Government Code Section 22.037 and 23.027).

Office of Councilmember

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

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

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

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

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

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

Even this is not a complete description of all the challenges that confront councilmembers. Former U.S. Senator Paul Douglas, who served as a city councilmember early in his career, described how he had been called on by his constituents to help kill rats and mice and exterminate bedbugs. He also recalled that he was once telephoned by a mother who said her little daughter had a chance to enter a tap-dancing competition at a neighborhood theater, but didn't know how to tap dance. Douglas went to the mother's home and, with the aid of a harmonica, gave the tot a dancing lesson.

These illustrations simply indicate how varied the councilmember's experience on the job may be. The real task is in providing leadership and direction for the city, in deciding what needs to be done, and helping plan what the city will be for future generations.

Qualifications

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

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

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

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

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

Terms of Office

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

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

Vacancies

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

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

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

Absences

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

There is no law applicable to absences by aldermen in Type B cities or members of the board of commissioners in municipalities operating under the commission form of government (Type C cities). However, in cities over 500 population, which operate under the commission form of government, Section 51.051 of the Local Government Code (relating to the application of laws to cities with the commission form) would probably make Sections 22.038 and 22.041 of the Local Government Code (relating to absences) applicable to such cities. Type B cities should contact their local legal counsel or the TML Legal Department to discuss this issue, as state law is unclear.

Removal

Procedures for removing a councilmember from office in a general law city are the same as for the mayor.

Compensation

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

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

Expense Reimbursement

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