

4 Chapter Four Powers and Duties of Cities

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

Administrative Oversight - General Law Cities

The Mayor as Chief Executive Officer

In most smaller cities, the council has given the mayor the primary responsibility for supervising the city's employees, procuring supplies, ensuring that the streets are cleaned and repaired, and overseeing the multitude of other items that need attention each day. Department heads report directly to the mayor, who meets with them from time to time to check on their problems. Most of the mayors who assume these extensive responsibilities usually do so in addition to their regular jobs.

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

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

The City Council as "Administrative Board"

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

This arrangement has the advantage of providing the council with maximum control over the city's operations. If a department is not functioning properly, the council can go directly to the source of the problem and take corrective action. The downside is that the council meets just once or twice a month, and may not be able to deal in a timely manner with problems as they arise. Delays can occur if a department is unable to proceed with a project because of snags that only the council can overcome. Also, this arrangement tends to be inefficient unless some method is established for coordinating the operations of various departments on a regular basis between council meetings, while not violating open meetings laws.

City Manager or Administrator

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

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

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

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

Council Committees

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

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

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

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

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

Administrative Oversight - Home Rule Cities

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

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

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

The Police Power

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

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

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

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

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

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

Planning, Subdivision Controls, and Annexation

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

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

With some exceptions, a general law city may not annex territory unless the city receives a petition from the owners or inhabitants of an area that is in the city's extraterritorial jurisdiction. A general law city may unilaterally annex property if: (1) the city has a population of more than 1,000 but less than 5,000; (2) annexation procedures prescribed by state law are followed; (3) the city is providing the area to be annexed with water or sewer service; and (4) certain other specific conditions are met. Other examples of general law unilateral annexation authority include, but are not limited to: (1) a Type A city may annex area it owns; (2) a general law city may annex adjacent navigable streams; (3) certain general law cities may annex certain areas that are surrounded by the city; (4) a general law city may annex municipally-owned reservoir that supplies water to the city; (5) a city may annex municipally-owned airport and right-of-way leading to airport; and (6) a general law city may annex adjacent road. A general law city may also annex property if

requested by area landowners or area voters (Local Government Code Chapter 43).

Regulation of Streets and Other Public Places

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

Construction of Public Facilities

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

A city may construct or maintain certain public facilities using either traditional competitive bidding or an alternative procurement and delivery method (such as design-build, construction management, a job order contract, or competitive sealed proposals) that provides the "best value" to the city (Local Government Code Chapters 252 and 271).

Donations of City Funds

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

Expenditures that serve a “public purpose” (for example, contributions to a local volunteer fire department) may fall outside of the constitutional prohibition against donations. If the city council wishes to make such an expenditure, it must determine whether the expenditure accomplishes a public purpose, and the determination is subject to review by the courts. Written contracts with formal control over use of a city expenditure or payment are usually necessary in order for the council to ensure that the city receives some sort of payment or value for its expenditure—the accomplishment of the public purpose.

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

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

Payment of Bonuses to City Employees

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

Bids

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

Certain cities that choose to use traditional competitive bidding when purchasing real or personal property may give preference to a local bidder if certain procedures are followed and the local bid is within a certain percentage of the

lowest bid from a non-local bidder. In some cases, local preference is allowed for certain cities and then only if the purchase is for less than \$100,000.

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

The above procedures do not apply to some purchases, including: (1) the purchase of land or rights-of-way; (2) personal or professional services, such as engineering, architectural, or planning services; (3) property bought at an auction; (4) property bought at a going-out-of-business sale; (5) property bought from another political subdivision or the state or federal government; and (6) advertising, other than legal notices. Also, the city can waive the requirement for bids in the following instances: (1) in case of public calamity, where it becomes necessary to act at once to provide relief for local citizens or to preserve or protect the public health; or (2) in the case of unforeseen damage to public property, machinery, or equipment, where immediate repair is necessary.

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

City Depository

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

Uniform Election Dates

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

Official Newspaper

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

Federal Voting Rights Act

Under the Federal Voting Rights Act, federal approval is required for actions that affect voting rights. Some examples are:

- ★ A polling place relocated or a precinct boundary line changed;
- ★ An annexation;
- ★ A change in the method of electing city council members (for example, a change from at-large elections to elections by wards, or vice versa); or
- ★ A change in the term of an elected city official or a change in the method of selecting any official (for instance, providing that an official whose office is presently appointive will in the future be elected, or vice versa).

This list is not all inclusive; rather, it offers a few examples of the kinds of election-related actions that are subject to federal approval. The scope of the Federal Voting Rights Act is intentionally broad. The administrative procedures written to implement it indicate that the Act applies to any "change affecting voting." This includes any voting qualification, prerequisite to voting, standard, practice, or procedure different from that in force on November 1, 1972, however minor or indirect the difference might appear to be.

Under the act, prior to final implementation of any annexation, any change of polling place, any change in the term of any city elected official, or any other "change affecting voting," the city must do one of the following:

- (1) obtain a declaratory judgment from the U.S. District Court for the District of Columbia that the proposed change will not result in the denial or abridgement of the right of any person to vote because of his or her race or color; or
- (2) submit the proposed change to the U.S. Attorney General.

If, within a specified time, the U.S. Attorney General fails to object to the proposed change, the change can be implemented.

Additionally, the city council should seek the counsel of an attorney whenever it contemplates any action that might result in a "change affecting voting." Failure to comply with the requirements of the act can: (1) subject city officials to civil and criminal penalties; and (2) mean that any "change affecting voting" will always be subject to challenge.

Delegation of Legislative Powers

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