City of Gordon

P.O. BOX 227 – 105 S. Main St.
GORDON, TEXAS 76453
254-693-5676 – FAX 254-693-5859
e-mail: cityofgordon@yahoo.com

January 2, 2026

Dear Prospective Candidate:

Thank you for your interest in serving the citizens of Gordon. Should you decide to become a candidate, your candidacy requires compliance with certain state statues. In an effort to assist you, I have prepared this Candidate packet with necessary forms and pertinent instructions. I encourage you to read this letter and the enclosed material PRIOR to filling out the specific forms.

There will be three races on the May 2, 2026, ballot – Election for the office of Mayor, and offices of two Alderman Council Members who will serve a two-year term, from May 2026 to May 2028.

Running for offices encompasses a broad range of activities. The Texas Secretary of State and the Texas Ethics Commission each regulate portions of the election process at the local level. It is your responsibility to familiarize yourself with the laws applicable to running for elective office.

As City Secretary for the City of Gordon, I will be happy to answer general questions regarding the due dates for reporting and fillings. I am, however, constrained from offering legal advice or opinions to any candidate. The Office of the City Secretary is specifically limited by law to the acceptance and filing of various applications, affidavits, statements, and reports, and noting the date and time of all such filings. These documents become public records upon filing and are available for public inspection.

Included in this packet of information is a calendar of events and deadlines, along with the forms and general information. This packet only contains a small portion of the regulations that govern municipal elections, candidates and/or officeholders. It is the responsibility of each candidate to obtain any necessary information regarding relevant laws and to abide by those laws. The Legislature enacts changes from time to time relating to voting procedures, applications, and filing deadlines. In light of these changes, please verify either with my office or the agencies listed below, that you have the most current information and forms available.

Persons needing questions answered may contact the Elections Division of the Secretary of State's Office at 1-800-252-VOTE or www.sos.state.tx.us, of the Texas Ethics Commission at 512-463-5800 or www.ethics.state.tx.us. For your convenience, copies of the Texas Election Code and the Local Government Code are available online at: http://www.legis.state.tx.us

The enclosed material contains useful information and required forms for the May 2, 2026 General Election in the City of Gordon (these documents are also available at https://gordonwater.myruralwater.com/election-potential-candidates).

- *A Guide to Becoming a City Official*. A publication of Texas Municipal League.
- Roles and Responsibilities of Council members (from Texas Municipal League's *Handbook for Mayors and Councilmembers*)
- Election Calendar showing relevant dates
- One copy of **Application For A Place On The City Of Gordon General Election Ballot** (bilingual). The loyalty oath is included on this form and it **MUST** be signed in the presence of a notary. The application is

then filed in my office. It is recommended that the Appointment of Campaign Treasurer by Candidate (enclosed) be filed at this time as well.

- 2026 Schedule for Elections Held on Uniform Election dates. Video training is now available to those required to file the Candidate/Officeholder Campaign Finance Report- Form C/OH. The Training video is approximately 40 minutes in length. Completing this training is voluntary. The video is available for download by following the instructions at http://www.ethics.state.tx.us/training/video.htm.

All Applications, Affidavits, Statements, and Campaign Reports Filed with the City Secretary's Office are Considered Public Information and are for Inspection by ANY Person.

The role of the City Secretary's Office is to accept and file the various candidate applications, affidavits, and statements required and note the date of the filings thereon. There is no legal duty to inform anyone of the necessity of or deadlines for filing any of the documents or to advise anyone in regard to the meaning and requirements of statutes. The City Secretary should not be expected to judge or comment upon the timeliness or sufficiency of reports filed, but rather only serve as the custodian of the records for the benefit and convenience of the public.

On the filing of an application for a place on the ballot, the City Secretary must review the application to determine whether it complies with requirements as to form, content, and procedure only. That is, the City Secretary checks to be sure is was filed correctly and in a timely manner and that all required information is completed and attested to. The review must be completed not later than the fifth day after the date the application is received by the authority. If an application does not comply with applicable requirements, the City Secretary must reject the application and immediately deliver to the candidate written notice of the reason for the rejection. [Election Code 141.032(e)]

Section 141.032 of the Texas Election Code, which governs the review of a candidate's application for a place on the ballot for form, content, and procedure, does not apply to a determination of a candidate's eligibility.

Thank you again for your interest in serving the citizens of Gordon.

Sincerely,

Teresa Johnson

Teresa Johnson
City Secretary

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Prescribed by Secretary of State
Sections 141.031, 141.039, 161.005, 172.021, 172.022, 172.0222, 172.0223, 172.023, Texas Election Code
11/2023

APPLICATION FOR A PLACE ON THE GENERAL PRIMARY BALLOT FOR A PRECINCT OR COUNTY CHAIR

ALL INFORMATION IS REQUIRED TO BE PROVIDED UNLESS INDICATED AS OPTIONAL[1]

Failure to provide required information may result in rejection of application.

APPLICATION FOR _____ CHAIR ON THE _____ PARTY GENERAL PRIMARY BALLOT
(Precinct or County) **(Democratic or Republican)**

To: County Chair
I request that my name be placed on the above-named official primary ballot as a candidate for election to the office indicated below.

OFFICE SOUGHT (circle one) (Include any place number or other distinguishing number, if any.)
County Chair ☐ **Precinct Chair** ☐ **Precinct #**_____

INCUMBENT DECLARATION:
(Check this box if you are the incumbent.)
☐ **INCUMBENT**

FULL NAME (First, Middle, Last)

PRINT NAME AS YOU WANT IT TO APPEAR ON THE BALLOT*

PERMANENT RESIDENCE ADDRESS (Do not include a P.O. Box or Rural Route. If you do not have a residence address, describe location of residence.)

PUBLIC MAILING ADDRESS (Optional) (Address at which you receive campaign related correspondence, if available.)

CITY	STATE	ZIP	CITY	STATE	ZIP

PUBLIC EMAIL ADDRESS (Optional) (Address for which you receive campaign related emails, if available.)

OCCUPATION (Do not leave blank)

DATE OF BIRTH
/ /

VOTER REGISTRATION VUID NUMBER[2] (Optional)

TELEPHONE CONTACT INFORMATION (Optional)
Home:
Work:
Cell:

LENGTH OF CONTINUOUS RESIDENCE AS OF DATE THIS APPLICATION WAS SWORN

IN THE STATE OF TEXAS (Optional)	IN PRECINCT/COUNTY FROM WHICH THE OFFICE SOUGHT IS ELECTED (Optional)
_____ year (s)	_____ year (s)
_____ month(s)	_____ month(s)

*If using a nickname as part of your name to appear on the ballot, you are also signing and swearing to the following statements: I further swear that my nickname does not constitute a slogan or contain a title, nor does it indicate a political, economic, social, or religious view or affiliation. I have been commonly known by this nickname for at least three years prior to this election. Please review sections 52.031, 52.032 and 52.033 of the Texas Election Code regarding the rules for how names may be listed on the official ballot.

Before me, the undersigned authority, on this day personally appeared (name of candidate)_____, who being by me here and now duly sworn, upon oath says:

"I, (name of candidate) _____, of _____ County, Texas, being a candidate for the office of _____, swear that I will support and defend the Constitution and laws of the United States and of the State of Texas. I am a citizen of the United States eligible to hold such office under the constitution and laws of this state. I have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote. I am aware of the nepotism law, Chapter 573, Government Code. I further swear that the foregoing statements included in my application are in all things true and correct."

X_____
SIGNATURE OF CANDIDATE

Sworn to and subscribed before me this the _____ day of _____, _____, by _____.
(day) (month) (year) (name of candidate)

_____
Signature of Officer Authorized to Administer Oath[3]

_____
Printed Name of Officer Authorized to Administer Oath

_____
Title of Officer Authorized to Administer Oath

Notarial or Official Seal

TO BE COMPLETED BY COUNTY CHAIR OR SECRETARY OF THE COUNTY EXECUTIVE COMMITTEE: (See Section 1.007)

☐ **Voter Registration Status Verified**

_____/_____/_____
Date Filed

_____
Signature of Chair or Designee Receiving Filed Application

_____/_____/_____ or _____/_____/_____
Date Accepted Date Rejected

_____
Signature of Chair or Secretary Upon Determination of Application

Print Reset

INSTRUCTIONS

FILING PERIOD

- **County Chair:** The application must be filed no earlier than the 30th day before the second Monday in December of an odd-numbered year unless the filing deadline is extended under Subchapter C. (Section 172.023, Texas Election Code). A political party's state executive committee, by rule, may require that an application for county chair be accompanied by a nominating petition containing the signatures of at least 10% of the incumbent precinct chairs serving on the county executive committee. (Section 172.021(f), Texas Election Code). Please contact your party's state executive committee for details as to whether they have created a rule requiring the submission of a nominating petition.
- **Precinct Chair:** The application must be filed no earlier than the 90th day before the second Monday in December of an odd-numbered year unless the filing deadline is extended under Subchapter C. (Section 172.023, Texas Election Code)
- For additional information, please see the Candidate's Guide on the Secretary of State's website, including the page on Frequently Asked Questions on Party Affiliation and Candidacy.

FILING DEADLINE

The filing deadline for candidates for precinct and county chair is 6:00 p.m. on the second Monday in December of an odd-numbered year unless the filing deadline is extended under Subchapter C.

The application shall be filed with the county chair or the secretary of the county executive committee. (Section 172.022, Texas Election Code) The chair or designee will sign the line next to the "Date Filed" and record the date the application was received when the candidate delivers, faxes or emails the application.

The application must be reviewed after it is filed to ensure that it complies with the requirements as to form, content and procedure. The review shall be completed not later than the fifth business day after the date the application is received by the filing authority. If an application is submitted fewer than five business days before the regular filing deadline, the review shall be completed not later than the first Friday after the regular filing deadline. If an application does not comply with the applicable requirements, the authority shall reject the application and immediately deliver to the candidate written notice of the reason for the rejection. (Section 172.0222, Texas Election Code). Once a determination has been made, the chair will note whether the application was accepted or rejected by completing the date accepted or date rejected box and signing the application in the far bottom right.

FOOTNOTES

[1]An application for a place on the ballot, including any accompanying petition, is public information immediately on its filing. (Section 141.035, Texas Election Code)

[2]Candidates for the offices of county and precinct chair are required to be residents and qualified voters of the county from which they are elected no later than the filing deadline. In addition to the general eligibility requirements for party office, a person must also reside in the election precinct to be eligible to be a candidate for or to serve as a precinct chair for that precinct. There is no specific period of time that the person must have been a resident of the precinct to be eligible for the office of precinct chair. (Section 171.023, Texas Election Code) For additional information, please contact the Elections Division of the Secretary of State.

[3]All oaths, affidavits, or affirmations made within this State may be administered and a certificate of the fact given by a judge, clerk, or commissioner of any court of record, a notary public, a justice of the peace, and the Secretary of State of Texas. See Chapter 602 of the Texas Government Code for the complete list of persons authorized to administer oaths.

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Prescrito por el Secretario de Estado
Secciones 141.031, 141.039, 161.005, 172.021, 172.022, 172.0222, 172.0223, 172.023, Código Electoral de Texas
11/2023

SOLICITUD DE INSCRIPCIÓN EN LA BOLETA DE LA PRIMARIA GENERAL PARA UN PRESIDENTE DEL PRECINTO O DEL CONDADO

TODA LA INFORMACIÓN ES REQUERIDA A MENOS QUE SE INDIQUE COMO OPCIONAL[1]

El hecho de no proporcionar la información requerida puede resultar en el rechazo de la solicitud.

SOLICITUD DE INSCRIPCIÓN PARA PRESIDENTE DEL _____ EN LA BOLETA DE LA PRIMARIA GENERAL
(Precinto o Condado)

DEL PARTIDO _____
(Demócrata o Republicano)

Para: Presidente del Condado
Solicito que mi nombre se incluya en la boleta primaria oficial mencionada anteriormente como candidato(a) para la elección del cargo indicado a continuación.

CARGO SOLICITADO (Circule una de las opciones) (Incluya cualquier número de plaza u otro número distintivo, si lo hay.) **Presidente del Condado** ☐ **Presidente del Precinto** ☐ **Número del Precinto**_____	**DECLARACIÓN DE TITULAR ACTUAL**: (Indique si usted es el titular actual.) ☐ **Titular Actual**

NOMBRE COMPLETO (Primer Nombre, Segundo Nombre, y Apellido)	**ESCRIBA SU NOMBRE COMO DESEA QUE APAREZCA EN LA BOLETA***
DIRECCIÓN DE RESIDENCIA PERMANENTE (No incluya un apartado postal o una ruta rural. Si usted no tiene una dirección de residencia, describa la ubicación de la residencia.)	**DIRECCIÓN DE CORREO PÚBLICO (Opcional)** (Dirección en la que recibe la correspondencia relacionada con la campaña, si está disponible)

CIUDAD	**ESTADO**	**CÓDIGO POSTAL**	**CIUDAD**	**ESTADO**	**CÓDIGO POSTAL**

DIRECCIÓN DE CORREO ELECTRÓNICO PÚBLICO (Opcional)(Dirección donde recibe correo electrónico relacionado con la campaña, si está disponible)	**OCUPACIÓN (No deje este espacio en blanco)**	**FECHA DE NACIMIENTO** / /	**VUID – NÚMERO ÚNICO DE IDENTIFICACIÓN DE VOTANTE[2] (Opcional)**

INFORMACIÓN DE CONTACTO TELEFÓNICO (Opcional) Hogar: Trabajo: Celular:	**DURACIÓN DE RESIDENCIA CONTINUA A PARTIR DE LA FECHA EN QUE ESTA SOLICITUD FUE JURADA**	
	EN EL ESTADO DE TEXAS (Opcional)	**EN EL PRECINTO/CONDADO DEL QUE SE ELIGE EL CARGO BUSCADO (Opcional)**
	_____ año(s) _____ mes(es)	_____ año(s) _____ mes(es)

***Si usa un apodo como parte de su nombre para aparecer en la boleta, también está firmando y jurando las siguientes declaraciones: Juro además que mi apodo no constituye un lema ni contiene un título, ni indica un punto de vista o afiliación política, económica, social o religiosa. He sido comúnmente conocido por este apodo durante al menos tres años antes de esta elección. Por favor, revise las secciones 52.031, 52.032 y 52.033 del Código Electoral de Texas con respecto a las reglas sobre cómo se pueden incluir los nombres en la boleta oficial.

Ante mí, la autoridad abajo firmante, en este día apareció personalmente (nombre del candidato)_____,
quien estando a mi lado aquí y ahora debidamente juramentado, bajo juramento dice:
"Yo, (nombre del candidato) _____, del condado de _____,

Texas, siendo candidato para el cargo de _____, juro que apoyaré y defenderé la Constitución y las leyes de los Estados Unidos y del Estado de Texas. Soy un ciudadano de los Estados Unidos elegible para ocupar dicho cargo según la Constitución y las leyes de este estado. No se me ha determinado por un fallo final de un corte que ejerce la jurisdicción testamentaria que esté totalmente incapacitado mentalmente o parcialmente incapacitado sin derecho a voto. Soy consciente de la ley de nepotismo según el Capítulo 573 del Código de Gobierno. Juro además que las declaraciones anteriores incluidas en mi solicitud son, en todos los aspectos, verdaderas y correctas".

X _____
FIRMA DEL CANDIDATO

Jurado y suscrito ante mí este día _____ de_____ del _____por _____.
(día) (mes) (año) (nombre de candidato)

_____ _____
Firma del oficial autorizado para administrar el juramento[3] Nombre de oficial autorizado para administrar juramentos en letra de molde

Notarial o sello oficial

_____
Título del oficial autorizado para administrar el juramento

TO BE COMPLETED BY COUNTY CHAIR OR SECRETARY OF THE COUNTY EXECUTIVE COMMITTEE: (See Section 1.007)

☐ **Voter Registration Status Verified**

_____/_____/_____ _____
Date Filed Signature of Chair or Designee Receiving Filed Application

_____/_____/_____ or _____/_____/_____ _____
Date Accepted Date Rejected Signature of Chair or Secretary Upon Determination of Application

Imprimir **Limpiar**

INSTRUCCIONES

PERÍODO DE PRESENTACIÓN

- **Presidente del Condado:** La solicitud debe ser presentada no antes del 30° día antes del segundo lunes de diciembre de un año impar, a menos que la fecha límite de presentación se extienda bajo el Subcapítulo C. (Sección 172.023, Código Electoral de Texas) El comité ejecutivo estatal de un partido político, por regla, puede exigir que una solicitud para presidente de condado esté acompañada por una petición de nominación que contenga las firmas de al menos el 10% de los presidentes de precinto en funciones que sirven en el comité ejecutivo del condado. (Sección 172.021(f) del Código Electoral de Texas). Comuníquese con el comité ejecutivo estatal de su partido para obtener más información sobre la creación de una regla que exija presentar una petición de nominación.
- **Presidente del Precinto:** La solicitud debe ser presentada no antes del 90° día antes del segundo lunes de diciembre de un año impar, a menos que la fecha límite de presentación se extienda bajo el Subcapítulo C. (Sección 172.023, Código Electoral de Texas)
- Para obtener información adicional, consulte la Guía del Candidato en el sitio web de la Secretaría de Estado, incluida la página de Preguntas Frecuentes sobre afiliación del partido y candidatura.

FECHA LÍMITE DE PRESENTACIÓN

La fecha límite para la presentación de candidatos para presidente del condado o del precinto es a las 6:00 p.m. el segundo lunes de diciembre de un año impar, a menos que la fecha límite de presentación se extienda bajo el Subcapítulo C.

La solicitud deberá presentarse ante el presidente del condado o el secretario(a) del comité ejecutivo del condado. (Sección 172.022, Código Electoral de Texas) El presidente o la persona designada debe firmar en la línea junto a la "Fecha de Presentación" y anotar la fecha en que se recibió la solicitud cuando el candidato presente su solicitud, o la envíe por fax o por correo electrónico.

Una vez presentada, la solicitud debe revisarse para garantizar que cumple los requisitos de forma, contenido y procedimiento. La revisión deberá completarse a más tardar el quinto día hábil siguiente a la fecha de recepción de la solicitud por parte de la autoridad de presentación. Si una solicitud se presenta menos de cinco días hábiles antes de la fecha límite de presentación establecida, la revisión deberá completarse a más tardar el primer viernes a partir de la fecha límite de presentación establecida. Si una solicitud no cumple los requisitos aplicables, la autoridad deberá rechazarla y entregar de inmediato al candidato una notificación por escrito del motivo del rechazo. (Sección 172.0222, Código Electoral de Texas) Una vez que se haya tomado una decisión, el presidente debe anotar si la solicitud fue aceptada o rechazada completando la casilla de fecha aceptada o fecha rechazada y firmando la solicitud en el extremo inferior derecho.

NOTAS

[1]Una solicitud para un lugar en la boleta electoral, incluida cualquier petición que la acompañe, es información pública inmediatamente después de su presentación. (Sección 141.035, Código Electoral de Texas)

[2]Los candidatos para los puestos de presidente del condado o del precinto deben ser residentes y votantes calificados del condado del que fueron elegidos a más tardar en la fecha límite de presentación. Además de los requisitos generales de elegibilidad para los cargos del partido, una persona también debe residir en el precinto electoral para ser elegible para ser candidato o para servir como presidente del precinto de ese precinto. No hay un período específico de tiempo que la persona debe haber sido residente del precinto para ser elegible para el cargo de presidente del precinto. (Sección 171.023, Código Electoral de Texas) Para obtener información adicional, comuníquese con la División de Elecciones de la Secretaría de Estado.

[3]Todos los juramentos, declaraciones juradas o afirmaciones hechas dentro de este estado pueden ser administrados y un certificado del hecho dado por un juez, secretario(a) o comisionado de cualquier corte de registro, un notario público, un juez de paz y el Secretario de Estado de Texas. Consulte el Capítulo 602 del Código Gubernamental de Texas para obtener la lista completa de personas autorizadas a administrar juramentos.

30 TIPS FOR NEWLY ELECTED MAYORS AND COUNCILMEMBERS

"Management is doing things right. Leadership is doing the right things."

Warren Bennis

1. Allot ample time to be effective in your public service role. Your most important responsibility as a mayor or councilmember is participation at council meetings, but attending meetings isn't enough. Research, study, and discuss the issues; keep yourself informed.

2. Pace yourself. Prioritize the meetings you attend. Recognize the need to spend time with your family, and achieve a healthy work/life balance.

3. Deliver on your promises. Most major decisions and actions require approval of the governing body, which takes a majority vote.

4. Treat your colleagues, constituents, and city staff with fairness and respect. People come to you with issues that are important to them. Do what you can to resolve their issues, or suggest other resources that might be helpful.

5. Allow your city staff to do their work and handle operations. Your primary role is to set policy and direction for the city. For example, instead of spending time reviewing invoices, make sure you have a good purchasing practice in place for generating invoices.

6. Take your budget preparation role seriously. The budget is your policy development tool and road map. It determines what your city does or doesn't do in the coming year. When budget cutbacks are necessary, ensure adequate funding for activities that are vital to city operations.

7. Be aware of the little things. While little things can go unnoticed, it's often those tiny details that require the most attention.

8. Establish policy statements. Written policy statements let the public and city staff know where they stand, and help the governing body govern. Written policy statements also provide a process to develop consensus.

9. Maintain the infrastructure. Make certain you are keeping up with what you have before taking on new projects. Deferring maintenance costs to the future burdens the next generation of leaders.

10. Be comfortable telling people that you don't know the answer to their question. It's better to tell constituents that you need to research an issue rather than provide inaccurate information.

11. Always keep the long-term interests of your city top of mind. Don't be hurried into action, or misled by the demands of special interest groups who want it done their way, right now.

12. Be open and honest with your colleagues. It's unwise to spring surprises on your fellow councilmembers or city staff, especially at formal meetings. If a matter is worth discussing, it should be placed on the agenda. Surprises often cause embarrassment, create distrust, and erode the team approach to governance.

13. Respect and don't bypass the system. If you have a city manager or other chief administrative official, follow policy and avoid personal involvement in day-to-day operations.

14. Don't let others bypass the system. Insist that people — such as bond dealers or equipment suppliers — work with your city staff first. If direct contact with councilmembers is necessary, ensure it happens with the council as a whole and not on a one-on-one basis.

15. Formalize your personnel rules and regulations. Make sure they're clear. For example, if you don't pay for unused sick leave when an employee is terminated, put it in writing. Once the rules are established, councilmembers should stay out of personnel matters.

16. Familiarize yourself with the Texas Open Meetings Act and the Public Information Act, and complete the state-mandated training in both. Respect the letter and intent of both acts.

17. Keep your constituents informed through social media, a regular editorial in the local newspaper, radio interviews, or news releases. Be friendly in your interactions with the news media. Effective communications keeps citizens engaged and fosters civic pride.

18. Keep your city staff informed, particularly those on the front line who have frequent contact with the public, or are in a decision-making role.

19. Appoint citizen advisory committees as needed and be prepared to follow their advice. Appointing your opposition to a desired committee helps them work for you, instead of against you.

20. Hire the best people you can, and give them as much responsibility as they can handle.Support and inspire them to succeed.

21. Encourage your employees to look for new ideas and better ways of doing things. Listen to what they have to say.

22. Have your city attorney attend your council meetings, but don't expect him or her to have all the answers. Give your attorney time to research key issues, and come back with an opinion.

23. Ask your city attorney "how can we legally accomplish this objective?" instead of simply asking whether or not you can do something.

24. Remember that if yours is a typical city, your city attorney will not be an expert on every issue. City government is too complex. You may occasionally need outside counsel which can be a good use of public funds.

25. Make sure your city has a solid financial accounting and reporting system in place. Some cities have had financial troubles because more money was spent than was available and it went unnoticed.

26. Remember that your city does not operate in a vacuum. You must work within the intergovernmental system to be effective. Keep in contact with school, county, state, and federal officials. Use the Texas Municipal League as a resource.

27. Sometimes, hiring a consultant can be a good way to get the expertise you are missing. However, it is important to maintain a leadership role with consultants, ensuring they stay on course, and act in your city's interest.

28. Keep your eye on state and federal legislation that can negatively affect your city through unfunded mandates or by eroding your ability to make decisions locally. Read the Legislative Update in the weekly *TML Exchange* for updates on key legislation and regulations.

29. Budget money for your officers and employees to attend TML workshops and conferences. TML provides excellent learning opportunities and personal contacts who can be valuable to you, your city staff, and elected officials.

30. Finally, know that you are in the public eye, and your words and actions affect your city and citizens. Follow your conscience, and act as a steward for your city's good governance. ★

A Guide to Becoming a City Official

Updated January 2024

The Texas Municipal League exists to provide support and services to city governments in Texas and is guided by its purpose statement – *Empowering Texas cities to serve their citizens*.

Texas Municipal League
1821 Rutherford Lane, Suite 400
Austin, Texas 78754
512-231-7400
www.tml.org

Table of Contents

Congratulations on Your Decision to File for City Office

Serving as an effective city elected official requires dedication, knowledge, and a substantial time commitment, and there are countless reasons why people choose to run for public office. While you may have a very specific reason for seeking a place on the city council, you will be involved in a number of other issues that can have a lasting impact on your city's future. For this reason, becoming a city elected official can be one of the most rewarding experiences of your life. An understanding of your role on the city council—as a member of a team—is critical to your success.

This booklet is designed to familiarize you with the responsibilities of city elected office. Use it as a reference guide during your campaign. Don't hesitate to ask your city manager or city secretary questions about your specific city structure. If you are elected, you may want to seek out the many other resources that help to guide newly elected officials in their new roles.

Material contained in this brochure should not be viewed as a substitute for legal advice or specific information applicable to your city. In addition, if you're serious about your candidacy, you should consider other, more detailed information sources available to you, including:

- attending city council or board of aldermen meetings
- examining your charter, if your city is home rule
- reviewing city ordinances
- the *TML Handbook for Mayors and Councilmembers*

For information on elections, you may get additional information from the city clerk or secretary or the Texas Secretary of State's office. You should also consult your own attorney or familiarize yourself with the requirements of election laws.

Leadership Attributes for Councilmembers

Do you have the necessary leadership attributes to be an effective city leader? At a minimum, successful elected officials must devote a significant amount of time and energy to fulfill a position that answers directly to citizens. Some desirable leadership attributes include:

- a general understanding of city government
- willingness to learn about a wide range of topics
- integrity
- consistency
- confidence
- dedication to the interests of citizens and the community as a whole

- strong communication and team-building skills, including being a good listener
- openness to the thoughts and ideas of others
- being approachable and accessible
- willingness to work cooperatively

An Elected Official Wears Many Hats

Local elected officials have many responsibilities—policymaker, legislator, ambassador, and employer.

The office of mayor is the highest elected office in city government. City councilmembers are the city's legislators, and their primary role is policymaking. The way administrative responsibilities are handled depends on your city type, with which you should be familiar.

Policymaker
As policymakers, it is the council's responsibility to identify the needs of the citizens and to formulate a plan to meet those needs. Policymaking is a complicated process but can be simplified if the city council works together as a team and sets goals for the city. It is from the city council's vision that the administrative staff of the city takes direction and goes about its daily work. The goals of the city should be clear. There are many legal, financial, and administrative considerations to implementing the goals of the city, and without clear direction the effectiveness of the city council can be diminished.

Legislator
Citizens look to the city council to exercise authority to preserve and promote their health, safety, and welfare. A city council may enact ordinances and resolutions and use its governmental powers for the public good. Citizens expect their city council to provide leadership in addressing issues. It is important to show respect for your fellow councilmembers and be willing to discuss issues thoroughly to reach a consensus on the best course of action for all citizens, whatever the issue.

Ambassador
As a member of your city council, you will be invited to participate in a variety of civic activities. These events will provide you with opportunities to learn more about what citizens of your city expect from city government. While not everyone likes this type of public spotlight, it is an important part of your role as a councilmember.

Employer
An understanding of your role as an elected official is vital to your relationship with the city staff. Just as in any productive employer-employee relationship, trust and respect are important. You can learn a great deal about the city from city employees. In many cities, councilmembers come and go, but the city staff continues to serve.

Mayors, Councils, and Boards of Aldermen

The mayor and city council or board of aldermen collectively serve as the governing body for a city and normally possess all legislative powers granted by state law. The positions of both councilmember and alderman have been compared to those of the members of the state legislature and the United States Congress. All these positions require elected officials to represent their constituents, to make policy decisions, to budget for the execution of the policies, and to see that their policies are carried out. Unlike their counterparts in state and federal offices, however, city officials are in direct contact with the citizens they serve on an ongoing basis.

Are You Eligible?

To run for office in a general law city in Texas, you must, among other requirements:

- be a citizen of the United States
- be at least 18 years old on the date of the election
- be a registered voter and have lived in the State of Texas for at least 12 consecutive months prior to the filing date for the election, and in your city or ward for at least six months prior to the filing date for the election
- not have been finally convicted of a felony for which you have not been pardoned or otherwise released from the resulting disabilities

Certain offices and certain city types have additional requirements in state law, so you should be sure to check with both the city and the Texas Secretary of State's Elections Division to ensure that you are eligible. A home rule city may set different requirements in its charter, so check with your city clerk or secretary on whether additional or different requirements apply. The Texas Secretary of State website is at www.sos.state.tx.us.

Filing for a Place on the Ballot

To run for city office, you must file an application with the city clerk or secretary. The application includes information required by the Texas Election Code and must be filed according to deadlines set by that code. A candidate may either file for a place on the ballot or as a write-in candidate, but an application must be filed in either case. A home rule city may also have additional requirements and procedures for filing for a place on the ballot. Your city clerk or secretary can inform you of the rules and deadlines.

Texas Ethics Commission Campaign Finance Filings

State law requires the filing of various forms by a candidate for city office. All candidates for city offices must file an "Appointment of a Campaign Treasurer by a Candidate" form with the city secretary before beginning their campaigns.

Candidates who do not intend to accept more than $1,080 in political contributions or make more than $1,080 in political expenditures may file a modified reporting declaration and operate under modified reporting. Under modified reporting, the candidate is not required to file any further forms beyond the final report, which is filed at the end of the campaign. Semiannual reports may still be required in some cases.

Candidates who intend to accept more than $1,080 in political contributions or make more than $1,080 in political expenditures, or who exceed that amount even after filing for modified reporting, must file under regular reporting requirements. Reports due under these requirements must be submitted by January 15 and July 15 of each year. The reports filed on these dates are known as semiannual reports.

An opposed candidate in an upcoming city election who is using regular reporting must also file reports of contributions and expenditures 30 days and 8 days before the election. A candidate in a runoff must file a report 8 days before the runoff election. Candidates filing under regular reporting are also required to file a final report at the end of the campaign.

Detailed information on filing is available on the Texas Ethics Commission's website at www.ethics.state.tx.us.

An Introduction to City Government

Elected city officials should have a basic understanding of city government and the duties, authority, and limitations of an elected body. What follows is a brief introduction to a few basic governance issues.

Of course, there is no better way to understand what elected officials do than to attend council meetings. In addition, most cities and towns have advisory boards that are formed to make or recommend policy or quasi-judicial decisions, such as a planning commission or parks and recreation board. Serving on these and other appointed boards is another excellent way to become informed.

Types of City Government

Texas has more than 1,200 incorporated cities; each of them is either a home rule city or a general law city. Home rule cities are larger cities. A city with a population of more than 5,000 in which the citizens have adopted a home rule charter through an election is a home rule city. A home rule charter is the document that establishes the city's governmental structure and provides for the distribution of powers and duties.

General law cities are usually smaller cities. General law cities don't have charters. Rather, they operate according to specific state statutes. A general law city looks to the state constitution and state statutes to determine what it **may do**. If state law

doesn't grant a general law city the express or implied power to initiate a particular action, none may be taken. There are three categories of general law cities: type A, B, or C. If you are seeking office in a general law city, you should ask your city manager or city secretary to clarify the type in order to understand which state laws apply.

As opposed to general law cities, a home rule city operates according to its charter and looks to the state constitution and state statutes to determine what it **may not do**.

Forms of Government

There are two prevalent forms of city government in Texas:

Mayor-Council Structure

- The mayor is the ceremonial head of government and presides over council or board of aldermen meetings.
- The council or board of aldermen sets meetings.
- The council or board of aldermen sets policy.
- Depending on local charter and/or ordinances, applicable statute, or local practice, broad or limited administrative authority is vested with the mayor, members of the council or board of aldermen, an administrator, or designated department heads appointed by the mayor, council, or board of aldermen.

Council-Manager Structure

- The mayor is the ceremonial head of government and presides over council or board of aldermen meetings.
- The council sets policy and hires and fires the manager.
- The city manager normally has broad administrative authority.

Basic City Services

Services provided by cities vary. However, some typical services may include:

- **Public Safety**—police, fire, and sometimes ambulance service
- **Utilities**—water and sewer, trash collection, electric power, and natural gas
- **Land Use**—planning, zoning, code enforcement, and other regulatory activities
- **Transportation**—street construction and maintenance, traffic safety, and sometimes public transit
- **Recreation/Culture**—parks, recreation, libraries, and sometimes cultural facilities
- **Legal**—ordinances protecting the public health, safety, and welfare of the community

City Finance

In budgeting, the governing body makes important decisions about the operation and priorities of the city. Is a swimming pool more important than storm sewers? Does the city need a new library more than it needs extra police personnel? Should the potholes be filled or the street completely rebuilt? Budgeting is a process by which the governing body determines the city's standard of living—what the citizens need and want, what they are willing to pay, and what services they can expect to receive for their tax dollars.

Cities levy specific taxes to finance city services. In addition, many city services are financed in whole or in part by user fees and charges. The following are the most common taxes and fees levied by Texas cities:

- **Property tax**—levied on the valuation of taxable property located within the city
- **Sales tax**—levied on retail sales of tangible personal property and some specific services
- **Right-of-way rental fees**—levied on non-municipally owned utilities (telecommunications, electric, gas, water, cable television)

Finally, cities receive some revenues from various federal and state grant and allocation programs. TML provides a comprehensive guide to all revenue sources available to cities. The guide is called the *TML Revenue Manual for Texas Cities* and is available at www.tml.org.

Ethics and Conflicts of Interest

Various laws govern the behavior of a city official. A brief overview of the most commonly applicable statutes follows.

Local Government Code Chapter 171 – Conflicts of Interest

Definition of "conflict of interest": A local public official has a conflict of interest in a matter if any action on the matter would involve a business entity or real property in which the official has a substantial interest, and if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public. A local public official is also considered to have a substantial interest if a close relative has such an interest.

General rule: If a local public official has a conflict of interest in regard to a business entity or real property, that official must file an affidavit with the city secretary stating the interest and must abstain from any participation or vote on the

matter.

Exception: If a local public official has a conflict of interest and files an affidavit, the official is not required to abstain from further participation or a vote on the matter if a majority of the members of the governing body also have a conflict of interest and file an affidavit.

Penalties: Penalties for violating the conflict of interest provisions range from having the action voided to the imposition of fines and incarceration.

Local Government Code Chapter 176 – Conflicts Disclosure

Local Government Code Chapter 176 requires that "local government officers"—including mayors, councilmembers, and certain other executive city officers and agents—file a "conflicts disclosure statement" with a city's records administrator within seven days of becoming aware of any of the following situations:

- A city officer or the officer's family member has an employment or business relationship that results in taxable income of more than $2,500 in the preceding 12 months with a person who has contracted with or is considering contracting with the city ("vendor").
- A city officer or the officer's family member receives and accepts one or more gifts with an aggregate value of $100 in the preceding 12 months from a vendor.
- A city officer has a family relationship with a vendor.

The law also requires a vendor to file a "conflict of interest questionnaire" if the vendor has a business relationship with the city and has an employment or other relationship with an officer or officer's family members, has given a gift to either, or has a family relationship with a city officer. The conflicts disclosure statement and the conflict of interest questionnaire are created by the Texas Ethics Commission and are available online at www.ethics.state.tx.us. An officer who knowingly fails to file the statement commits either a class A, B, or C misdemeanor, depending on the amount of the contract.

Government Code Chapter 553 – Conflicts Disclosure

Government Code Chapter 553 requires that city officers and candidates for city office who have a legal or equitable interest in property that is to be acquired with public funds file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation. The affidavit must be filed with: (1) the county clerk of the county in which the officer or candidate resides; and (2) the county clerk of each county in which the property is located.

A person who fails to file the required affidavit is presumed to have committed a Class A misdemeanor offense if the person had actual notice of the acquisition or intended acquisition of the property.

Financial Disclosure for Cities with a Population of 100,000 or More

Chapter 145 of the Texas Local Government Code requires candidates and elected city officials in cities with a population of 100,000 or more to fill out detailed financial statements to be filed with the city secretary or city clerk.

Nepotism

Definition of "nepotism": Nepotism is the appointment or employment of a close relative of a city's "final hiring authority (the city council or city manager, depending on the form of government)" to a paid position with the city.

General rule: A public official, acting alone or as a member of a governing body, generally may not appoint a close relative to a paid position, regardless of the relative's merit. In addition, a person may not continue to be employed by a city if a close relative is elected to the city council, unless he or she falls under an exception.

Exception: If the employee has been continuously employed by the city for a certain period of time, an employee may remain employed by the city if a close relative is elected to city council.

Exception: The nepotism statute does not apply to cities with fewer than 200 people.

Penalties: Penalties for violating the nepotism provisions include a fine and immediate removal from office.

Dual Office-Holding/Incompatibility

Definition of "dual office-holding" and general rule: The Texas Constitution generally prohibits one person from holding more than one paid public office.

Definition of "incompatibility" and general rule: Texas law prohibits one person from holding two public offices, regardless of whether one or both offices are paid, if one position might impose its policies on the other or subject it to control in some other way. There are three types of incompatibility: (1) "self-appointment" incompatibility prohibits a member of a governing body from being appointed to a position over which the governing body has appointment authority; (2) "self-employment" incompatibility prohibits a member of a governing body from being employed in a position over which the governing body has employment authority; and (3) "conflicting loyalties" incompatibility prohibits one person from holding two

public offices in which the duties of one office might negatively affect the duties of the other office.

Penalties: A person who accepts a prohibited second office automatically resigns from the first office.

Open Government

Before assuming public office, you should become familiar with Texas Open Meetings Act (TOMA) and Public Information Act (PIA). These laws apply to political subdivisions in Texas, including cities, and outline what meetings and information must be open and available to the public.

Texas Open Meetings Act (TOMA)

The Texas Open Meetings Act (TOMA) reflects the policy that public bodies are engaged in the public's business. Consequently, city council or board of aldermen meetings should be open to the public and held only after the public has been properly notified. The TOMA governs how city meetings are conducted. Some general principles follow.

Definition of "meeting": A meeting occurs any time a quorum of the city council discusses public business that is within the city council's jurisdiction, regardless of the location or means of communication (e.g., phone, in person, email).

General rule: Every regular, special, or called meeting of the city council and most boards and commissions (depending on membership and authority) must be open to the public.

Exception: TOMA does not apply to purely social gatherings, conventions and workshops, ceremonial events, press conferences, or candidate forums, so long as any discussion of city business is incidental to the purpose of the gathering, and no action is taken.

Exception: A city may use an online message board that is viewable by the public for city councilmembers to discuss city business. The message board must meet several criteria provided for in TOMA.

Exception: Statutorily authorized executive or "closed" sessions, including deliberations concerning: (1) the value or transfer of real property; (2) specific consultations with the council's attorney; (3) specific personnel matters; (4) economic development; (5) certain security matters; (6) certain information related to emergencies and disasters; (7) a prospective gift or donation; (8) certain competitive matters relating to a city-owned electric or gas utility; or (9) potential items on tests that the council conducts for purposes of licensing individuals to engage in an activity.

To hold an executive session, the governing body must first convene in open session, identify which issues will be discussed in executive session, and cite the applicable exception. All final actions, decisions, or votes must be made in an open meeting.

Agenda: A governmental body must post an agenda that includes the date, hour, place, and subject of each meeting. The agenda must be posted on a physical or electronic bulletin board at city hall in a place readily accessible to the public at all times for at least 72 hours before the meeting. In addition, for cities that have an Internet website, the city must post the city council's agenda 72 hours before the meeting on that website.

Records of meetings: Cities must keep written minutes or recordings of all open meetings, and a certified agenda or recording of all executive/closed meetings, except for closed consultations with an attorney. The minutes must state the subject and indicate each vote, decision, or other action taken, and a city that has a website must post the approved minutes on that website.

Minutes and recording of an open meeting are public records, while certified agendas and recording of a closed meeting are confidential and cannot be released to the public except by court order.

Penalties: Penalties for violating the TOMA range from having the action voided to the imposition of fines and incarceration. Any action taken in violation is voidable and may be reversed in a civil lawsuit. There are four criminal provisions under the TOMA, including:

1. Knowingly engaging in a series of communications of less than a quorum of members discussing city business that will ultimately be deliberated by a quorum of members;
2. Calling or participating in an impermissible closed meeting;
3. Participating in an executive session without a certified agenda or recording; and
4. Disclosing a certified agenda or recording to a member of the public.

Texas Public Information Act (TPIA)

The Texas Public Information Act governs the availability of city records to the public. Some general provisions follow.

Definition of "public information": Public information includes any information that is collected, assembled, or maintained by or for a governmental entity, regardless of the format. Public information can include city-related emails or texts on a city official's personal devices/accounts.

General rule: Most information held by a city is presumed to be public information and must be released pursuant to a written request.

Exceptions: Specific statutory exceptions to disclosure allow certain types of

information to be withheld from the public. Other statutes make certain kinds of information "confidential by law," meaning that a city must withhold that information from the public. Because there are numerous exceptions, city officials should consult with local counsel immediately on receipt of a request.

Procedure: Any member of the public may request information in writing. A city official is prohibited from inquiring into the requestor's motives and is generally limited to: (1) releasing the information as quickly as is practicable, but generally not later than ten business days following the request; or (2) requesting an opinion from the Texas attorney general's office within ten business days of the receipt of the request as to whether the information may be withheld. Recent statutory changes and rulings by the attorney general have granted cities the authority to withhold specified types of confidential information without going through the process of seeking an opinion from the attorney general's office.

Penalties: Penalties for violating the PIA range from a civil lawsuit against the city or a city official to the imposition of fines and incarceration. There are three general criminal provisions under the PIA, including: (1) refusing to provide public information; (2) providing confidential information; and (3) destroying government information improperly.

Open Government Training

Each elected or appointed member of a governmental body must take at least one hour of training in both the Open Meetings Act and the Public Information Act. For more information, please visit the attorney general's website at www.texasattorneygeneral.gov.

A Basic Glossary of City Government

Budgeting: Crafting, passing, and following a city budget are among the most important tasks you will perform as a councilmember. Cities cannot make expenditures except in strict accordance with a budget, and they can levy taxes only in accordance with the budget.

Conflicts of Interest: As a councilmember, you are prohibited from voting or deliberating on agenda items that affect your own business, financial interests, or real property. You'll be required to file an affidavit with the city secretary disclosing the details of your conflict, and that affidavit becomes a public record. Also, you are required to disclose in writing the receipt of any gifts or income from any vendor that does business with the city.

Dual Office-Holding/Incompatibility: Councilmembers cannot hold other paid public offices; in many cases, they cannot hold other unpaid public offices, either. Further, councilmembers can't take paid jobs with their own city, nor can they

appoint themselves to other posts or positions. Finally, think twice about announcing to run for another public office while you're still a councilmember—you may automatically resign your council seat when you do. Check with your city attorney or the Texas Municipal League before considering any other position or job that might be a problem.

Employment Policies: In general law cities, the final authority on employment decisions typically rests with the council as a whole. In home rule cities, the charter usually determines who makes employment decisions. As a member of the council, you should familiarize yourself with the city's employment policies and periodically consult with your city attorney to ensure the policies are kept up to date.

Government Transparency: The Texas Public Information Act and the Open Meetings Act require access to records and meetings. After a city receives a written request for information under the Public Information Act, it must promptly provide copies or access to information, with limited exceptions. The Texas attorney general generally determines whether information is excepted from disclosure to the public. City councils are required to conduct their meetings in accordance with the Open Meetings Act. City officials are required by law to attend training in both Acts.

Gifts and Donations: Cities are prohibited by the Texas Constitution from giving money or anything of value to a private individual, association, or corporation. The exception to this doctrine is when the city council determines that a donation will serve a public purpose of the city. The decision as to what constitutes a public purpose is left to the discretion of the city council but may be overturned by a court. State law also places strict requirements on what gifts an elected official or candidate may receive. Officials and candidates should review these rules before giving or accepting any gift.

Holdover: The Texas Constitution includes a provision that allows an elected official who is no longer qualified for office to continue to serve until his or her vacancy is filled by a qualified individual. This provision allows a city to continue to conduct business even when it loses one or more councilmembers. However, some disqualifications may prevent the disqualified councilmember from continuing to serve as a holdover, and this issue should be reviewed upon the vacancy being created.

Liability: Councilmembers will generally be held personally liable only for actions taken outside the scope of their duties and responsibilities as members of the governing body. However, the city itself will be potentially liable for actions taken by its councilmembers within the scope of their official duties. (See Tort Claims Act below.)

Meeting: Almost everyone intuitively knows what a meeting is. For example, a regular meeting of a city council, where agenda items are discussed and formal action is taken, is clearly a meeting. However, according to the Texas Open Meetings Act, other gatherings of the members of a governmental body may constitute a

meeting. Generally, any time a quorum is present and city business is discussed, all of the Open Meetings Act requirements, including posting of a notice and preparation of minutes, must be followed.

Quorum: A city council must have a quorum to call a meeting to order and conduct business. The number of councilmembers required to establish a quorum varies by city. A quorum in a general law city is determined by state law, and a quorum in a home rule city is spelled out in the city's charter.

Tort Claims Act: The Texas Tort Claims Act limits governmental liability and provides for damage caps for governmental entities. The Act provides that liability for engaging in 36 specifically enumerated "governmental functions" (such as provision of police and fire protection, maintaining city parks, and other activities one expects of a local government) is limited by statute to $250,000 for personal injury claims and $100,000 for property damage claims. The Tort Claims Act does not generally provide for private causes of action against individual councilmembers for the actions of the city government.

Votes by Council: When a council votes on an ordinance or resolution, all that is typically needed to pass the item is a majority of those present and voting. While a quorum is the number needed to conduct a meeting, it is not necessary that a quorum actually vote on each agenda item. Local practices may vary from city to city, however.

Good Luck

We wish you luck in the election. No matter the outcome, you will find the process rewarding and should be proud that you made the decision to offer your time and commitment to the citizens of your city. If you are elected, the Texas Municipal League is here to assist you. Contact us at 512-231-7400 or www.tml.org.

Who Belongs to TML?
Membership in the League is voluntary and is open to any city in Texas. From the original 14 members, TML's membership has grown to more than 1,170 cities. Over 16,000 mayors, councilmembers, city managers, city attorneys, and department heads are member officials of the League by virtue of their cities' participation. Associate memberships are available to private sector organizations and companies that strive to provide quality services to municipal government.

TML Service Statement
In serving its member cities, the League will:

- Represent municipal interests before legislative and administrative bodies.
- Conduct original research in any area of concern to member cities and provide the results of that research to member cities and other interested parties.
- Serve as a repository of literature, analyses, research, and other data

related to all aspects of municipal operations and make that material available to members.

- Sponsor and conduct conferences, seminars, meetings, and workshops for the purpose of studying and exchanging information regarding municipal government.
- Make available an official magazine and other publications, reports, or newsletters of interest to members.
- Secure the assistance of educational institutions for the purpose of gathering, analyzing, and publishing municipal government information, and conducting training and professional development in the field of municipal administration.
- Strive to secure harmonious actions among Texas cities, other governments, and other groups in all matters which affect the rights and duties of the cities of Texas.
- Provide any additional services for which individual members, acting alone, may not have adequate resources.
- Promote the interests of the League's affiliates by providing organizational and technical assistance.
- Promote constructive and cooperative intergovernmental relations by maintaining mutually supportive relationships with groups representing local, state, and regional governments.

Texas Municipal League

Key Legal Requirements for Texas City Officials

2024 Edition

The explanations herein are for informational purposes only and should never be substituted for adequate legal advice. Prior to taking action on anything contained herein, a city official should consult with local legal counsel. Please contact the TML Legal Services Department at 512-231-7400 or legalinfo@tml.org for more information. This document is available online at www.tml.org.

Open Government Training

Each elected or appointed member of a governmental body must take at least one hour of training in both the Texas Open Meetings Act and the Texas Public Information Act. Under certain circumstances, the Office of the Attorney General may require a public official to complete additional training on a determination that a city has failed to comply with the Texas Public Information Act. For more information, please visit the attorney general's website at www.texasattorneygeneral.gov.

Texas Open Meetings Act (TOMA)

Definition of "meeting" - A meeting occurs any time a quorum of the city council discusses public business that is within the city council's jurisdiction, regardless of the location or means of communication (e.g., phone, in person, email).

General rule - Every regular, special, or called meeting of the city council and most boards and commissions (depending on membership and authority) must be open to the public.

Exception - TOMA does not apply to purely social gatherings, conventions and workshops, ceremonial events, press conferences, or candidate forums, so long as any discussion of city business is incidental to the purpose of the gathering, and no action is taken.

Exception - A city may use an online message board that is viewable by the public for city councilmembers to discuss city business. The message board must meet several criteria provided for in TOMA.

Exception - Statutorily authorized executive or "closed" sessions, including deliberations concerning: (1) purchase or lease of real property; (2) consultation with attorney; (3) personnel matters; (4) economic development; (5) certain homeland security matters; and (6) certain cyber-security matters.

To hold an executive session, the governing body must first convene in open session, identify which issues will be discussed in executive session, and cite the applicable exception. All final actions, decisions, or votes must be made in an open meeting.

Agenda - A governmental body must post notice of its meeting that includes the date, hour, place, and subject of each meeting. The notice must be posted on a bulletin board at city hall in a place readily accessible to the public at all times for at least 72 hours before the meeting. In addition, for cities that have a website, the city must concurrently post the notice of the meeting and the city council's agenda on the website at least 72 hours before the meeting.

Records of meetings - Cities must keep written minutes or recordings of all open meetings, and a certified agenda or recording of executive/closed meetings, except for

closed consultations with an attorney. The minutes must state the subject and indicate each vote, decision, or other action taken, and a city that has a website must post the approved minutes on that website.

Minutes and recording of an open meeting are public records, while certified agendas and recording of a closed meeting are confidential and cannot be released to the public except by court order.

Penalties - Penalties for violating the TOMA range from having the action voided to the imposition of fines and incarceration. Any action taken in violation of TOMA is voidable and may be reversed in a civil lawsuit. There are four criminal provisions under the TOMA, including:

(1) Knowingly engaging in a series of communications of less than a quorum of members discussing city business that will ultimately be deliberated by a quorum of members;
(2) Calling or participating in an impermissible closed meeting;
(3) Participating in an executive session without keeping a certified agenda or recording; and
(4) Disclosing a certified agenda or recording to a member of the public.

Texas Public Information Act (PIA)

Definition of "public information" - Public information includes any information that is collected, assembled, or maintained by or for a governmental entity (including information held by an individual officer or employee in the transaction of official business), regardless of the format.

General rule - Most information held by a city (or a city official or employee) is presumed to be public information and must be released pursuant to a written request.

Procedure - Any member of the public may request information in writing. A city official is prohibited from inquiring into the requestor's motives, and is generally limited to:

(1) Releasing the information as quickly as is practicable, but generally not later than ten business days following the request; or
(2) Requesting an opinion from the Texas attorney general's office within ten business days of the request as to whether the information may be withheld.

Penalties - Penalties for violating the PIA range from a civil lawsuit against the city or a city official to the imposition of fines and incarceration.

There are three general prohibitions carrying criminal penalties under the PIA, including:

(1) Refusing to provide public information;

(2) Providing confidential information; and
(3) Destroying government information improperly.

Ethics

Chapter 171 – Conflicts of Interest

Definition of "conflict of interest" - A local public official has a conflict of interest in a matter if any action on the matter would involve a business entity or real property in which the official has a substantial interest, and action on the matter would confer an economic benefit on the official.

General rule - If a local public official has a substantial interest in a business entity or real property, the official must file an affidavit with the city secretary stating the interest and abstain from any participation or vote on the matter. A local public official is considered to have a substantial interest if a close relative has such an interest.

Exception - If a local public official has a conflict of interest and files an affidavit, the official is not required to abstain from further participation or a vote on the matter if a majority of the members of the governing body also have a conflict of interest and file an affidavit.

Penalties - Penalties for violating the conflict of interest provisions range from having the action voided to the imposition of fines and incarceration.

Chapter 176 – Conflicts Disclosure

General rule - Chapter 176 of the Local Government Code requires that mayors, councilmembers, and certain other executive city officers and agents file a "conflicts disclosure statement" with a city's records administrator within seven days of becoming aware of any of the following situations:

- A city officer or the officer's family member has an employment or business relationship that results in taxable income of more than $2,500 in the preceding 12 months with a person who has contracted with or is considering contracting with the city ("vendor").
- A city officer or the officer's family member receives and accepts one or more gifts with an aggregate value of $100 in the preceding 12 months from a vendor.
- A city officer has a family relationship with a vendor.

The chapter also requires a vendor to file a conflict of interest questionnaire if the vendor has a business relationship with the city and an employment or other relationship with an officer or officer's family members, has given a gift to either, or has a family relationship with a city officer. The conflicts disclosure statement and the conflict of interest questionnaire are created by the Texas Ethics Commission and are available online at www.ethics.state.tx.us.

Penalties - An officer who knowingly fails to file the statement commits either a class A, B, or C misdemeanor, depending on the amount of the contract.

Chapter 553 – Conflicts Disclosure

General Rule - Chapter 553 of the Government Code requires a "public servant" who has a legal or equitable interest in property that is to be acquired with public funds to file an affidavit within ten days before the date on which the property is to be acquired by purchase or condemnation. Chapter 553 applies to the acquisition of both real property (e.g., land) and personal property (e.g., a vehicle). In addition, Chapter 553 seems to apply even when the property is to be acquired by a governmental entity with which the public servant is not affiliated. The affidavit must be filed with the county clerk of the county in which the public servant resides as well as the county clerk of each county in which the property is located.

Penalties - A person who fails to file the required affidavit is presumed to have committed a Class A misdemeanor offense if the person had actual notice of the acquisition or intended acquisition of the property. A Class A misdemeanor is punishable by a fine not to exceed $4,000, confinement in jail for a term not to exceed one year, or both.

Nepotism

Definition of "nepotism" - Nepotism is the appointment or employment of a close relative of a city's "final hiring authority (the city council or city manager, depending on the form of government)" to a paid position with the city.

General rule - A public official, acting alone or as a member of a governing body, generally may not appoint a close relative to a paid position, regardless of the relative's merit. In addition, a person may not continue to be employed by a city if a close relative is elected to the city council, unless he or she falls under an exception.

Exception - If the employee has been continuously employed by the city for a certain period of time, the employee may remain employed by the city if a close relative is elected to city council.

Exception - The nepotism statute does not apply to cities with fewer than 200 people.

Penalties - Penalties for violating the nepotism provisions include a fine and immediate removal from office.

Dual Office Holding/Incompatibility

Definition of "dual office holding" and general rule - The Texas Constitution generally prohibits one person from holding more than one paid public office at the same time.

Definition of "incompatibility" and general rule - Texas law prohibits one person from holding two public offices at the same time, regardless of whether one or both offices are paid, if one position might impose its policies on the other or subject it to control in some other way. There are three types of incompatibility:

(1) "Self-appointment" incompatibility prohibits a member of a governing body from being appointed to another public office over which the governing body has appointment authority;
(2) "Self-employment" incompatibility prohibits a member of a governing body from being employed in another public office over which the governing body has employment authority; and
(3) "Conflicting loyalties" incompatibility prohibits one person from holding two public offices in which the duties of one office might negatively affect the duties of the other office.

Penalties - A person who accepts a prohibited second office automatically resigns the first office.

Bribery/Gifts

Definition of "bribery" - A public official or public employee commits the crime of bribery when he accepts, agrees to accept, or solicits any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion. The fact that a benefit or gift was not offered until after the exercise of official discretion is not considered a defense to a prosecution for bribery.

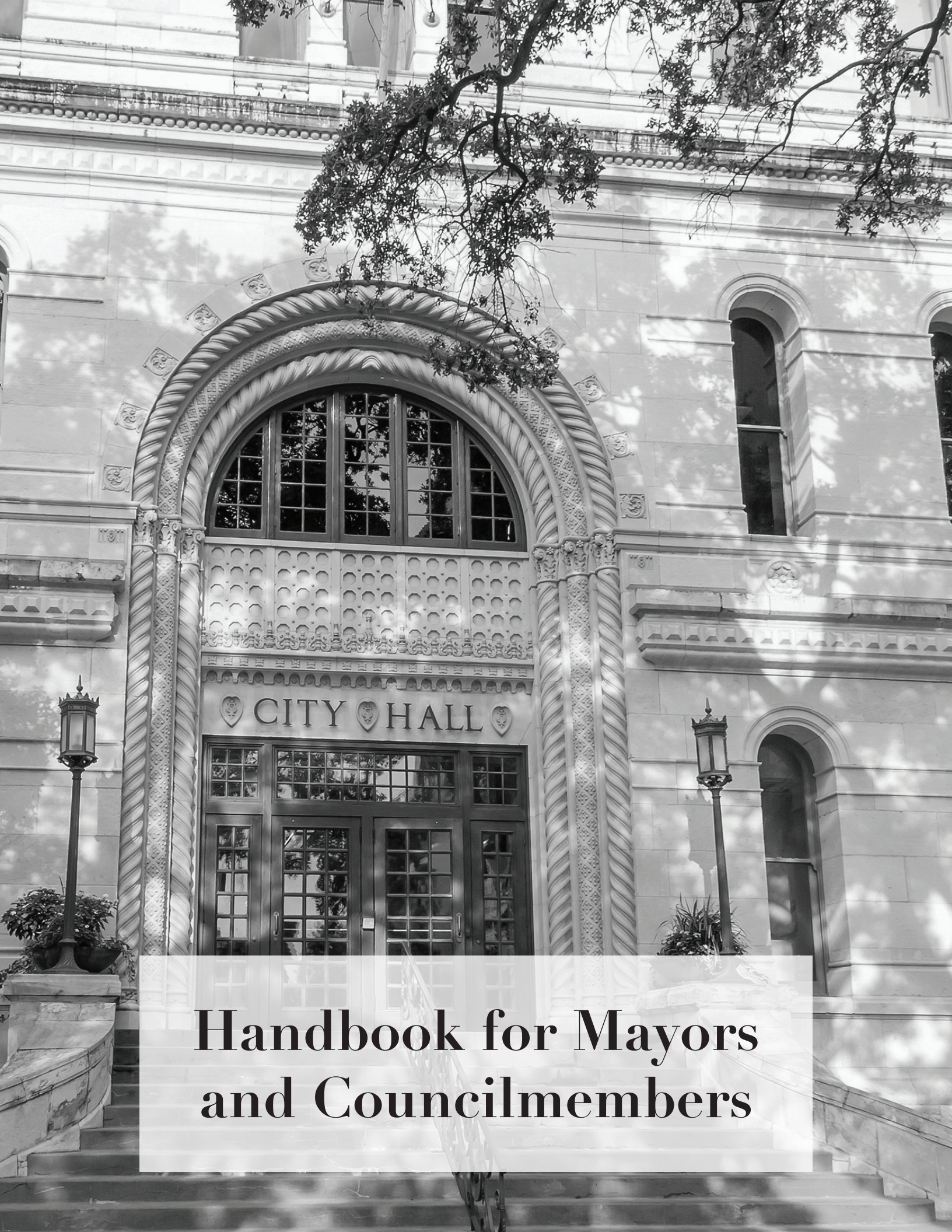
Bribery penalty - The penalty for violating the bribery law is a second degree felony, punishable by two to twenty years imprisonment and a fine of up to $10,000.

Gifts - Public officials and employees are generally prohibited from accepting gifts from any person subject to their jurisdiction, whether or not the gift is related to a specific official action.

Allowable gifts - Certain exceptions may apply, such as: (1) an item with a value of less than $50 (excluding cash or a negotiable instrument, such as a check or gift card); (2) a gift given by a person with whom the official or employee has a familial, personal, business, or professional relationship, independent of the official or employee's status or work; (3) any benefit that the official or employee is entitled to receive by law or for which the person has performed a duty independent of the person's status as a public service (for example, a jury duty fee); or (4) any political contributions as defined by the

Texas Election Code. In addition, a public employee or official may in certain circumstances accept as a guest an unsolicited gift or benefit of food, lodging, transportation, or entertainment, so long as the gift is not related to a specific official action.

Gifts penalty - The penalty for violating the acceptance of gifts prohibition is, with some exceptions, a class A misdemeanor, punishable by a fine of up to $4,000 and/or jail time of up to one year.



Handbook for Mayors and Councilmembers

TEXAS MUNICIPAL LEAGUE

1821 Rutherford Lane, Suite 400, Austin, Texas 78754

2024 HANDBOOK FOR MAYORS AND COUNCILMEMBERS

Foreword

Serving as a local elected official is one of the most demanding—and often thankless—tasks a citizen can perform. Municipal officials can be called upon day and night. They are subject to constant criticism, and almost everything they do will be wrong in someone's opinion. Many spend their own money to campaign for election; most receive little, if any, pay for the job.

But serving in local office can also be rewarding and productive. For many, it is more important than being in Congress or the state legislature because the city is the real world where municipal officials can make good things happen for their fellow city residents.

We hope this handbook will offer a few suggestions that will make your job easier. Obviously, this guide cannot touch upon every relevant subject, but it does include what we think are the most important topics. Throughout, however, it should be recognized that this handbook is only a guide and that there is no substitute for competent legal advice regarding interpretations of the law and other questions that might arise in specific situations.

If you don't find the answers to your questions about the part of city government you are covering or the issues facing cities today, we're ready to assist you in any way we can. Just give us a call at 512-231-7400, email us at legalinfo@tml.org, or visit our website at www.tml.org.

We wish you great success.

BENNETT SANDLIN

TML Executive Director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About the Texas Municipal League

In the summer of 1913, Professor Herman G. James, director of the Bureau of Municipal Research and Reference at the University of Texas at Austin, and A.P. Woolridge, then the mayor of Austin, formed the League of Texas Municipalities.

The two men invited representatives from all Texas cities to come to Austin on November 4, 1913, for an organizational meeting. Fourteen cities sent representatives to Austin. At that first meeting, a modest membership fee was approved along with a constitution to govern the association.

Since that time, the League has grown into one of the largest and most respected organizations of its kind in the nation. From the original 14 members, TML's membership has grown to over 1,170 cities. Membership is voluntary and open to any city in Texas. More than 16,000 mayors, councilmembers, city managers, city attorneys, and department heads are member officials of the League by virtue of their cities' participation. Guided by its purpose statement – *Empowering Texas cities to serve their citizens* – TML exists to provide support and services to city governments in Texas.

League services to its member cities include legal information on municipal legal matters, legislative representation on the state and federal levels, information and research, publication of a monthly magazine, conferences and training seminars on municipal issues, and professional development of member city officials.

Introduction

HOW TO USE THIS HANDBOOK

In the past, the League has prepared two separate handbooks for city officials: one for those in general law cities, and one for those in home rule cities. In the interest of efficiency, those books have been combined to form this *Handbook for Mayors and Councilmembers*. Most of the information is relevant to all cities. But a fundamental understanding of the fact that there are two types of cities in Texas will help the reader recognize those areas where a distinction is made.

For further information visit the TML website at www.tml.org or contact the League's legal services department at legalinfo@tml.org

The two types of cities in Texas are general law and home rule. Most smaller cities (those with 5,000 or fewer inhabitants) are general law cities. A general law city operates exactly as its name implies: it can do only what state law expressly authorizes. The most important part of that authorization is the form of government of a general law city. State law defines the composition of the governing body and various items that go with that (such as filling vacancies on the governing body). Chapter two describes in detail the roles and responsibilities of officers in general law cities: Type A, Type B, and Type C. The main differences in the powers of the different types of cities are largely of historical interest, but the state law directing the makeup of the governing body is still very important.

When a general law city reaches 5,000 inhabitants, it may follow procedures in state law to draft a home rule charter. The draft is then submitted to the voters of the city at an election. If the voters approve the charter at the election, the city becomes a home rule city. A home rule city is governed by its charter (see chapter three for the roles and responsibilities of officers in home rule cities) and looks to state law for limitations on its power. The state legislature has frequently passed laws that limit the authority of home rule cities, and state law also frequently imposes certain procedures that must be followed by any type of city.

This handbook is meant to be a broad and general overview of cities in Texas. Many of the topics are covered in much more detail in various papers and memos available from the League. City officials with questions about items in this book or anything relating to the governance or authority of their city should visit the TML website at www.tml.org and/or contact the League's legal services department at legalinfo@tml.org. The information in this handbook, or other information obtained from the League, should never be substituted for the advice of local legal counsel.

Chapter One: Local Government in Texas

Understanding city government requires some knowledge of all local governments. This chapter briefly discusses counties, school districts, council of governments, and types of city governments.

Units of Local Government

According to 2022 Census of Government figures, Texas has 1,225 cities, 254 counties, 1,070 school districts, and 2,984 special districts. During the past 20 years, the number of special districts has steadily increased, due mainly to the rapid creation of water districts in unincorporated areas. Conversely, the number of school districts has steadily declined as smaller systems have consolidated with larger ones. The number of counties has remained constant for 100 years, while the number of cities is increasing at an average of about 10 per year.

The United States Census Bureau also recognized that five of the 10 cities with the largest recent population gains were in Texas —San Antonio, Fort Worth, Georgetown, Leander, and New Braunfels. Texas also had six of the most recent 15 fastest-growing cities by percentage — New Braunfels, Georgetown, Kyle, Little Elm, Leander, and Conroe.

Counties

Counties are known as "general purpose" governments due to the many different functions they perform. Counties serve the dual purposes of providing governmental services for the benefit of their residents and administrative services on behalf of the state. Major governmental services include road construction and maintenance, jails and courts, welfare, health, and law enforcement. Administrative services performed by counties as agents of the state include voter registration and motor vehicle licensing.

Special Districts

Schools and the many types of special districts are known as "single-purpose" governments, since they usually perform just one function, such as education, water supply, or hospital care. Most special districts serve a limited geo- graphical area and were created because of the inability of general purpose local governments to provide a particular service.

Councils of Governments

Councils of governments (COGs) are also known as "regional planning commissions." COGs are defined as "political subdivisions of the state" under Texas law. However, COGs differ considerably from cities, counties, and other conventional local governments because they cannot levy taxes nor incur debt.

COGs are voluntary, area-wide associations of local governments. Their function is to foster local cooperation among localities by serving as forums for intergovernmental problem-solving and by planning governmental programs and facilities on a regional basis. Though they do not have broad power to execute projects, many of the state's COGs provide direct services on a limited basis.

Each COG operates under the supervision of a governing body composed of elected officials representing participating local governments. Financing is provided by a combination of dues paid by member governments and federal and state funds.

Cities

Among all the different types of local governments, cities perform the greatest number of functions, both governmental and proprietary.

State law specifically defines and lists certain activities as either governmental or proprietary functions in the Texas Tort Claims Act. The law lists 36 functions that are govern- mental. Included among them are police and fire protection, health and sanitation services, street construction and design, transportation systems, establishment and maintenance of jails, and enforcement of land use restrictions. Three functions are listed as

proprietary: the operation and maintenance of a public utility, amusements owned and operated by a city, and any activity that is abnormally dangerous or ultra-hazardous. Functions that are listed as governmental are not included as proprietary functions.

There are two categories of cities in Texas: home rule and general law.

Home rule cities are larger cities with more than 5,000 inhabitants in which the residents of the city have adopted a home rule charter. A charter is a document that establishes the city's governmental structure and provides for the distribution of powers and duties among the various branches of government.

The legal position of home rule cities is the reverse of general law cities. Rather than looking to state law to determine what they may do, as general law cities must, home rule cites look to the state constitution and state statutes to determine what they may not do. Thus, if a proposed home rule city action has not been prohibited, limited, or preempted by the state, the city generally can proceed.

General law cities are smaller cities, most of which are less than 5,000 in population. All general law cities operate according to specific state statutes prescribing their powers and duties. General law cities are limited to doing what the state authorizes or permits them to do. If state law does not grant general law cities the express or implied power to initiate a particular action, none may be taken.

Approximately seventy-five percent of all Texas cities operate under the general laws; the remainder are home rule cities. "General law" is a term used to describe all of the state laws applicable to a particular class of things. A general law city, therefore, is one that is subject to all of the state laws applicable to such cities, many of which are found in the Local Government Code.

General law city officials occasionally call the Texas Municipal League office to request a copy of their "city charters." Unlike home rule cities, general law cities do not have charters. The creation of a general law city is documented in its incorporation papers, filed at the county courthouse, which describe when the city was established and its original boundaries.

Categories of General Law Cities

There are three categories of general law cities: Type A, Type B, and Type C. Although it is sometimes difficult to distinguish between the types, it is necessary to know the difference in order to determine which state laws apply.

Type B General Law Cities

Most new cities begin as Type B general law cities under a state law that permits the incorporation of any area containing 201 to 10,000 inhabitants. Later, as the population of a city grows to 600 or more, it can make a transition to Type A.

In a Type B general law city with the aldermanic form of government, the governing body is known as the "board of aldermen" and includes six members (a mayor and five aldermen), all of whom are elected at-large. At its discretion, the board of aldermen may provide by ordinance for the appointment or election of such additional officers as are needed to conduct the business of the city.

A Type B general law city has the same powers and duties as a Type A general law city, except where specifically provided otherwise. In other words, a Type B general law city has the authority of a Type A general law city in a particular issue where the law governing a Type B city is silent on the particular issue.

Type A General Law Cities

Type A general law cities are usually the larger general law cities. Most were incorporated under Type B status and then switched to Type A status when their population increased to 600 or more, or when they had at least one manufacturing establishment.

The governing body of a city operating as a Type A general law city is technically known as the board of aldermen, although many cities refer to it as the "city council." The governing body varies in size depending on whether the city has been

divided into wards. If the city has been divided into wards, the council consists of a mayor and two councilmembers from each ward—whatever the number. If the city has not been divided into wards, the governing body always consists of a mayor and five councilmembers.

In addition to the city council, other municipal officers include a marshal, treasurer, tax assessor-collector, city secretary, city attorney, and engineer. Whether these offices are elective or appointive depends on the method selected by the city council for filling them. Moreover, the city council may provide by ordinance for the appointment or election of such other municipal officers as it deems necessary.

Type C General Law Cities

A Type C general law city operates with the commission form of government. The governing body is known as the "board of commissioners" and always consists of a mayor and two commissioners. No other elective officers are required; however, the board of commissioners must appoint a city clerk, and may provide by ordinance for the election or appointment of such other officers as are required.

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

Any city operating under the commission form of government can change over to the aldermanic form of government, and vice versa. The commission form of government in a general law city should not be confused with the commission plan adopted by the City of Galveston at the turn of the century. Under the Galveston plan, each member of the municipal governing body—the city commission—simultaneously served as legislators and heads of the city's administrative departments. Thus, one member of the governing body served as "police commissioner," another served as "fire commissioner," and so on, with each commissioner exercising day-to-day supervisory authority over a particular department.

General law cities operating under the commission form of government are not authorized to adopt the Galveston plan.

In a general law city, one commissioner, alderman or councilmember, acting alone, has no individual power; only the commission, board of alderman or city council, acting collectively, exercises power.

City Manager Plan

The city manager plan can be adopted in any general law city under the provisions of Chapter 25 of the Local Government Code:

1) Upon presentation of a petition signed by at least 20 percent of the total number of qualified voters voting for mayor in the last preceding city election, the mayor must call an election on the question of adopting the city manager plan within 10 days after the date the petition is filed.
2) If a majority of the votes cast at the election favor adoption of the city manager plan, the council must, within 60 days after the election, appoint a city manager and fix his or her salary by ordinance.
3) The administration of the city is to be placed in the hands of the city manager, who serves at the pleasure of the city council.
4) In any city where the city manager plan has been approved, all officers of the city, except members of the governing body, thereafter shall be appointed as may be provided by ordinance.
5) Procedures for repealing the city manager plan are essentially the same as for adopting it.

The basic structure of the city manager plan is similar to that of a private corporation, in which the stockholders elect a board of directors which then hires a president to run the company. Under the city manager plan, the voters elect a city council which, in turn, hires a city manager to

administer the city's day-to-day affairs.

Under the city manager plan, the council serves as the legislative body. The council sets policy, it approves the budget and sets the tax rate, and it determines the size of the payroll and the extent and cost of municipal services. In short, the council is the final authority on all of the many policy decisions that determine the scope and functions of the city government.

The mayor and councilmembers have no administrative duties under the city manager plan. These are vested in the city manager, who is responsible for directing the workforce and programs of the city in accordance with ordinances, rules, and regulations adopted by the council.

The typical city manager in Texas is appointed for an indefinite term and is subject to dismissal by the council at any time except as otherwise prohibited by law. He or she is designated as the chief executive and administrative officer of the city and is accountable to the council for the proper conduct of all municipal operations. The manager has the unilateral authority to hire, discipline, and fire the department heads under the manager's control. In some cases, however, certain employees, such as the city attorney or municipal judge, are directly hired and/or supervised by the council rather than the manager. Although the manager's role varies from one city to another, the primary function is to implement the policies established by the council and ensure that the city is operated in an economical and responsible manner. Specific duties of the manager may include the following:

1) Enforcing all city ordinances, rules, and regulations.
2) Supervising all municipal employees and programs.
3) Preparing and executing the city's annual budget pursuant to the revenue and expenditure plans adopted by the council.
4) Managing the city's funds and preparing periodic reports that advise the council and the general public of the city's financial condition.
5) Providing information to the council to facilitate its ability to make informed decisions in the best interests of the city.
6) Preparing council meeting agendas and attending all such meetings to serve as a resource to the council and the public.
7) Drawing the council's attention to community needs and recommending alternatives by which the council can respond to those needs.

Adopting the city manager plan does not change the basic governmental framework of a general law city. Rather, it is an administrative mechanism added to the basic structure.

Legislation passed in 2003 clarifies that city councils of cities that have not adopted a city manager plan under chapter 25 of the Local Government Code are free to delegate by ordinance management duties to a city administrator.

The Home Rule Concept

Although scholars have used a variety of flowery phrases to describe the concept of home rule, the principle is simple: home rule is the right of citizens at the grassroots level to manage their own affairs with minimum interference from the state. Home rule assumes that governmental problems should be solved at the lowest possible level, closest to the people.

As mentioned earlier, home rule cities look to the state to tell them what they are prohibited from doing, rather than for specific grants of authority to undertake particular functions. In *Forwood v. City of Taylor*, the Texas Supreme Court summarized Texas' home rule doctrine as follows:

> *It was the purpose of the Home-Rule Amendment ... to bestow upon accepting cities and towns of more than 5,000 population full power of self-government, that is, full authority to do anything the legislature could theretofore have authorized them to do. The result is that now it is necessary to look to the acts of the legislature not for grants of power to such cities but only for limitations on their powers.*

As a result of the *Forwood* case and other court decisions upholding their broad powers, home rule cities have the inherent authority to do just about

anything that qualifies as a "public purpose" and is not contrary to the constitution or laws of the state.

Inherent Powers of Home Rule Cities

An "inherent power" is one that is possessed by a city without its having been specifically granted by the state. It is the right to perform an act without having received that right from the Texas Constitution or the state legislature.

Home rule cities have many inherent powers. A discussion of some of the inherent powers of major significance may explain why so many cities have chosen to adopt home rule charters.

Municipal Organization

In contrast to counties or general law cities, whose organization is fixed by state law, the governmental structure of a home rule city is left entirely to the discretion of local voters. The residents of a home rule city are free to decide their form of municipal government (mayor-council, council-manager, and so on); choose between a large or small city council; provide for the election of the city council at-large, by single-member district, or by place; fix the terms of office for councilmembers at two, three, or four years; or establish overlapping terms of office. Moreover, they can decide whether the mayor is to be elected directly by the voters, selected from among members of the council, or chosen by some other method.

The residents of a home rule city also have total discretion over the city's administrative structure. Subject only to local preferences, the charter can establish a simple administrative framework or a complex one, provide for the appointment or election of major administrative officials, and so on. And finally, the charter can provide for the creation of any boards or commissions that local voters decide are necessary to make the city function effectively.

Annexation

From 1912-2019, the inherent power of a city to unilaterally annex adjoining areas was one of the most important home rule prerogatives. To annex "unilaterally" means that the city can bring an adjacent, unincorporated area into the city without the permission of the persons residing in that area.

In 2019, the legislature passed H.B. 347, which drastically altered the annexation landscape for all cities. Now a city may only annex:

1) Vacant land at the request of the landowner;
2) An area with a population of less than 200 only if the following conditions are met, as applicable: (a) the city obtains consent to annex the area through a petition signed by more than 50 percent of the registered voters of the area; and (b) if the registered voters of the area do not own more than 50 percent of the land in the area, the petition described by (1) is signed by more than 50 percent of the owners of land in the area; and
3) An area with a population of 200 or more only if the following conditions are met, as applicable: (a) the city holds an election in the area proposed to be annexed at which the qualified voters of the area may vote on the question of the annexation and a majority of the votes received at the election approve the annexation; and (b) if the registered voters of the area do not own more than 50 percent of the land in the area, the city obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area.

Initiative, Referendum, and Recall

Initiative, referendum, and recall are inherent home rule powers that are reserved for exclusive use by local voters to provide direct remedies in unusual situations. There is no constitutional or statutory authority for initiative, referendum, or recall. These powers are unique to home rule cities, and they are not available to voters at any other level of government, including the state.

Initiative is a procedure under which local voters directly propose (initiate) legislation. Lawmaking through the initiative process allows local voters to circumvent the city council by direct ballot box

action on new ordinances that have wide support in the community, but which the council refuses to enact.

The initiative process begins with the circulation of a petition setting forth the text of the desired ordinance. Then, petitioners must obtain the number of voter signatures needed to force the city council to submit the ordinance to the people at a citywide election. Petition signature requirements vary from charter to charter. Some are based on a percentage of the number of qualified voters in the city, while others are expressed as a ratio of the number of votes cast at the last general city election.

After a completed petition is filed, the city secretary checks it to make sure that all of those who signed are qualified voters. If the petition complies with the requirements of the charter and the Election Code, the city council has two options: (1) it can adopt the proposed ordinance; or (2) it must call an election on the ordinance. If, at the election on the proposed ordinance, a majority of those voting favor its adoption, the ordinance is put into effect.

Referendum is a procedure under which local voters can repeal unpopular, existing ordinances the council refuses to rescind by its own action. The procedures for forcing the city council to call a referendum election are usually the same as for initiative elections. Petitions calling for an election to repeal "Ordinance X" are circulated. When the required number of signatures is obtained, the petition is submitted to the city council, which can either repeal the ordinance by its own action or call an election at which the residents can vote to repeal it. If, at such an election, a majority favors retaining the ordinance, it is left on the books. If a majority favors its repeal, it is rescinded when the council canvasses the election returns.

Recall is a process by which local voters can oust members of the city council before the expiration of the members' terms. Under most charters, a recall election begins with the filing of an affidavit stating the name of the member of council whose removal is sought and the grounds for removal. The city clerk or secretary then furnishes the person filing the affidavit with petition forms that must be completed and returned within a prescribed time.

Most city charters impose two further limitations on recall efforts. First, they prohibit more than one recall election per member per term. Secondly, they forbid recall elections for any member during the early stages of his or her term—as, for example, prohibiting an election to recall a member within 60 days of the date he or she was sworn into office, or prohibiting recall elections for members whose terms will expire within 60 days. The following language is typical of charter recall provisions:

> *The people of the city reserve the power to recall any member of the council and may exercise such power by filing with the city clerk a petition, signed by qualified voters of the city equal in number to at least ten percent of the qualified voters of the city, demanding the removal of a member.*

Charter Amendments

In addition to initiative and referendum, direct lawmaking by local voters can be accomplished through amendments to the charter document itself. Under Section 9.004 of the Local Government Code, citizens can force the city council to call an election on a proposed charter amendment by simply filing a petition signed by five percent of the qualified voters or 20,000, whichever is less. Voter-initiated charter amendments, if adopted, can change most aspects of the city government.

Limitations on Home Rule Powers

Although the powers of a home rule city are broader than that of a general law city, they remain subject to all the limitations imposed by state and federal law. Some of these are briefly summarized below.

Every city must comply with the federal and state constitution and statutory requirements. Examples include state statutes that require every city to pay unemployment taxes, that require cities with 10,000 or more in population to pay longevity compensation to its police officers and firefighters or prohibit conducting regular city elections on any day except on those days prescribed by the Election Code.

Though certain limitations are imposed on home rule cities by the state, some can be further narrowed by local action. For example, the Texas Constitution authorizes any city with more than 5,000 inhabitants to levy property taxes at a maximum rate of $2.50 per $100 assessed valuation. But a home rule charter may set a local ceiling lower than that. If a city's charter limits the city tax rate to $1.70 per $100 of assessed valuation, this provision has the same effect as state law. The city council is bound by it even though the state constitution permits a higher rate.

Additionally, the governing body of a home rule city cannot act on any matter which has been preempted by the state. A clear example of preemption by state law can be found in the Texas Alcoholic Beverage Code. In this code, the state sets the business hours of retail liquor stores. Therefore, an ordinance requiring liquor stores to open or close at times other than those prescribed by state law may not be enacted. Another example of clear preemption is recent legislation that prohibits cities from adopting or enforcing an order, ordinance, or other measure that imposes a curfew on juveniles.

Some areas of preemption are much less clear now. In 2023, the Legislature adopted H.B. 2127, also known as the "Texas Regulatory Consistency Act," which curbed city authority.

H.B. 2127 expressly preempts a city from adopting or enforcing five types of regulations:

- Regulations of employment leave, hiring practices, breaks, employment benefits, scheduling practices, and any other terms of employment that exceed or conflict with federal or state law for non-city employers;
- New or amended predatory lending regulations;
- Regulations impeding a business involving the breeding, care, treatment, or sale of animals or animal products, including a veterinary practice, or the business's transactions if the person operating the business holds a state or federal license to perform such actions or services;
- New or amended regulations relating to the retail sale of dogs or cats; and
- Regulations involving evictions.

Most notably, H.B. 2127 among other things, prohibits a city from adopting or enforcing an ordinance in a field of regulation occupied by state law in eight specific statutory codes (Agriculture Code, Business & Commerce Code, Finance Code, Insurance Code, Labor Code, Natural Resources Code, Occupations Code, and Property Code), unless expressly authorized by another statute. Exactly what "fields of regulation occupied by state law" means remains unclear. Unfortunately, this is a legal question that the courts must decide on a case-by-case basis.

H.B. 2127 appears to potentially contradict the long-standing constitutional interpretation of home rule authority in Texas. The bill adds Section 51.002 of the Local Government Code to provide as follows: "Notwithstanding Section 51.001, the governing body of a municipality may adopt, enforce, or maintain an ordinance or rule only if the ordinance or rule is consistent with the laws of this state." That provision raises even more questions about the scope of the bill. If state law is silent in a certain area, it is unclear if a home rule city may regulate in that area. One might argue yes, because the Texas Constitution gives home rule cities the full power of self-government. But the bill certainly calls home rule authority in question in several areas. Given the language, a court could determine Section 51.002 of the Local Government Code eliminates city regulatory authority in the absence of state regulation, which would create a direct conflict between the statute and the Texas Constitution.

In fact, in August of 2023, a Travis County district judge declared that H.B. 2127 is unconstitutional, lending credence to cities' arguments during the 2023 Legislative Session that the bill was ambiguous and on questionable legal footing. The ruling came after the City of Houston—later joined by the cities of San Antonio and El Paso as intervenors—filed a lawsuit against the state challenging the constitutionality of H.B. 2127.

While the ruling represents an encouraging first step for the preservation of constitutional home rule authority in Texas, it marks just the beginning of the legal wrangling over the new law.

The Charter Document

Although all municipal governments are subject to an abundance of federal and state laws, the charter remains the most important document for a home rule city. Members of the council should read the charter immediately upon their election to office; annual reviews also can be useful.

Most charters include the following components:

1. Provisions establishing the city's form of government (mayor-council, council-manager, and so on) and its legislative and judicial machinery;
2. Organizational provisions establishing the administrative structure of the city government and the means for financing its operations;
3. Provisions governing the procedures of the city council and advisory boards and commissions, and procedures for granting franchises, and assessing and collecting taxes; and,
4. Popular controls over the city government, such as elections, referenda, initiative, and recall.

Forms of Home Rule City Government

Every home rule city in the state operates under one of two forms of government: mayor-council or council-manager. Among Texas' approximately 385 home rule cities, the vast majority have the council-manager form.

Mayor-Council Government

The mayor-council plan has two variants: strong-mayor and weak-mayor. Under the strong-mayor system, most key administrative and appointive powers are concentrated in the hands of a full-time mayor who also presides over meetings of the city council. The mayor usually has: (1) the power to appoint and remove department heads and the members of most major boards and commissions; (2) the prerogative to prepare the city budget and, following its adoption by the council, to execute the budget; (3) a high enough salary to enable the officeholder to devote their full time to being mayor, as well as an office budget sufficient to hire an adequate staff; and (4) the power to veto actions by the city council. In a strong-mayor city, councilmembers have no administrative duties. Their role is to enact ordinances, adopt policies governing the operations of the city, and otherwise function as the legislative branch of the city government.

Under the weak-mayor system, the powers of the mayor are limited. First, the mayor may be selected by the council rather than being directly elected by the people, which dilutes his or her political influence. Secondly, the mayor's pay is usually minimal and few, if any, funds are provided for staff. Third, department heads often are appointed and removed by majority vote of the city council, which diffuses administrative authority. And finally, few weak mayors have either the authority to veto actions of the council or the exclusive power to develop and execute the budget, since these powers are collectively exercised by the council.

Very few home rule cities in Texas use the weak-mayor form of government.

Council-Manager Plan

The basic structure of the council-manager form of government is like that of a private corporation where the stockholders elect a board of directors which then hires a president to run the company. Under the council-manager plan, the voters elect a city council which, in turn, hires a city manager to administer the city's day-to-day affairs.

In a council-manager city, as in any other form of city government, the council serves as the legislative body. The council sets policy, approves the budget, sets the tax rate, determines the size of the payroll, and the extent and cost of municipal services. In short, the council is the final authority on all the many policy decisions that determine the scope and functions of the city government.

Under the council-manager plan, the mayor and councilmembers have no administrative duties. These are vested in the city manager, who is responsible for directing the workforce

and programs of the city in accordance with ordinances, rules, and regulations adopted by the council. The typical city manager in Texas is appointed for an indefinite term and is subject to dismissal by the council at any time except as otherwise prohibited by law. He or she is designated, either by charter or ordinance, as the chief executive and administrative officer of the city and is accountable to the council for the proper conduct of all municipal operations. The manager has the unilateral authority to hire, discipline, and fire the department heads.

Although the manager's role varies from one city to another, the manager's primary function is to implement the policies established by the council and ensure that the city is operated in an economical and responsible manner. Specific duties of the manager may include the following:

1) Enforcing all city ordinances, rules, and regulations.
2) Supervising all municipal employees and programs.
3) Preparing and executing the city's annual budget pursuant to the revenue and expenditure plans adopted by the council.
4) Managing the city's funds and preparing periodic reports that advise the council and the general public of the city's financial condition.
5) Providing information to the council to facilitate its ability to make informed decisions in the best interests of the community.
6) Preparing council meeting agendas and attending all such meetings to serve as a resource to the council and the public.
7) Drawing the council's attention to community needs and recommending alternatives by which the council can respond to those needs.

In larger cities, city managers spend comparatively little time on citizen contacts, personnel problems, and other routine matters. Managers in these cities usually have a sizable staff capable of handling day-to-day problems, thus allowing the manager to concentrate on communicating with the council, policy issues, planning activities, and work sessions with department heads.

On the other hand, the managers of medium-sized and smaller cities frequently operate with limited resources and a small staff. The manager must, by necessity, be personally involved in the details of providing police, fire, solid waste, and other services.

Chapter Two: Roles and Responsibilities of Officers in General Law Cities

All members of the city council play unique 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

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. The mayor presides over council meetings 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 general law 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 when the mayor is authorized by ordinance to appoint department heads and advisory board members. In Chapter 25 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, such as the power to appoint commissioners of a housing authority (Local Government Code Section 392.031).

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 city 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 29.004). 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 may be 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 may be required on 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, 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 Chapter 25 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 general law 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 general law cities, those cities should consult with their local legal counsel with questions.

The mayor's prerogatives can also be restricted by the structure of the city government. Under the Chapter 25 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) Be a registered voter;
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).

Terms 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 aldermen is two years (Local Government Code Section 22.035). In a Type C general law city, the mayor's term of office is two years (Local Government Code Section 24.023).

In any city, the term of office for members of the governing body can be extended to three 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 should be filled according to prescribed procedures.

In a Type B general law city operating under the aldermanic form of government, a mayoral vacancy must be 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, the vacancies 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 to fill a vacancy is no longer an option. Any vacancy must be filled by special election (Texas Constitution, Article XI, Section 11).

Absences

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 Chapter 21 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 for a misdemeanor involving 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 Type C cities, 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 Type A and B general law cities, 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: an elected officer cannot receive a pay increase that was approved during the term for which he or she is elected. Such an increase will become effective only after the next general municipal election at which the office 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 city travel policies are established by ordinance or resolution.

Office of the 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 while performing the duties of the mayor (Local Government Code Sections 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:

1. 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.
2. 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.
3. Employer—The council is responsible for all the city's employees and must see that they are adequately paid and provided with decent working conditions and fringe benefits.
4. 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.

This is not even a complete description of all the challenges that confront councilmembers.

The real task is in providing leadership and direction for the city, in deciding what needs to be done, and in 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 six months preceding election day;
4) Be a registered voter;
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 Sections 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 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—must be 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 Type C general law 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 Section 22.038 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 without a fine. 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 the alderman has obtained a leave of absence at a regular meeting—his or her office shall be vacant. (Local Government Code Section 22.041).

There is no law applicable to absences by aldermen in Type B general law cities or members of the board of commissioners in cities operating under the commission form of government (Type C general law cities). However, in cities over 500 population, which operate under the commission form of government, Sections 51.035 and 51.051 (the "borrowing provisions") 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 general law cities should contact their local legal counsel 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 and are governed by Chapter 21 of the Local Government Code.

Compensation

In Type C cities, 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, no maximum salary amount is fixed for aldermen. Therefore, the governing body can set councilmember 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, a council of governments, and similar organizations. Most travel policies are established by ordinance or resolution.

Chapter Three: Roles and Responsibilities of Officers in Home Rule Cities

All members of the city council play unique roles in making the city government operate effectively in a home rule city. Many of their functions are set by law, while others are established as a matter of local custom or policy. While the information in this chapter is broadly applicable to cities across the state, each home rule charter is distinct. To ascertain the scope of a particular official's role in a specific city, one would need to consult that city's charter.

Office of the Mayor

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 pre- sides 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 either by provisions in the charter or 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.

Most charters designate the mayor as presiding officer of the city council and as such, his or her actual powers in legislative matters can be greater than those of other councilmembers. For example, as presiding officer of the council, 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 charters of some cities authorize the mayor to veto ordinances and other enactments approved by the city council.

Appointive Powers

Appointive powers represent another area in which the mayor's powers often outrank those of councilmembers, especially in mayor-council cities where the mayor is authorized to appoint department heads and advisory board members. In council-manager cities, however, the mayor's appointive powers are usually more limited, since the city manager appoints all or most administrative employees, and the full council often appoints the members of advisory boards and commissions.

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 an almost 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, city events, and other community celebrations.

The mayor also issues proclamations for a variety

of purposes, whether to honor visiting dignitaries, recognize exceptional achievements, 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.

Powers of the Mayor in Council-Manager Home Rule Cities

Under the council-manager form of government, the mayor has no day-to-day administrative duties; rather, these are vested in a city manager who is responsible for implementing policies established by the council. In most council-manager cities, the mayor is in city hall on an irregular basis and is involved very little in routine operational matters.

The charters of most council-manager cities make it clear that decision-making is to be exercised by the full council, and that the mayor is to be considered the same as any other member of the council for policy-making purposes. This is accomplished by concentrating administrative powers in the hands of the city manager and by requiring action by the whole council, and not just the mayor, to appoint key board and commission members.

And finally, a number of state laws further ensure that the full council share appointive powers. Several examples can be found in the Local Government Code. Chapter 211 mandates that the city's governing body appoint the members of the city's zoning commission as well as the members of the zoning board of adjustment. Additionally, Chapters 504 and 505 authorize the governing body to appoint the directors of Type A and Type B economic development corporations.

Powers of the Mayor in Mayor-Council Home Rule Cities

The Mayor-Council setup, sometimes referred to as the "Strong Mayor" form of government, allows the mayor in home rule cities to serve in the dual roles of administrator and political head of the city. Even though this form of local government is allowable in home rule cities in Texas, it remains relatively uncommon. When adopted, the mayor is in city hall on a continuing basis, working with department heads on routine items that need to be addressed each day, handling emergencies, and performing all of the ceremonial duties that go with the office. Depending on the city, the charter may give the mayor broad authority to deal with the many problems that arise each day. A skilled administrative staff usually is available to help the mayor carry the day-to-day load. Additionally, in some cities, the charter gives the mayor the power to veto actions of the council.

The broad powers of the mayor in mayor-council cities usually are offset by charter provisions that require the council to ratify mayoral appointments and other key actions. This requirement for council approval of the budget provides councilmembers with an effective method of slowing down a zealous mayor by reducing or abolishing expenditures.

Further checks can be created by distributing governmental powers in a certain way. For instance, under the Houston charter, provision is made for an elected city controller responsible for supervising the expenditure of municipal funds independent of both the mayor and council.

Limitations on the Mayor's Powers

As noted above, the powers of the mayor in both mayor-council and council-manager home rule cities can be limited by requiring full council approval of the budget and board and commission appointments, and by distributing governmental powers among a variety of city officials rather than concentrating them in the office of mayor. Another way to impose restraints on the mayor is to limit his or her power at the council table. For example, some charters in home rule cities do not allow the mayor to initiate motions at council meetings, while some charters forbid the mayor from voting except to break a tie.

Office of the Mayor Pro Tem

The mayor pro tempore is a member of the council who performs the mayor's duties if the mayor's is incapacitated or absent. The mayor pro tem is usually selected by a majority vote of the council. The term of service as a mayor pro tem can vary

from city to city. For example, in most cities the term of the mayor pro tem is often the same as that of a councilmember. In another city, for example, each councilmember serves a three-month term as mayor pro tem on a rotating basis.

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 on every question presented 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 the many functions councilmembers perform. They also wear several other hats, which one writer describes as follows:

1. 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.
2. Financier—The council must 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 city 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.
3. Employer—The council is responsible for all the city's employees and must see that they are adequately paid and provided with decent working conditions and fringe benefits.
4. 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.

In addition to these everyday duties, councilmembers spend considerable time representing the city in a wide circle of external relationships. Examples include:

1. Serving on committees of the Texas Municipal League and other statewide local government organizations.
2. Working with state legislators on city-related bills.
3. Working with the National League of Cities, the U.S. Conference of Mayors, and other national public interest groups on municipal issues pending before Congress or federal regulatory agencies.
4. Supporting efforts of the chamber of commerce, industrial foundations, and other organizations to foster the city's economic development.

Size of the Council

There is no state law requiring the city council of a home rule city to be any particular size. As is true in so many other areas of home rule, the size of the governing body is determined by the city's charter.

Terms of Office

The terms of office for mayors and councilmembers range from two to four years and are set by the city's charter. More than ninety percent of all home rule charters provide continuity on the governing body by staggering councilmembers' terms, thus preventing wholesale changeovers on the council at any one election. Under staggered term procedures, the terms of approximately half of the members of the council expire at one municipal election, and the other half expire at the next election. For instance, in the case of a seven-member city council with two-year terms, the terms of three members might expire during each odd-numbered year, while the other four terms would expire during each even-numbered year. Some home rule charters limit the number of terms a councilmember may serve.

Method of Electing the Council

Council members in cities with two-year terms may be elected by winning a plurality of votes cast; however, Article XI, Section 11 of the Texas Constitution stipulates that in cities with terms longer than two years, members of the governing body must be elected by a majority vote. This requirement can occasionally lead to the need for runoff elections to ensure a majority vote is achieved. There are four basic methods of electing home rule city councils in Texas. The first is the pure at-large system, under which candidates are elected citywide without regard to where they live.

The second is the at-large place system of electing the council, under which candidates run citywide, but each must file for a designated seat or "place" on the council.

Under an at-large/from-districts system, candidates are elected citywide, but councilmembers must reside in designated geographical areas of the city.

Under a single-member district electoral system, all candidates for the council (not including the mayor) must live in designated districts of the city and are voted upon only by the voters residing in those districts.

Additionally, a number of cities use hybrid electoral systems that combine various features of the plans described above. Mixed systems include those in which some members of the council are elected at-large and the remaining councilmembers are elected from single-member districts, or where some members of the council are elected at-large and the balance are elected from districts at-large.

Qualifications

Every candidate for the office of mayor or councilmember must meet the qualifications prescribed by the Texas Election Code, which requires that a candidate:

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

(Election Code Section 141.001).

The Election Code authorizes home rule cities to establish two exceptions to these six criteria. First, the charter can require council candidates to be up to 21 years old, rather than 18, upon the commencement of the term to be filled at the election. Second, the charter can require candidates to be residents of the city for 12 months, rather than 6 months, as of the deadline for filing for office (Election Code Section 141.003).

Vacancies

Vacancies on the council can result from a failure to qualify for office, resignation, death, disability, recall, or failure of a member of council to meet the requirements of the charter. In some instances, a vacancy can occur if a member of the council announces for another elective office. For example, under Article XI, Section 11, of the Texas Constitution, in cities where the term of office for councilmembers is three or four years, any councilmember who announces for another elective office automatically resigns from the council if more than one year and 30 days remains in his or her term at the time of such announcement.

Also, some city charters provide that any councilmember who runs for another office automatically vacates his or her seat on the council. A city charter may provide that:

If any officer of the city shall file as a candidate for nomination or election to any public office, except to some office under this charter, they shall immediately forfeit their office.

Procedures for filling vacancies vary from charter to charter. In some instances, charters require that vacancies on the governing body be filled by appointment of the council in every case, regardless of whether a regular city election is imminent. The charters of others require the council to fill a single vacancy by appointment, but if two or more vacancies exist, they must be filled at a special election. Under Article XI, Section 11, of the Texas Constitution, cities with three- or four-year terms must fill all vacancies by election unless: (a) there is 12 months or less left in the member's term; and (b) the charter provides for appointment. Finally, some charters require that all council vacancies be filled by special election. Among these cities, the common practice is not to require special elections in cases where a regular city election is imminent (for example, within sixty to ninety days of the time the vacancy occurred).

Compensation

As with so many other aspects of home rule government, state law is silent regarding the compensation of mayors and councilmembers. As such, the salary can be governed by the charter or set by local policy if the charter is silent.

Salaries

In most of the cities operating under the mayor-council form of government, the mayor may receive a substantial salary for his or her full-time administrative services. In council-manager cities, the charter generally treats councilmembers as part-time legislators for whom minimum compensation is provided.

Most charters fix the dollar amount of the salary or fees to be paid to members of the governing body. A few permit the council to set its own compensation.

Expense Reimbursement

It is commonplace for cities to reimburse members of council for travel, lodging, and other expenses incurred on official city business trips to meetings of the Texas Municipal League, National League of Cities, and similar organizations. Only a small number of charters make any mention whatsoever of members' expense reimbursement. Most travel policies are established by ordinance or resolution.

Other Benefits

A final category of benefits for councilmembers includes staff and office facilities. Again, there is no consistency among cities: benefits range from providing part-time clerical help to full-time secretaries and administrative assistants.

As with so many other issues, the question of what—if any—staff and facilities should be provided to councilmembers must be decided locally.


CITY HALL

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 (See Chapter One for a discussion on H.B. 2127). Below is a discussion of some of the basic powers given to cities.

Administrative Oversight in General Law Cities

The Mayor as Chief Executive Officer

In a general law city, a mayor's duties and authority come first from the Local Government Code and other state law and then may be expanded by the city council. See Local Government Code Sections 22.037, 22.042, and 23.027. Through an express delegation of authority, the city council in some cities may delegate to the mayor the authority to supervise the city's employees, procure supplies, ensure that the streets are cleaned and repaired, or oversee the multitude of other items that need attention each day. Department heads may 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. It is important to note that while the city council can delegate these authorities, they also retain the power to rescind or modify such delegations as circumstances or preferences change.

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, encounters political difficulty, 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 provides 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 because councils meet just once or twice a month, they 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, or if critical items are left off council meeting agendas. 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, without 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. Often this official has the title "city manager" or "city administrator," who is the chief administrative officer of the city. In other cases, 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, by ordinance

or city policy, 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 a single 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.

The residents in general law cities have an additional option for choosing their city's form of administrative oversight through election. Chapter 25 of the Local Government Code allows for the creation of the city manager position pursuant to an election, with the duties established by state law. This form of government is rare and has different characteristics from other forms where a manager or administrator position is created solely by 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.

Commonly, 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 notices of meetings of all governmental bodies be posted in advance and meetings be open to the public, unless an exception applies. If there is some question as to whether meetings of a council committee are subject to the Open Meetings Act, the best practice usually is to assume that they are (see Texas attorney general opinions H-3, and JM-1072; and JC-60) and consult with the city attorney for guidance.

Administrative Oversight in Home Rule Cities

While the same general policy-making functions are shared by city councils everywhere, administrative responsibilities differ according to the particular city government organization. For example, if the city operates under a city manager or city administrator plan, or if the mayor serves as an administrative head of the city, the council

exercises control in a more indirect way by setting broad policies that are left to the mayor, manager, or administrator 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 residents. 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 Government Code, the Health and Safety Code, and other statutes.

Additionally, a 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 some 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).

Prior to 2017, a home rule city could annex areas located outside the city limits but within the city's extraterritorial jurisdiction without the consent of the landowners. However, beginning with the 2017 legislative session, the legislature began a multi-session project to drastically alter city annexation

authority. As it stands today, except in certain specific circumstances, both home-rule and general law cities may annex property only on request of the landowners, or by following the procedures below:

1. A city may annex an area with a population of less than 200 only if the following conditions are met, as applicable: (1) the city obtains consent to annex the area through a petition signed by more than 50 percent of the registered voters of the area; and (2) if the registered voters of the area do not own more than 50 percent of the land in the area, the petition described by (1) is signed by more than 50 percent of the owners of land in the area.
2. A city may annex an area with a population of 200 or more only if the following conditions are met, as applicable: (1) the city holds an election in the area proposed to be annexed at which the qualified voters of the area may vote on the question of the annexation and a majority of the votes received at the election approve the annexation; and (2) if the registered voters of the area do not own more than 50 percent of the land in the area, the city obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area.

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 manufacturedhousing; 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 Chapter 252 and Government Code Chapter 2267).

Donations of City Funds

The Texas Constitution prohibits the donation of city funds to private individuals, corporations, or associations (such as garden clubs or The 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 governments, 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 Texas 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 payment is part of the employee's overall compensation, and is included in the budget as such, it can be a legitimate expenditure.

Public Purchasing

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, use an Internet-based reverse auction procedure, or participate in a cooperative purchasing program.

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 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 Facilities 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—for example—the following instances: (1) in the 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 first Saturday in May and the first Tuesday after the first Monday in November.

Official Newspaper

At the beginning of each fiscal year, the council 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 it in three public places or by publication in the newspaper (Local Government Code chapter 52). Many home rule charters have similar provisions.

Federal Voting Rights Act

On June 25, 2013, the United States Supreme Court issued its opinion in *Shelby County v. Holder*. In the case, Shelby County, Alabama, alleged that the basis for applying the federal Voting Rights Act to certain states is unconstitutional. The Court agreed. It concluded that Section 4 of the Act is unconstitutional, but the holding also affects other portions of the law, including the requirement that any voting change made by a city be "precleared" by submitting it to the United States Department of Justice or a federal court for a determination that it is not discriminatory.

In response to the opinion, the United States Department of Justice is providing a written response to jurisdictions that submit proposed changes to the Attorney General that advises that no determination will be made under Section 5 of the Voting Rights Act on the specified change.

Based on the United States Department of Justice's response, the Texas Municipal League advises that Section 5 preclearance submissions to the Department of Justice are no longer required. However, each city should heed the advice of its attorney to make the determination on whether or not preclearance is required, as pending litigation may impact other sections of the Voting Rights Act.

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.

Chapter Five: The City Council at Work: Meetings

It is imperative that every meeting of the city council be conducted in an orderly and legal manner. If the council's conduct is improper, the legality of its actions may be successfully challenged in court. If its meetings are slovenly and disorganized, the council cannot expect to command public respect.

Legal Requirements

State law prescribes several specific requirements for council meetings, including: (1) that meetings be scheduled at a fixed time and place; (2) that notice of a meetings be posted within a specific time frame; (3) that a quorum of the council be present (either in person or, in certain cases, by video conference) for the transaction of business; and (4) that any question before the council be decided by majority vote of the members present and voting, except where the law requires otherwise.

Texas Open Meetings Act

Every meeting of the city council must be conducted in accordance with Chapter 551 of the Government Code, the Texas Open Meetings Act. Among all the state laws affecting city officials, this is the one most likely to be unintentionally violated because of lack of knowledge.

To help educate government officials on the Act's requirements, each elected or appointed member of a governmental body must take at least one hour of training in the Open Meetings Act. The training must be completed not later than 90 days after the member takes the oath of office or assumes the responsibilities of the office.

The attorney general's office allows the training requirement to be met in at least two ways: (1) viewing a video that is available to borrow or online; and (2) receiving training from certified entities, such as TML. Please visit the attorney general's website or call TML for more information on the training.

The Open Meetings Act requires that written notice of the date, hour, location, and subject of every council meeting be posted 72 hours in advance of such meeting on a bulletin board in city hall accessible to the public day and night. Cities that maintain a website must also concurrently post the notice of the city council meeting and the meeting agenda on the city's website. Also, the minutes of the city council's meetings must be posted on the city's website when approved. The validity of an Internet posting of the notice and agenda by a city that is made in good faith to comply with the requirements of the law is not affected by the failure to comply due to technical problems beyond the control of the city. Additionally, if the city makes a good-faith attempt to continuously post the notice of the meeting on the Internet during the prescribed period, the notice physically posted at city hall must be readily accessible to the general public only during normal business hours. There are some special requirements, including additional notice requirements, if a meeting is to be held by videoconference call.

There are three exceptions to the 72-hour posting requirement:

1) At least one hour advance notice is required for a special meeting called in the case of "emergency or urgent public necessity," the nature of which must be stated in the notice.
2) Emergency or urgent public necessity items may be added to an agenda of a meeting for which 72 hours notice has already been posted if a supplemental notice listing such items is posted at least one hour prior to the meeting stating the emergency that requires action on the additional items.
3) Pursuant to a general posting of items of "community interest," the following need not specifically appear on the posted notice: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; honorary recognitions of city officials, employees, or other citizens; reminders about upcoming events

sponsored by the city or other entity that is scheduled to be attended by a city official or employee; and announcements involving imminent threats to the public health and safety of the city.

The Act also requires that all council meetings, with narrow exceptions, be open to the public. Closed meetings (also referred to as "executive sessions") are permitted for the discussion of items that legitimately fall within the exceptions stated in the law. Exceptions from the open meeting requirement are provided for the following:

1) Private consultations between the city council and its lawyers to discuss pending or contemplated litigation, settlement offers, and other legal matters that implicate the attorney-client privilege. The city's attorney must be present (either in person if the attorney is a city employee, or in person or by telephone, video conference call, or Internet communications if the attorney is an independent contractor) at any closed meeting held under this exception.
2) Discussions regarding the purchase, exchange, lease, or value of real property, or negotiated contracts for prospective gifts or donations to the city, when a discussion of these items in public would have a detrimental effect on the city's negotiating position.
3) Deliberations involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a city officer or employee, or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing.
4) Discussions regarding the deployment or implementation of security personnel or devices, or a security audit. Also, security assessments or deployment relating to information research technology.
5) Discussions regarding commercial information received from a business prospect and/or the nature of any incentives being considered by the city for economic development purposes.
6) Deliberations regarding a test item or information relating to a test that the city administers to individuals who seek to obtain or renew a license or certificate necessary to engage in an activity.
7) Electric or gas service discussions in very limited circumstances.
8) Discussions regarding various critical infrastructure and homeland security information, including: (a) staffing requirements of an emergency response provider; (b) tactical plans; (c) infrastructure vulnerability assessments and other reports prepared for the federal government; (d) the location of dangerous materials that may be used for weapons; (e) computer passwords; and (f) information regarding security systems that protect property from terrorism or related criminal activity.

Before an executive session can take place, the council must first convene in open session, the presiding officer must announce that a closed meeting will take place, and he or she then must identify the section of the Open Meetings Act that authorizes the closed session.

The law requires that a certified agenda or a recording must be made of all meetings that are closed to the public, except executive sessions held for the purpose of consulting with an attorney under the provisions of the law. For an executive session to discuss critical infrastructure or homeland security matters, a recording is mandatory. The law does not define the term "certified agenda," but it does provide that the certified agenda shall state the subject matter of each deliberation and include a record of any further action taken. It also must include a record of the date and time of the beginning and end of the meeting. The presiding officer must certify that the agenda is a true and correct record of the proceedings. In lieu of the certified agenda, the city may make a recording of the closed meeting, including an announcement made by the presiding officer at the beginning and end of the meeting indicating the date and start and end times.

The certified agenda or the recording must be maintained for a period of two years after the date of the meeting. However, if a lawsuit is filed during this two-year period, the certified agenda or recording must be preserved pending the outcome

of the action. The certified agenda or recording is not a public record, and it is a criminal offense to make either available to the public without lawful authority, but either may be reviewed by a current member of the city council. It is advisable that the certified agenda or the recording be placed in a sealed envelope identifying the contents and then placed in secured storage. The certified agenda and tape recording are available for inspection by a judge if litigation has been initiated involving an alleged violation of the open meetings law. The judge may order that the recording or certified agenda be made available to the public if the closed meeting was not authorized.

Although a certification of the posted notice may have been the intent of the legislature, the fact that a certified agenda or recording is to be made available to members of the public only upon court order may indicate that the contents of the certified agenda consist of a more descriptive agenda item than might be placed on the posted notice. For example, while the posted notice may state that an executive session is being held for the purpose of discussing "Land Acquisition for an Electric Substation," the certified agenda may read "Land Acquisition—Discuss acquisition of land for a new electric substation to serve The Oaks subdivision." Although the statute requires the certified agenda to include a record of any further action taken, the open meetings law expressly provides that no final action, decision, or vote can be made except in a meeting that is open to the public. The "further action" which must be noted on the certified agenda may be, for instance, no action, a directive to place the item on an open meeting agenda for final action, or a request that additional information be gathered for discussion on another date.

One of the most difficult aspects of the Open Meetings Act results from the fact that communications between a quorum of a city council about public business, no matter the forum or the time, constitute a "meeting" to which the Open Meetings Act applies. As a result, members of council have generally been advised to avoid commenting, for instance, on social media sites related to city business if the discussion will ultimately involve a quorum.

However, a written communication between members of council about public business or public policy over which the council has supervision or control does not constitute a meeting if the following conditions are met: (1) the communication is posted to a city-owned or controlled online message board that is viewable and searchable by the public, (2) the communication is displayed in real time and displayed on the message board for no less than 30 days after the communication is first posted, and (3) the message board is prominently displayed on the city's primary internet webpage and not more than one click away from the city's primary internet webpage. A city may not have more than one online message board used for these purposes.

Additionally, the online message board may only be used by members of council or city employees who have received authorization from the council. If a city employee posts on the message board, the employee must include his or her name and title with the communication. Moreover, the council may not vote or take action by posting on the city's online message board, and if the city removes a posted message, the city must retain the posting for six years as it is considered public information.

Stiff penalties are provided for violations of the Open Meetings Act. A member of council who participates in an illegal closed meeting can be punished by a fine of $100 to $500, confinement in the county jail for one to six months, or both. The same penalty applies to a member of council who engages in a prohibited series of communications. For instance, using the telephone or email to poll other members of council or meeting with them individually to deliberate over some matter of city business that will be deliberated among a quorum of members could violate the Act.

The actions taken by a city council in an illegal meeting are voidable, and a court may assess costs of litigation and reasonable attorney's fees incurred by a party who substantially prevails in an action brought under the open meetings law.

Public Information Act

Chapter 552 of the Government Code requires that most city records, including those in the

possession of members of council, be open to public inspection.

As with the Open Meetings Act, each elected or appointed member of the city council must take at least one hour of training in the Public Information Act or designate a public information coordinator to take the training on his or her behalf.

The training or designation must be completed not later than 90 days after the member takes the oath of office or assumes the responsibilities of the office. Again, note that a public official (for example, a member of a city council) may designate a public information coordinator to satisfy the open records training requirement.

"Public information" is defined as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; (2) for a governmental body and the governmental body: (a) owns the information; (c) has a right of access to the information; or (d) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body. Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

"Public information" includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business. "Official business" is defined as any matter over which a governmental body has any authority, administrative duties, or advisory duties. This means, for instance, that the Public Information Act now expressly provides that communications on the privately-owned computer or cell phone of a member of council, if made in connection with the transaction of official business, are public information.

Members of council are considered "temporary custodians" of the public information on their privately-owned devices. A "temporary custodian" is an officer or employee of a city, including a former officer or employee, who, in transaction of official business, creates or receives public information that the officer or employee has not provided to the city's officer for public information or the officer's agent. As a temporary custodian, the member of council must either preserve the public information in its original form in a backup or archive and on the privately-owned device for the required record retention period, or transfer the public information to the city or the city server. Also, as a temporary custodian, a member of council is required to surrender public information in a privately-owned device and that is the subject of public information request to the public information coordinator not later than the tenth day after receiving a request from the public information coordinator. Failure to surrender the information could be grounds for disciplinary action by the city council, as well as, other penalties being brought against the temporary custodian.

The media on which public information is recorded may include paper; film; a magnetic, optical, or solid state or other device that can store an electronic signal; tape; mylar; and any physical material on which information may be recorded, including linen, silk, and vellum. The general forms in which the media containing public information exist may include a book, paper, letter, document, email, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

Certain information is specifically excluded from the requirements of the law. While the list of exempt materials is too long to recite here, it includes such information as working papers being used to draft ordinances or resolutions; certain personnel records; certain law enforcement records; information that would, if released, give an advantage to bidders; documents protected because

of attorney-client relationships; documents relating to pending litigation; and various types of critical infrastructure and homeland security information, including information that relates to: (1) staffing requirements of an emergency response provider; (2) tactical plans; (3) infrastructure vulnerability assessments and other reports prepared for the federal government; (4) the location of dangerous materials that may be used for weapons; (5) computer passwords; and (6) information regarding security systems that protect property from terrorism or related criminal activity.

Despite the narrow exemptions established in the law, its net effect is to require that most public information, upon request, must be made promptly available, to members of the public. A city that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions to disclosure under the Public Information Act, must, with some exceptions, ask for a decision from the Texas attorney general. If an attorney general decision is required, the city must request the decision and state the exceptions that apply not later than the 10th business day after receiving the written request. Not later than the 15th business day after receiving the request, the city must submit to the attorney general the reasons that the exceptions apply, a copy of the request for information, and a copy of the information requested or representative samples labeled to indicate which exceptions apply to which parts of the information. Recent legislation now requires cities, other than those with fewer than 16 full-time employees or that are located in a county with a population of less than 150,000, to submit all requests for an attorney general ruling and certain related documents through the attorney general's electronic filing system.

Formal Meetings of the Council/ The Agenda

A well-organized agenda is an indispensable part of every orderly council meeting. The agenda establishes a calendar of activities for the council to follow in the course of its meeting. It lists all the items of business that will be considered. By putting members of council on notice as to what will be discussed, each of them is enabled to arrive at the meeting prepared and ready to conduct business.

The following illustrates a typical agenda format:

1) Call to Order—The presiding officer calls the meeting to order and determines whether a quorum is present.
2) Invocation—Optional.
3) Roll Call—Although most city councils are small enough to readily determine who is present by simply looking around the council table, a formal roll call lends an air of dignity to the proceedings.
4) Approve Minutes of the Previous Meeting—Unless a majority of the council desires that the minutes of the previous council meeting be read, the minutes can be approved as submitted or corrected.
5) Consent Items—"Consent" items are noncontroversial items that can be considered and voted upon as a block.
6) Public Comment Session—Scheduling this agenda item early in the meeting permits members of the public to complete their business with the council in a timely manner and then leave if they wish.
7) Public Hearings.
8) Old Business—Final passage of ordinances, and other business pending from previous council meetings.
9) New Business—New ordinances or resolutions (or amendments to existing ones) or policies that councilmembers or city staff wish to have the council consider. Under the Open Meetings Act, each item to be considered must be specifically described in the agenda. It is not sufficient just to put the words "New Business" or "Old Business" on the agenda, and then allow the consideration at the council meeting of any or all items that might be brought up.
10) Reports of Advisory Boards and Commissions—Each board or commission must be listed, together with a description of each report that will be presented at the council meeting.
11) Items from Council—This part of the agenda is provided for members of council to present matters other than ordinances, resolutions, and other matters requiring

formal action. The attorney general has opined that matters raised by members of council or city staff must be specifically described on the agenda (other than items of "community interest," as previously explained in this chapter). Examples would include a councilmember's request that the staff take action on a particular problem, as described in the agenda.

12) Staff Reports—This agenda item includes reports from the mayor and/or city administrator on the status of various projects, problems that are developing in particular neighborhoods, and so on. Under the open meetings law, each of these reports must be listed and specifically described in the agenda.
13) Announcements.
14) Adjournment—If there is no further business, the mayor can adjourn the meeting. If all of the items listed in the agenda have not been considered and disposed of, a majority vote usually is required to adjourn.

The amount of detail included in the agenda is a matter for the council to decide. Oftentimes, the agenda is used as the notice of the meeting. In that case, the legal rule applicable to the format of an agenda is found in the open meetings law, which requires that every agenda item be specifically described in the meeting notice. In practice, this means that broad categories, such as "Old Business" or "New Business," cannot be included in the agenda without listing each of the specific items that will be discussed.

The city council is specifically required to keep minutes or a recording of each of its open meetings. The minutes must state the subject matter of each deliberation and must indicate each vote, other decision, or other action taken by the council. The minutes or recording are public records and may be examined or copied by members of the public. This requirement must be met for all open meetings of the council, including meetings where formal actions or votes do not occur. For example, a city council or board that meets to discuss formulation or development of a policy or ordinance that will be voted on at a later date must keep a formal record of the proceedings, even though no final vote or action is taken.

Rules of Order and Procedure

Recognizing that every legislative body needs a systematic way of conducting its business, many city councils operate according to formal rules of order and procedure. Rules of order and procedure prevent confusion by establishing an organized process for conducting council meetings. Properly followed, they save time for all participants, while protecting the individual member's right to participate fully.

The following provisions usually are included in rules of order and procedure:

1. Designation of the time and location of regular meetings of the council, together with a description of procedures for calling special meetings;
2. Procedures for placing items on a meeting agenda;
3. Methods for compelling members of council to attend meetings;
4. A description of the duties of the presiding officer at council meetings;
5. A description of the parliamentary rules under which the council will operate;
6. Procedures for introducing and voting on ordinances, resolutions, and other items;
7. The order of business the council will follow at each meeting; and
8. A ranking of motions by order or precedence, which motions may or may not be debated, and so on.

Although most city councils use *Robert's Rules of Order* to conduct their meetings, some have adopted their own local rules. *Robert's Rules of Order* may be appropriate for some cities, but is often too cumbersome for others. State law is silent with regard to what procedural rules apply; so, unless your city charter provides otherwise, any standard rules that are reasonable and consistently followed are acceptable.

The following two sections briefly describe motions and debate rules that are fairly common.

Motions

A motion is simply a vehicle for initiating action on a proposal. Some types of motions can be brought

up and voted on at any time, while others are out of order at certain times. Certain motions outrank others. Some motions require a second; others do not. Knowing the difference between the various types of motions and when to use them is a first step in taking an active part in passing or defeating measures before the council.

A main motion is used to initiate the consideration of a new item of business. After being seconded, a main motion is subject to being debated, amended, tabled, or withdrawn before a final vote is taken.

Any councilmember making a main motion may, prior to receiving a second, withdraw or change it. If the motion has been seconded, approval of the person who seconded it is required in order for the maker of the motion to change or withdraw it, unless another councilmember objects, in which case the change or withdrawal must be voted upon.

A new main motion cannot be brought up for consideration while another main motion is being debated. Each main motion must be disposed of before another is made.

A secondary motion is used to propose an action on a main motion being debated by the council. Examples of secondary motions include the following:

1) Motion to table the main motion; that is, lay it aside and go on to the next item on the agenda.
2) Motion to request that discussion cease and that the main motion be voted upon; that is, moving the previous question.
3) Motion to limit discussion to a fixed amount of time.
4) Motion to postpone action on the proposal until some definite time in the future.
5) Motion to refer the proposal to a committee.
6) Motion to amend the main motion.
7) Motion to postpone action on the proposal to an indefinite future time.

These examples of secondary motions are listed in the order of their rank. Therefore, if the council is debating Councilmember X's motion that the item under consideration be referred to a committee, and Councilmember Y moves to table the main motion, debate would cease until Councilmember Y's higher-ranking motion is voted upon.
A privileged motion is used to bring procedural questions before the council, such as whether the council should recess or adjourn. Unlike other motions, privileged motions do not require a second in order to be considered.

A privileged motion can be offered at any time, without regard to any other motion pending before the council and must be decided before the council returns to the other business under discussion. Therefore, a motion to adjourn, if made while a main motion is before the council, must be decided before the main motion is considered any further.

Some privileged motions are more privileged than others. This is the usual order of their importance:

1) Motion to set the time and place of the next meeting.
2) Motion to fix the time of adjournment.
3) Motion to adjourn.
4) Motion to recess.
5) Motions on questions of privilege.
6) Motion to keep the meeting to the agreed order of business.

Thus, during consideration of a main motion, a privileged motion might be made to adjourn. But before the question is called on the motion to adjourn, another higher-ranking privileged motion might be made to set the time and place of the next meeting.

Debate

Motions are usually classified three ways: (l) undebatable motions; (2) privileged motions upon which limited debate is permitted; and (3) fully-debatable motions.

Undebatable motions involve procedural questions that can be resolved without discussion, such as tabling a main motion, moving the previous question, restricting further discussion of a main motion to a fixed number of minutes, postponing action, or referring an item under discussion to a committee. [See items (1) through (7) under "secondary motions."] After an undebatable motion is offered, the presiding officer must immediately take a vote, without discussion.

Privileged motions upon which limited debate is permitted include setting the time of the next meeting and others listed among items (1) through (6) under "privileged motions." Any discussion of a privileged motion must be addressed to the motion itself. A motion to fix the time for adjourning the council meeting, for example, might require limited debate as to the advisability of such a decision, but other points of discussion would be out of order.

Fully-debatable motions are subject to unlimited discussion prior to a decision.

One of the most important principles of debate is that councilmembers' statements be directly relevant to the item under consideration. Councilmembers recognized by the mayor are given the floor only for the purpose of discussing the item then pending, and they are out of order if they depart from that item.

"Debate" can easily evolve into statements of personal philosophy. Interesting though they may seem to the speaker, such departures do not belong in a council meeting. Meandering can be controlled by limiting councilmembers to one speech per agenda item or by restricting the length of their speeches. (Robert's Rules of Order sets an arbitrary limit of 10 minutes for each such speech.) A more difficult alternative is to impose limits on the number of minutes that will be allotted for a given agenda item.

Role of the Mayor as Presiding Officer

The mayor, as presiding officer, has the primary responsibility for ensuring that the council's rules of procedure are followed and for maintaining the dignity of council meetings. The mayor calls the meeting to order and confines the discussion to the agreed order of business. He or she recognizes councilmembers for motions and statements and allows audience participation at appropriate times. The mayor sees to it that speakers limit their remarks to the item being considered and, as necessary, calls down people who are out of order.

Proper performance of these functions requires that the mayor know parliamentary procedure and how to apply it. The mayor must recognize that parliamentary procedure is a tool, not a bludgeon—that is used to ensure that the will of the majority prevails while the right of the minority to be heard is protected.

In addition to fulfilling the duties of the presiding officer, the mayor should be familiar with legal requirements imposed by state law. This involves knowing which actions are required on ordinances, when extraordinary council votes are required, and when a time element—such as the deadline for giving notice of a city election—is important. The city attorney can help with these matters, but if the mayor knows the basics, time can be saved and illegal or incomplete actions prevented.

Presiding effectively at a council meeting is an art that no book can fully teach. The tactful presiding officer knows how to courteously discourage councilmembers who talk too much or too often, and how to encourage shy councilmembers who are hesitant to speak at all.

Councilmembers' remarks should always be directed to the chair. Even when responding to questions asked by another councilmember, he or she should begin by saying, "Mayor, if you will permit me. . ." and wait for recognition from the chair before proceeding. This helps avoid the spectacle of two councilmembers haggling over an issue that is of little interest to their council colleagues.

In addition to maintaining order and decorum at council meetings, the mayor must see to it that all motions are properly dealt with as they arise. The mayor must recognize the councilmember offering the motion, restate the motion, present it to the council for consideration, call for the vote, announce the vote, give the results of the effect of the vote, and then announce the next order of business.

In some cases, the mayor might refuse to allow a councilmember to offer a motion, even though it is in order, either because of unfamiliarity with parliamentary procedure or because of personal opposition to the proposed action. The mayor's refusal to allow a motion to be considered is subject to appeal, as are all of the mayor's decisions regarding procedures. A simple majority vote is all that is required to overrule the mayor's decision on procedural issues. If the decision of the chair is sustained, no further action is taken; but if the decision of the chair is overruled by the council,

the council goes forward with the discussion of the motion or other matters before it.

On rare occasions, the mayor, in the heat of the moment, may rule that an appeal is out of order, or even declare the meeting adjourned. Both rulings are improper. A meeting cannot be summarily adjourned by the mayor. If an appeal from the decision of the chair is made immediately following the ruling, it is not out of order. If the mayor refuses to honor the appeal, the person making the appeal could then state the question, suggest limited debate, and then put the question to a vote.

Streamlining Council Meetings

Even the best planned council meetings can deteriorate into endurance contests. These are not necessarily the exceptional meetings, with long public hearings or battles over controversial ordinances. As often as not, these are regularly-scheduled meetings which drone on until the entire council is thoroughly exhausted.

Regulating Talk

Too much talking is the most common cause of lengthy meetings. Talking can assume a variety of forms—bickering or tiresome exchanges of personal opinions among councilmembers, endless speeches by citizens appearing before the council, or unnecessarily long and detailed reports by staff.

Nearly all these problems can be overcome by tactful action on the part of the presiding officer. If citizens addressing the council ramble on and on, the mayor may have no choice but to tell them to confine their remarks to the subject at hand and conclude as quickly as possible. If the problem is created by a talkative councilmember, a simple statement to the effect that "it's getting late and we must move along" usually will suffice, though private visits by the mayor may be needed to handle chronic talkers.

Shortening the Agenda

Having too many items on the agenda is another frequent cause of lengthy council meetings. This is not an easy problem to solve, and several evaluation sessions may be needed to correct the situation.

Perhaps the agenda is loaded down with detailed items that are included for reasons of custom, rather than necessity, and many of these could be handled by staff without council action. If too much meeting time is needed to explain the various items on the agenda, perhaps a requirement that the more complex ones be explained in writing in advance of the meeting would help.

In some cases, it may be discovered that lengthy council meetings are the result of complexities that simply cannot be overcome. In these instances, the only answer may be more frequent meetings.

Handling "Consent" Agenda Items

Agendas tend to be cluttered with uncontroversial, recurring items that are of little interest to most councilmembers but must be included because they require formal council approval. Examples include council approval of the minutes of previous meetings, routine purchases, and minor fund transfers between accounts. Most of these items generate no discussion, but each uses up time by requiring a separate motion to approve, a second, and a vote.

This problem can be overcome by establishing a "consent" agenda category that encompasses routine items that are approved by a single motion and a vote, without debate. ("Councilmember Smith moves the approval of items 3a, b, c, d, e, f, and g.")

If a councilmember objects to a consent item, it is removed from the list and added to the regular agenda at the appropriate spot. If a councilmember questions a consent item, but not so strongly as to require that it be removed from the list, his or her "no" vote or abstention can be entered in the minutes when the consent vote is taken.

The number of consent items can range from a handful to 25 or 30 or more, depending on the council's workload and preferences. Whatever the size, the consent agenda can be a real time-saver. One city reported that using a consent agenda had slashed the length of the average council meeting by 50 percent.

Administrative Improvements

Some council meetings are unnecessarily long because of deficiencies in the city's administrative procedures. For example, residents who can't get their problems solved at city hall during normal business hours are likely to show up at council meetings to demand assistance. The fact that most of these complaints should have been handled through administrative action does not relieve the council of the duty to spend time listening to them.

Councilmembers who sense that too much formal meeting time is being devoted to hearing gripes from residents about administrative inaction usually come to the conclusion that the way to get frustrated residents off the agenda and into proper channels is to establish a system for receiving and processing complaints. The system can be simple, such as assigning one or two employees to process complaints on a part-time basis, or it can be a more sophisticated office operated by a full-time staff. In any event, it is usually advisable to have at least one staff member responsible for this function attend council meetings to be available to head off complaints.

Mechanical Aids

The time needed to explain an agenda item can be reduced by using photographs, flipcharts, and other graphic arts to supplement or replace written reports. Graphics and visual presentations needn't be expensive. In most cases, using a simple map to show the location of a project, flow charts to illustrate a particular procedure or process, photographs to point out the physical characteristics of the matter being discussed, or a PowerPoint presentation can provide the extra perspective that written words or oral discussions sometimes fail to convey.

Council Work Sessions

Informal work sessions (sometimes called "workshops") of the council may be needed from time to time to study certain matters in detail. These are most often held in con- junction with budget review since regular council meetings do not provide enough time to consider the budget in detail. Work sessions are also useful when major policy questions must be decided or when a complicated ordinance, such as a building code, comes before the council.
The Texas Open Meetings Act applies to all council meetings, including workshops. A notices of a workshop meeting therefore should be posted in the same manner as a notice of regular council meeting. Also, minutes or a recording must be made of the meeting.

Public Participation

Many members of the public form their opinions of the city government on the basis of having attended just one council meeting. For some, it will be the only one they attend in their lifetime. This is the time to impress citizens favorably, and to show them that the council is capable of doing its job.

The "public participation" period, also known as "public comment" or "public session," is a time slot set aside on the agenda for the public to address the council. Members of the public have the right to speak on items that are on the agenda for consideration at an open meeting. The council must allow the public to speak on items listed on the agenda of an open meeting either at the beginning of the open meeting or during the meeting when that item is being discussed by the council. The council can still adopt reasonable rules regarding the right of the public to address the council. This includes limiting the amount of time that the public may address the council on a given item. If the citizen addressing the council on an item on the agenda speaks a foreign language and needs an interpreter, then the council must allow the non-English speaker at least double the time allowed for English speakers to address the council. Though members of council are expected to be polite to members of the public appearing before them, they may not prevent the public from publicly criticizing the council or its actions during the public comment period.

The presiding officer should inform members of the public of the place on the agenda at which time they will be recognized to speak. And if an exceptionally controversial item has drawn a large crowd, it is generally wise to state the approximate time the item is likely to come up for discussion.

To guard against filibusters by members of the public, some councils limit the length of time any one member may speak to three or four minutes, and permit this to be extended only by a two-thirds vote of the council. This kind of limitation often is necessary to keep talkative speakers from infringing on the rights of others who may wish to speak.

A city council may also allow the public to speak on items that are not listed on the agenda during a public comment session. If the city council allows the public to do so, it may apply reasonable rules regarding the number, frequency, and length of the presentation, but it cannot discriminate against speakers. In such instances, limited verbal interchanges between members of the public and members of council are allowed. When a member of the public makes an inquiry about a subject which is not on the agenda, a member of council may respond with a statement of factual information or recite existing policy.

Because the city council cannot take action on an item unless it has been posted on the agenda in accordance with the Open Meetings Act, if a citizen brings an item before the council that needs to be acted upon, the city council should request that it be placed on the agenda for the next meeting. The attorney general has also stated that if a city knows or reasonably should know the subject matter of a citizen's presentation, it should place the matter on the agenda.

Public Hearings

The purpose of a public hearing is to present evidence on both sides of an issue. Some public hearings are required by state law, as in the case of the Uniform Budget Law (Sections 102.001 et seq., Local Government Code), which requires a public hearing on the city budget prior to its adoption. Others are voluntarily conducted by the council to obtain a full range of citizen opinion on important matters, such as a proposed bond issue. The difference between a public hearing and a public comment session is that a public hearing is required by law for particular topics with specific notice requirements set out by law.

The proper conduct of a public hearing is no less important than for a regular council meeting. Each should begin promptly and be conducted in an orderly manner in conformance with established rules of procedure.

At the start of the hearing, the presiding officer should clearly state the subject to be discussed. If, for instance, it is a rezoning public hearing, the proposed ordinance should be read and its purpose explained. If the subject is controversial, the following order can be adhered to: proponents' presentation, opponents' presentation, proponents' rebuttal, opponents' rebuttal, questions from council.

One cardinal rule to remember is that numbers don't always count. There are some topics that naturally draw large, highly biased crowds. Vocal minorities often swamp public hearings to show that their side has widespread support. Such items as little league ballparks, school crosswalks, water rates, and taxes can attract crowds, but the size of the turnout does not necessarily indicate that their cause is just. The council is elected to serve all the citizens, and the council must look at the overall picture—not just the view presented by one partisan group.

The council is responsible for weighing the evidence presented at the hearing and, after due consideration, reaching a decision. Obviously, this cannot always be done at the same meeting as the public hearing. In fairness to those who have taken the time to attend, the presiding officer should indicate whether a decision will be made immediately after the hearing and announce the final result . Otherwise, the chair should describe the reason that no decision will be made at that time, then state the probable time at which a final determination will be reached.

When a decision is announced on an issue that involves a public hearing, the presiding officer may, with the assistance of legal counsel, give the reasons why the decision was reached. Even a brief explanation will help prevent observers from feeling that the outcome of the hearing was decided in advance, and that they wasted their time by attending.


POLICE
NO PARKING FIRE LANE
MAIN ST
JEFFERSON ST

Chapter Six: Financial Administration

Financial administration, simply stated, is matching dollars with needs. Financial administration is the small town mayor who notices that city hall has a leaky roof and makes a mental note to have it replaced when the money is available. Financial administration is a million-dollar capital improvements program, a bond election preceded by a barrage of information disseminated through the news media, a bond sale, and a report to the taxpayers through the newspaper—all of this is part of financial administration.

Financial administration involves an understanding of the extent and limits of the economic resources of the city and the methods of tapping them to meet residents' demands for city services. It begins with a thorough knowledge of revenue sources and ends with a proper accounting of all the funds expended by the city. Much lies in between; it is all financial administration.

Revenue Sources

City revenues come from many sources, including utility systems, property taxes, sales taxes, user fees, federal grants, and street rentals. (The Texas Municipal League publishes a comprehensive Revenue Manual for Texas Cities.)

Utility Revenues

Most Texas cities own water and sewer systems, while comparatively few operate electric or gas systems. Among those that own water or sewer systems, the revenue producedby utility billings accounts for a substantial portion of all money taken in at city hall. This percentage is considerably higher among cities that own electric or gas systems.

Property Taxes

Municipal property tax revenue is growing each year, both in total dollars and on a per-capita basis. In many cases, however, the demands on city budgets have increased at a much greater rate than have property tax collections.

Maximum Property Tax Rates

The Texas Constitution establishes the maximum permissible property tax rate for cities at the following levels: (1) for Type B and small Type C general law cities—25¢ per $100 assessed valuation; (2) for other general law cities with a population of 5,000 or less—$1.50 per $100 assessed valuation; and (3) for cities with 5,001 or greater population—$2.50 per $100 assessed valuation.

Administrative Procedures

Over the years, the Texas system of property tax administration has undergone significant change.

Prior to 1980, the appraisal of property for tax purposes was fragmented among more than 3,000 cities and other local jurisdictions, and there were no uniform statewide standards governing the administration of local taxes. In 1979, however, the Texas Legislature changed this situation radically when it enacted a new State Property Tax Code that established uniform appraisal policies and procedures.

Under the code, county-wide appraisal districts are now responsible for preparing a unitary tax roll that encompasses all property within the county. Although cities and other jurisdictions retain the authority to set their own tax rates and collect their own taxes, they must use the tax roll prepared by the central appraisal district for all tax-related purposes.

The basic procedures for administering property taxes include the following:

1) Appraisal: The taxable value of all property in the county is determined by the central appraisal district.
2) Protest: Any property owner dissatisfied by the value fixed by the central appraisal district can appeal to the appraisal review board. Upon a convincing demonstration that the appraisal district's determination was erroneous, the review board has the authority to correct the error, including but not limited to ordering a reduction of the taxable value of the appellant's property.

3) Assessment of Taxes: The tax roll prepared by the central appraisal district is furnished to cities and other taxing entities within the county; those entities use it as the basis for levying taxes for the coming fiscal year.

   Legislation passed in 2019 overhauls the process by which cities adopt their tax rates. Generally speaking, if taxes that fund maintenance and operations expenses increase more than 3.5 percent, the city must hold an election on the November uniform election date for voters to approve the rate. (Note: There are exceptions to this general process for cities under 30,000 population, under certain circumstances.) A city may not adopt a tax rate exceeding the lower of the voter-approved tax rate or the no-new-revenue tax rate until it publishes notice and holds a public hearing. Cities must take various other actions to promote transparency in the tax-rate-setting process, including posting certain information on their websites, and incorporating tax rate information into a database maintained by their appraisal districts.
4) Collection: After the council has set the property tax rate for the coming fiscal year, the tax assessor-collector mails tax notices to all property owners in the city and initiates the collection of taxes.

The procedures for assessing and collecting property taxes are prescribed by the Tax Code and Local Government Code. Complete details regarding state requirements are available from the Property Tax Division of the Texas State Comptroller of Public Accounts.

Delinquent Property Taxes

For obvious reasons, it is to the city's advantage to collect as much as possible of the amount of property taxes owed. In this regard, financial analysts are inclined to criticize cities that fail to consistently collect at least 95 percent of the taxes levied. In many Texas cities, a 98-percent collection rate is the norm.

The more successful city tax offices are assisted by an attorney who is skilled in collecting delinquent taxes. In some cases, this may be the city attorney, but the more common practice is for the city to hire a lawyer who specializes in the delinquent tax field. Most outside lawyers charge a fee that is paid by the delinquent taxpayers on the basis of a percentage of the delinquent taxes they owed.

City Sales Tax

As a result of legislation initiated by the Texas Municipal League, the general city sales tax became available to Texas cities in 1968 and has become almost universal, with virtually all cities in the state having adopted it.

Most cities in which the combined local sales tax (city, county, special district) has not reached two percent can consider the imposition of certain additional sales taxes for purposes that include economic development, crime control, property tax relief, and street maintenance. Additional information regarding the sales tax for economic development is available from the Texas Municipal League and the League's *Economic Development Handbook*.

User Fees

Charges for the use of city services are an increasingly popular method of generating revenues. In addition to charging for solid waste collection and water and sewer services, cities impose fees for the use of a variety of facilities, including swimming pools, golf courses, and airports.

Federal Grants

Despite cutbacks in recent years, federal aid is still an important part of the municipal revenue picture. For individual cities, federal aid as a proportion of all revenues fluctuates widely, with "distressed" cities receiving large amounts of federal money, and the more prosperous cities receiving comparatively little.

Street Rentals

A portion of an average city's revenue is produced by rental charges collected from private firms—such as cable TV companies, telecommunications providers, and gas and electric utilities—in return for allowing them to use streets and other public

rights-of-way. Municipal street rental charges for electric, gas, and water utilities are authorized under the state Tax Code, which allows cities to impose such charges on utility and transportation enterprises in return for the privilege of using the city's streets and alleys to string lines, bury pipes, and otherwise use public property to conduct business. The provisions for collecting compensation from telecommunications providers are contained in Chapter 283 of the Local Government Code, and those relating to cable and video providers are in Chapter 66 of the Utilities Code. Chapter 284 of the Local Government Code contains right-of-way compensation provisions for small cellular network nodes.

Fines

Under state law, a city may assess a fine of up to $2,000 per day for violations of ordinances dealing with fire safety, zoning, or public health-related matters. A city may assess a fine of up to $4,000 per day for violation of an ordinance governing the dumping of refuse. For ordinances dealing with other violations, the maximum fine is $500 per day.

The amount of revenue from fines as a proportion of city revenues usually varies in direct proportion to city size. In larger cities, fines generate a comparatively small proportion of total revenues; in most small cities, fine revenues play a much more important role in the city budget.
State law limits the amount of revenue that a city under 5,000 population may derive from fines for violations of traffic laws.

License and Permit Fees

Under their police powers, cities regulate a wide variety of activities to promote the health, safety, and welfare of local citizens. Permit and license fees provide the revenues necessary to finance the administrative costs of these regulatory programs. Examples of permit fees include those charged for examining subdivision plats and plumbing installations. Examples of license fees include those for registering dogs. The amount of a permit or license fee must bear a reasonable relationship to the cost of the particular regulatory program. Under the law, excessive fees may not be imposed to create "profits." Also, the city may not assess a fee or require a permit for which no bona fide regulatory function is performed.

Hotel-Motel Tax

Chapter 351 of the Tax Code authorizes most cities to levy an occupancy tax of up to seven percent on the price of a hotel or motel room. Other cities, depending on population, may levy an even higher tax. For purposes of imposition of a hotel occupancy tax, a short-term rental (STR) is considered a hotel under state law. Under the law, proceeds from hotel occupancy tax must be earmarked for certain specified purposes, including the advertising and promotion of the city and its vicinity to attract tourism, arts and cultural activities, historical restoration and preservation activities, registration of convention delegates, operation of visitor information centers, the construction of civic centers and auditoriums, certain sporting events, signage, and tourist buses. Cities must maintain a written list of all projects funded by the hotel-motel tax. Cities must also annually report to the comptroller their hotel occupancy tax rates, the amount of revenue collected from hotel occupancy taxes during the year, the amount of revenue collected in any preceding fiscal year that has not yet been spent and the amount of that revenue remaining in the city's possession, and the amounts and percentages allocated to specific uses during the year.

Taxes on Alcoholic Beverages

Under the Texas Alcoholic Beverage Code, the state levies both a gross receipts tax and a separate tax on the sale of all mixed drinks served in clubs, saloons, and restaurants. Some of the state's total collections are remitted back to the cities on a pro rata basis.

Additionally, cities are authorized by state law to levy fees not to exceed one-half of the state fee for a variety of alcoholic beverage-related permits, including permits for package stores, distributors, brewers, and others issued within the city.

Occupation Taxes

Cities are authorized to levy an occupation tax on certain businesses and professions, such as operators of pinball machines and other coin-operated devices. The rate of the city tax may not exceed an amount set by law and may not exceed 50 percent of the rate of the occupation tax levied by the state on the same businesses if

no statutory amount is set. A city may not levy a tax on a business or profession not subject to state occupation taxation.

Special Assessments

A "special assessment" is a charge imposed by the city on a limited group of properties to finance public improvements that specifically benefit those properties and enhance their value. Special assessments are most frequently used to finance the construction of sidewalks or reconstruction of streets. The cost of improvements is apportioned among all the owners of property abutting the improvement according to relative benefit. Costs are divided between property owners and the city according to the state law applicable to the particular type of improvement.

Miscellaneous Revenues

Miscellaneous income is derived from many different sources, such as rental charges for the use of city property, the sale of city property, the sale of water and other utility services to other jurisdictions, and interest in- come on idle city funds.

Budgeting

For many members of council, budgeting represents the most wretched and tiresome aspect of city government. Budgeting begins amid cries from some citizens for "tax relief" and demands from others that their "essential" programs be funded. Upon its adoption, the budget is dismissed with a sigh: "Now that that dreadful chore is behind us, we can get on with the 'fun' part of the city's business."

Financial management is indeed unglamorous, and budgets are poor leisure reading. However, it is also true that among all the functions performed by the city council, budgeting is the most important.

In its simplest definition, budgeting is a plan for utilizing the city's available funds during a fiscal year to accomplish established goals and objectives. Within a broader context, the budget also serves to:

1) Provide the public with an understandable financial plan that plainly describes activities that will be undertaken during the next fiscal year and the extent and specific types of services that will be performed.
2) Establish priorities among city programs, particularly new or expanded programs.
3) Define the financial framework that will be used to periodically check the status of city operations.
4) Determine the level of taxation necessary to finance city programs.

Budgeting is the forum for making the most of the council's key decisions about the future of the city. It is a process for determining the community's standard of living—what local residents need and want, what they are willing and able to pay for, and what services they can expect to receive for their tax dollars.

The council can use the budget to restore an ailing city government to financial health, or misuse it to drive a healthy government to insolvency. It can be used to nurture community development or freeze growth. The budget is everything. It is, in the words of one mayor, "the World Series of municipal government."

Statutory Requirements

The budgeting process in every Texas city, regardless of size, must comply with the requirements in Chapter 102 of the Local Government Code. Under the statute:

1) The city council must adopt an annual budget and conduct the financial affairs of the city in strict conformance with the budget.
2) The budget for each fiscal year must be adopted prior to the first day of such fiscal year. In most Texas cities, the fiscal year begins on October 1; therefore, the budget must be adopted by September 30 or earlier.
3) The city's budget officer must prepare a proposed budget for the consideration of the city council. In most cities, the law requires that the mayor serve as budget officer; in cities that have adopted the city

manager form of government, the city manager is the budget officer.

4) Copies of the proposed budget compiled by the budget officer must be filed with the city clerk/secretary and made available for public inspection. The initially proposed budget must be filed no later than 30 days prior to the date upon which the city council sets the property tax rate for the next fiscal year.
5) If the budget will raise more total property taxes than in the prior year, it must contain a cover page giving notice of that fact. A budget calling for such a property tax increase must be posted on the city's website if it operates one.
6) The city council must hold a public hearing on the budget after the 15th day that the budget has been filed with the city clerk or secretary. Notice of the public hearing must be given in a newspaper of general circulation in the county not less than ten nor more than 30 days prior to the hearing. The notice must identify a proposed property tax increase.
7) Upon adoption of the final budget by majority vote of the council, copies must be filed with the county clerk and city clerk/secretary and made available for public inspection. A budget that raises total property taxes requires a separate ratification vote. The adopted budget must contain a cover page that includes property tax information as well as the record vote of each councilmember on the budget. The adopted budget and cover page must be posted on the city's website if it operates one.
8) After the new fiscal year has begun and the budget has been put into effect, no expenditure "shall thereafter be made except in strict compliance with such adopted budget," and council may not amend the budget to authorize new or additional expenditures except for reasons of "grave public necessity" requiring "emergency expenditures to meet unusual and unforeseen conditions, which could not, by reasonable diligent thought and attention, have been included in the original budget..." However, council may make changes to the budget that do not increase the total expenditure in the original budget (for example, moving amounts from one budget line item to another line item) without a finding of "grave public necessity.
9) The budget and any amendments to it must be filed with the county clerk.
10) The governing body of the city may levy taxes only in accordance with the budget.

For obvious reasons, Chapter 102 of the Local Government Code is generally interpreted to prohibit deficit financing— that is, budgeting expenditures for which no offsetting revenues are provided.

Many charters also prescribe the format of the budget, including requirements that it contain a message describing the budget officer's proposed fiscal plan for the city and significant features of the budget for the forthcoming fiscal year; a general summary, with supporting data, which shows proposed expenditures and anticipated revenues for the next fiscal year and their relationships to corresponding data for the current budget year; and details of proposed expenditures and anticipated revenues.

Basic Budget Information

Adoption of a plan of city services for the next fiscal year begins with a budget document containing certain basic information. The budget document should identify all services currently provided and proposed to be provided (or terminated) during the coming fiscal year. For each service, the following information should be furnished:

1. An itemization of expenditures for each service during the previous fiscal year, a projection of actual expenditures for the current year, and proposed expenditures for the next fiscal year.
2. A statement of objectives for each service to be funded during the next fiscal year. "Objectives" do not mean organizational objectives—such as "to add new police officers" or "to purchase a new street sweeper." Rather, these statements should describe the benefits the community will derive from a particular service, such as

"to reduce average police response time to emergency calls by three minutes," or "to clean x number of miles of streets."
3. The proposed level of each service for the next fiscal year, together with a description of performance standards for each. In the case of the solid waste budget, for example, service levels and performance can be expressed in terms of the numbers of customers served and the volume of refuse collected. Street maintenance can be expressed in terms of lane miles resurfaced, maintenance requests, and number of complaints concerning street quality, and so on. This approach will help the council focus on community benefits that will be produced by a given expenditure, rather than on such details as whether a particular department is requesting too much money for supplies or travel.
4. A brief description of the methods by which the services will be delivered.
5. An itemization of the cost components of proposed services.
6. Sources of funding for the proposed services.
7. A description of factors that could affect the cost of proposed services.

The budget also should contain a summary of the city's financial condition for the prior year and current year, and a projection of its anticipated condition for the coming fiscal year and beyond. This summary should indicate:

1. Outstanding obligations of the city.
2. Beginning balance of all cash funds.
3. Actual revenues, broken down by source, collected in the preceding year and anticipated for the ensuing year.
4. Estimated revenue available to cover the proposed budget.
5. Estimated tax rate required to cover the proposed budget.

Properly organized, this information will enable members of council to gain a comprehensive understanding of the city's financial condition and give them the tools they need to establish the scope and direction of municipal services for the coming year.

Implementation

After the budget has been approved, regular monitoring by the city council can help ensure that municipal services are carried out in accordance with budget objectives and within expenditure ceilings. In most cities, the budget officer is required to furnish the council with periodic reports that show the prior month's expenditures and total expenditures to date for each budgeted activity. Using these reports, the council can identify deviations from budget plans, anticipate financial trouble spots, and determine whether the various departments are functioning properly.

On a periodic basis, perhaps quarterly, the council should be furnished with a written description of significant budgetary developments during the current fiscal year. For each activity, this statement should describe progress to date in comparison with objectives, and should provide reports on expenditures by budget category and revenue collections. Revised estimates of revenue also should be presented, together with revised surplus or deficit projections. These reports will give the council the basis for determining how well the city is meeting its service targets with the funds available. Also, it can help the council determine whether budget modifications are needed during the year.

Municipal Borrowing

It is a rare case when a city is able to carry out a capital improvements program of any consequence without using credit. More often, the city borrows money, and in doing so, offers future tax collections or utility revenues as security for the loan.

Loans fall into two categories: short-term and long-term—or, stated differently, loans to be repaid within the current fiscal year versus those to be repaid in future years. This section briefly reviews the two types of loans.

Short-Term Borrowing

Most short-term loans are made with local banks. Their purpose is to provide funds of a temporary nature, and they are made with the expectation of repayment within the current fiscal year. A bank

loan made in August to avoid an overdraft in the general fund pending receipt of tax collections in September is a good example of a short-term loan.

A short-term loan differs from a long-term loan in two respects: (1) it will mature within the current fiscal year; and (2) it can be approved by the city council without the necessity for voter approval at a referendum election.

Short-term loans should be used sparingly. An excessive amount of short-term debt can adversely affect the city's bond rating and impair its ability to accomplish long-term borrowing for major capital improvement programs. Frequent use of short-term borrowing reflects deficiencies in the quality of the city's management of its financial resources.

Long-Term Borrowing

Unlike short-term loans, which can be repaid with general fund dollars derived from a variety of revenue sources within the current fiscal year, long- term loans require that the specific source of revenue that will be used to repay the debt be identified and, in certain cases, pledged.

Long-term loans secured by a pledge of property taxes are called "general obligations" and include ad valorem tax bonds, time warrants, and certificates of obligation. Long-term loans secured by a pledge of revenue from an income-producing facility are called "revenue bonds."

General Obligation Debt

General obligation debts are payable from, and are secured by, a pledge of future property tax collections. Under standards promulgated by the Texas attorney general, a city with a maximum permissible tax rate of $1.50 per $100 assessed valuation may not incur general obligation debt that will require the levy of a tax at a rate higher than $1.00, after allowing ten percent for delinquencies in collection and for the payment of maturing principal and interest.

General obligation debt is commonly expressed as a percentage of the city's total assessed valuations. For example, a city that has a total assessed valuation of $10 million and outstanding general obligation debt in the principal amount of $500,000 is said to have a debt ratio of five percent. Three common forms of general obligation debt are ad valorem tax bonds, time warrants, and certificates of obligation.

Ad Valorem Tax Bonds

Ad valorem tax bonds are commonly referred to as general obligation, or G.O. bonds. They are issued pursuant to an ordinance adopted by the city council, typically following approval of the bonds at a referendum election. The bonds are examined as to legality by the Texas attorney general, and then delivered by the city to the successful purchaser or bidder for payment in cash. This cash is then used by the city to pay for libraries, police buildings, city halls, and other public facilities with a long, useful life.

G.O. bonds usually are issued in $5,000 denominations, and the bond issue usually provides serial maturities, with a certain amount of principal maturing each year over a period not to exceed forty years.

General obligation bonds have the highest degree of investor acceptance of any type of municipal indebtedness, and they command the lowest interest rates. Therefore, unless exceptional circumstances dictate otherwise, G.O. bonds are the preferred means of borrowing against a pledge of tax revenues.

Time Warrants

Time warrants are also general obligation debts and are payable from ad valorem taxes. Unlike G.O. bonds, which are sold for cash, time warrants are issued directly to vendors to pay for construction, equipment, and services. Also, unlike G.O. bonds, time warrants do not require voter approval, although the law does require that the city council publish notice of its intent to issue them and that the council call a referendum election upon presentation of a petition signed by ten percent of the taxpaying voters.
The procedures for issuing time warrants are cumbersome and expensive and will result in

the city paying a higher rate of interest than if the borrowing were accomplished with bonds. Nevertheless, time warrants can occasionally be advantageous—for example, to complete the construction of a public works project where there has been a cost overrun and bond funds have been exhausted.

Certificates of Obligation

The third form of general obligation debt payable from property taxes is certificates of obligation (COs). Like time warrants, COs can be issued without voter approval—except that upon notice of the city's intent to issue COs, five percent of the qualified voters can force an election on the issue by submission of a petition. With certain exceptions, a city may not issue a CO to pay a contracted obligation if a bond proposition to authorize the issuance of bonds for the same purpose was submitted to the voters during the preceding three years and failed to be approved.

COs can be issued directly to vendors to pay for construction work, equipment, machinery, materials, supplies, land, or professional services furnished to the city. Also, under certain circumstances COs can be sold, like bonds, for cash, in which case they must be approved by the Texas attorney general in the same manner as bonds.

Revenue Bonds

Revenue bonds are the only type of bond secured by a pledge of revenues from an income-producing facility such as a utility system. Revenue bonds are usually designated with the name of the system that pledges the revenues (for example, Waterworks System Revenue Bonds, Waterworks and Sewer System Revenue Bonds, and so on).

When utility revenues are pledged to support revenue bonds, the pledge is made of the system's net revenues—that is, gross revenues minus operating and maintenance costs. Such bonds are payable solely from these revenues and include a statement on their face that the holder shall never be entitled to demand payment from property taxes.

In determining whether the amount of pledged revenues is sufficient to repay the outstanding revenue bonds of a utility system, analysts will look at the ratio between the system's net earnings and the requirements of principal and interest maturities over a period of years. As a rule, net revenues should be at least 1.25 times larger than the average annual debt service requirements of the system. This ratio is called "coverage," and revenue bonds are said to have 1.25X coverage, or 2.23X coverage, and so on. The higher the coverage, the better the security for the bonds and, all other things being equal, the lower the rate of interest at which the bonds can be issued.

In pledging the revenues of a utility system, it is common to make a "cross pledge," or "combined pledge." This is a pledge of the revenues of one system to repay bonds issued for improvements to a different system; for example, pledging the net revenues of the water system to the payment of bonds issued to improve the sewer system. On the other hand, the revenues of a utility system may not be cross pledged to the payment of bonds issued on behalf of a non-revenue-producing facility. For instance, water system revenues cannot be pledged to the payment of bonds issued to build a city hall.

Bond Ratings

As the annual volume of long-term debt incurred by state and local governments has grown over the years, competition between cities and other borrowers for investors' dollars has increased correspondingly. A municipal bond rating is one of the methods used to help alleviate the problems arising from this competitive situation.

A bond rating gives a quick indication of the quality of a new issue being offered, so that prospective bidders may know if they want to develop a bid. But a bond rating has greater value than a mere screening device: it also influences the rate of interest payable on bonds. Therefore, it is desirable that the city maintain a good rating for its bonds, because it can mean the difference between a good bid and a poor one, and a difference in interest charges to the city running into many tens of thousands of dollars.

Most Texas cities have more than one bond rating. Each bond issue is rated separately, based on the source of revenue that has been pledged to secure payment. General obligation bonds, therefore, are rated separately from water or sewer revenue bonds.

In determining the rating of a bond issue, analysts focus on the nature of the particular security. In the case of general obligation bonds, prime importance is attached to relationships among the city's debt, wealth, population, and tax collection experience. The economic base of the city, the stage of its development, and the quality of its government also are important factors. Finally, analysts examine the exact nature and strength of the legal obligation that the bonds represent.

The bond ratings of two particular firms are universally accepted in investor circles. These are Moody's Investors Service and S&P Global (formerly Standard & Poor's Corporation), both of which are based in New York City. The four investment grade ratings granted by these services are as follows:

Moody's Investors Service
Aaa: Best quality, carrying the smallest degree of investment risk.
Aa: High quality (together with Aaa comprise "high-grade bonds").
A: Higher medium-grade (many favorable investment attributes).
Baa: Lower medium-grade (neither high-quality nor high-risk).

S&P Global
AAA: Highest rating, with extremely strong capacity to repay loan.
AA: Only a small degree below AAA in the capacity to repay the loan.
A: Strong capacity to repay loan, although more susceptible to adverse effects in economic conditions.
BBB: Adequate capacity to repay loan.

In offering newly issued bonds for bids, the city should apply to one or both of the rating agencies to obtain a rating on the issue being offered. The nominal cost of obtaining a rating can be recovered many times over by minimizing interest costs on the basis of a favorable bond rating, as opposed to the sale of non-rated bonds.

Bond Elections

If it has been determined by the city council that a bond election is required, the first step—and the key step—in a successful campaign is citizen participation. The tried-and true elements of a successful bond election include the following:

1. Let private citizen volunteers, rather than the city council, conduct the campaign to persuade local voters to vote for the bonds.
2. Enlist the support of community and civic organizations.

Installment Obligations

An ever-increasing number of Texas cities are financing municipal purchases through installment sales or lease-purchase agreements. Generally speaking, cities must competitively procure the personal property at issue when a lease-purchase agreement or installment sale involves an expenditure of more than $50,000 in city funds.

Anticipation Notes

Certain cities may have authority to borrow against anticipated revenue (typically federal grant money) by issuing anticipation notes. Anticipation notes may be appropriate for borrowing relatively small amounts of money when the issuance of bonds would be cost prohibitive. State agencies may be authorized to purchase anticipation notes from cities, thus speeding the grant process to fund city projects. The law relating to anticipation notes is found in chapter 1431 of the Texas Government Code.

Capital Improvements Programming

It is a financial fact of life in every city that the demand for new streets, water lines, and other public works will always exceed the supply of current funds. Capital improvements programming is the primary method used by most cities to cope with the perpetual imbalance between capital demands and limited financial resources.

A capital improvements program (CIP) is a long-term plan, usually spanning five to six years, for financing major cost items that have a long useful life, such as buildings, land, streets, utility lines, and expensive equipment. The CIP document lists all the capital items scheduled for construction or acquisition during the next five or six years, the time when construction or acquisition is to occur, the amount expected to be spent during each year of the CIP, and the source of funding for each expenditure.

Preparation of a CIP involves five major steps. First, a list of proposed capital improvements is prepared on the basis of recommendations from the city council, staff, and community groups. The city's comprehensive plan will be the source of many CIP items, but whatever the source, each item included in the list should be supportive of the community goals expressed in the plan.

Second, cost estimates are developed for all proposed CIP items. In addition to stating the up-front cost of each item, these calculations usually include a description of savings that will result from its acquisition or construction, as well as the impact the item would have on future revenues or operating costs.

Third, a determination is made of the city's ability to pay for the items included in the draft CIP, together with a description of the method by which each will be financed. Ability to pay will be determined by a financial analysis of past, current, and future revenue, expenditure, and debt patterns. Options for financing particular items include special assessments, state or federal grants, additional fees or taxes, current revenues (pay-as-you-go), reserve or surplus funds, general obligation or revenue bonds, and certificates of obligation. The objective of this step is to determine, for each year, the minimum costs the city will incur before any new capital expenditures can be financed.

Fourth, all proposed CIP items are organized by the staff for orderly presentation to the city council. Each is ranked in recommended priority order. Items that overlap or duplicate previously approved projects or that are inconsistent with the city's comprehensive plan are identified and perhaps downgraded.
Finally, the tentative CIP is discussed at public hearings, thoroughly reviewed by the council, and then finally approved by formal council action.

Based on information contained in the CIP, a capital budget is prepared to show all capital expenditures in priority order, together with summaries of the financial activities planned for each year, including the amounts of bonds to be issued, amounts of operating funds required, and so forth.

The capital budgeting process normally takes place on a cyclical basis. Under a six-year CIP, year one is the current capital budget adopted by the city council at the same time it approves the operating budget. Many times, the capital budget is included as a component of the operating budget. Years two through six, having been approved by the council when it adopted the CIP, remain in the record as expressing the council's intent to carry forward with the balance of the CIP.

At the conclusion of year one, the council approves another one-year capital budget and extends the CIP, with revisions, for another year. Thus, year two of the previous CIP be- comes year one of the new six-year program, and the cycle begins anew.

Capital improvement programming offers several advantages. By scheduling ample time for construction or acquisitions, costly mistakes can be avoided, as is the case when streets have to be dug up repeatedly because they are not planned in relation to other facilities. Also, by working with a list of planned projects, sites can be purchased at lower cost, and by spacing out projects over several years, the city's tax and debt load can be stabilized, and balance can be maintained between debt service and current expenditures.

Financial Reporting

Financial reports prepared periodically throughout the fiscal year are an essential part of the control system necessary to permit the city council to determine whether funds are being expended in accordance with the budget and to identify discrepancies between anticipated and actual revenues. Financial reports fall into four general categories—internal budgetary reports, annual financial reports, annual audits, and local debt reports—each of which is briefly discussed next.

Internal Budgetary Reports

Internal budgetary reports are prepared on a monthly basis and are distributed to the city council and department heads. These reports illustrate the financial condition of the city as it unfolds from month to month and answer such questions as: are city services being provided as planned? are expenditures exceeding budgeted levels? is the cash inflow at the expected level? By determining the answers to these and related questions on a regular basis, the council can identify problem areas and initiate corrective actions accordingly.

Annual Financial Report

The annual financial report is compiled at the conclusion of the fiscal year and shows, item by item, budgeted versus actual revenues and expenditures, together with other information that describes the city's year-end financial condition. The financial report should be prepared by an independent certified public accountant appointed by the city council and made available to the department heads, the news media, and other interested parties.

Annual Audit

Sections 103.001-103.004 of the Local Government Code require each city to have an annual audit of its financial records and accounts. The audit can be performed either by a certified public accountant or a qualified city employee, and must be made available for public inspection no later than 180 days after the close of the city's fiscal year.

The audit involves examination of three aspects of the city's financial operations: (1) internal controls; (2) statements, records, and accounting transactions; and (3) compliance with statutory and budgetary requirements. Properly conducted, the audit provides a double check on the city's financial status, a method for communicating with the citizenry, and a bona fide statement of the city's financial condition, which will improve its ability to issue bonds.

Local Debt Report

Section 140.008 of the Local Government Code requires cities to annually compile and report various types of debt obligation information, including the amounts of principal and interest to pay outstanding debt obligations, the current credit rating given by any nationally recognized credit rating organization to debt obligations of the city, and any other information that the city considers relevant or necessary to explain the outstanding debt values. Subject to certain exceptions discussed below, the local debt report must be posted continuously on the city's website until the city posts the next year's report. The report must be made available to any person for inspection.

As an alternative to posting the report on the city's website, a city may provide all required debt information to the comptroller and have the comptroller post the information on the comptroller's official website. Further, a city with a population of less than 15,000 may provide the comptroller with its local debt report for inclusion on the comptroller's website. A city that already includes the required debt information in other reports that are posted to the city's website may provide a link to that information rather than replicating the data in the local debt report.

Investments

In 1995, the Texas Legislature enacted the Public Funds Investment Act, which requires the city council to adopt a written investment policy. A city may contract with an independent investment advisor to provide investment and management services. Typically, the city investment officer must attend one investment training session within 12 months of taking office and must attend eight

hours of training once every two years thereafter. The treasurer and the chief financial officer (if the treasurer is not the chief financial officer) must also attend ten hours of training every two years. The Texas Municipal League offers comprehensive public funds investment training.

Financial Warning Signals

In recent years, increasing attention has been given to monitoring the financial health of cities. Although most of the chronic financial problems of cities tend to slowly snowball over an extended period of time, they usually result from a standard set of problems, including: (1) a decline in revenues or tax base; (2) an eroding capital plant; (3) a faltering local or regional economy; (4) growing debt burden; (5) accumulation of unfunded pension liabilities; (6) a sudden loss of substantial federal funds; (7) an increase in spending pressures; and/or (8) ineffective financial management practices.

Chapter Seven: Ordinances and Resolutions

The city council takes official action by two primary means: resolutions and ordinances. Both 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 generally 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.

Also, depending on city type and the subject matter of an ordinance, it may have to be published in a newspaper before taking effect.

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, or portion thereof, is void if it conflicts with the United States 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 or federal legislature conflicts with the ordinance, the ordinance is void. Conversely, if an ordinance supplements and is in harmony with the law, the ordinance will be sustained.

An ordinance is invalid if a court determines that the state legislature intended to preempt the subject area addressed in the ordinance. If the legislature has preempted the field, no ordinance except those specifically authorized by statute may be enacted on the subject.

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

1. 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;
2. An ordinance restricting the hours of operation of liquor stores to fewer than those authorized under the state Alcoholic Beverage Code;
3. an ordinance legalizing an activity or business that was prohibited by state law; and
4. an ordinance in conflict with the Interstate Commerce Clause of the United States Constitution.

Validity of Ordinances

An ordinance that is arbitrary, oppressive, capricious, or fraudulent will be invalidated by the courts. A court can inquire into the validity of an ordinance by looking at whether the ordinance has a substantial relationship to the protection of the general health, safety, or welfare of the public. A court usually will not substitute its judgment for that of the city council; but if an ordinance is not in compliance with lawful requirements, the courts may overturn it. An ordinance is considered valid if no lawsuit has been filed to invalidate the ordinance on or before the third anniversary of the effective date of the ordinance, unless the ordinance was invalid on the day it was enacted or it was preempted.

Form of the Ordinance

State law does not prescribe the form of an ordinance, other than to require that it contain an ordaining clause (Section 52.002 of the Local Government Code) and to require the publication, or sometimes posting of either the complete text or caption of every ordinance that establishes penalties for violations (Sections 52.011-52.013 of the Local Government Code). 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, factual findings made by the council, or the legislative authority for the ordinance.
4) The ordaining clause, which is required by law, in most instances.
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 effective date of the ordinance which may, in some circumstances, be governed by state law or city charter (if adopted by a home rule city).
7) A severability clause which clarifies that the invalidity of some portions of the ordinance should not render the entire ordinance invalid.
8) The penalty clause, which fixes the penalty for violating the ordinance. Under state law, the maximum penalty the council may establish for violating an ordinance dealing with fire safety, zoning, or public health (except for dumping refuse) is a fine of $2,000 per day for each day the ordinance is violated. The maximum penalty the council may establish for violating an ordinance governing the dumping of refuse is $4,000 per day. 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.
9) The final part of the ordinance is a statement that the ordinance 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 adopted. Some cities also require the city attorney to approve the form of the ordinance. If required by state law or city charter, signatures must be present on the ordinance, or the ordinance may be declared void.

The following ordinance illustrates these eight components:

Ordinance No. 125

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

PREAMBLE
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
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.

ORDAINING CLAUSE
NOW THEREFORE:

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

BODY
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.

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 any time 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.

SECTION 4. EFFECTIVE DATE
This Ordinance shall become effective immediately upon its passage and publication as required by law.

SECTION 5. SEVERABILITY
This Ordinance shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of the Ordinance shall not affect the validity or constitutionality of any other section, clause, provision or portion of this Ordinance.

SECTION 6. 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.

CONCLUSION
PASSED AND APPROVED this____ day of _____, 20___

/s/_____
Mayor

ATTEST:
/s/_____
City Secretary/ Clerk

APPROVED AS TO FORM:
/s/_____
City Attorney

Chapter Eight: Conflicts of Interest

Mayors and councilmembers are expected to avoid involvements that put their personal interests at cross purposes with those of the public. In most cases, good judgment is enough to keep city officials within the bounds of propriety. There are, however, state laws governing the behavior of city officials.

At least three situations can impair the ability of mayors or councilmembers to properly perform their duties. All three involve conflicts of interest in which a member of the city council is placed in the position of owing loyalty to the interests of the city on one hand, and to some other interest on the other.

The first situation occurs when a member of council occupies two or more public offices at the same time. The second exists when the city council votes to take an action that will have a beneficial effect on a business or property in which a member of council or the member's close family member has a major interest. And the third exists in cases of nepotism, where hiring decisions are made on the basis of relationship. Each of these situations is described below.

Dual Office-Holding

Two or More Civil Offices

Mayors and councilmembers are prohibited from holding more than one public office at the same time if both are "offices of emolument." An emolument is a benefit that is received as compensation for services and includes salaries, fees of office, or other compensation—not including the re- imbursement of actual expenses.

Therefore, a mayor or councilmember who receives a salary, fees for attending council meetings, or any other emoluments from the city, may not simultaneously serve as a district judge, state senator or representative, county clerk, or in any other local or state office of emolument. The only exceptions to this prohibition are found in Article XVI of the Texas Constitution, which allows certain state officers and employees to hold municipal offices of emolument and permit a person holding an office of emolument to also serve as a justice of the peace, county commissioner, notary public, as an officer of a soil and water conservation district, or in other specific offices.

Incompatibility

Second, with respect to dual civil offices, mayors and councilmembers are prohibited from holding a second public office having duties and loyalties incompatible with those that must be performed as an officer of the city. This rule—which applies to all public offices, whether paid or unpaid—heeds the mandate that no person can serve two masters; full allegiance is required to one or the other.

The general rule regarding incompatible offices was reviewed in *Thomas v. Abernathy County Line I.S.D.*, in which the Texas Supreme Court held that the offices of city councilmember and school board member were incompatible because if the same person could be a school board member and a member of the city council at the same time, school policies, in many important respects, would be subject to direction of the council n instead of the school board.

The incompatibility doctrine also prohibits the council from appointing one of its own members to a public office (unless otherwise allowed by state law) or employing the member as a city employee. A mayor, for example, could not simultaneously serve as a police officer for the city.

Though it may be difficult at times to determine whether two offices or positions are incompatible, a misjudgment could be costly. The courts have held that when an individual who holds an office accepts and is sworn into a second office that conflicts with the first, the individual is deemed to have automatically resigned from the first office.

City Actions That Benefit Members of Council

City councils everywhere routinely make decisions on purchases, rezoning, utility extensions, road construction projects, and other matters that

benefit various private interests. Because of the broad scope of the council's powers, it is reasonable to expect that some of its decisions will directly or indirectly impact the individual members of the council making such decisions.

Anticipating that potential conflicts of interest will inevitably arise at the local level while acknowledging the practical impossibility of flatly prohibiting such conflicts, the Texas Legislature enacted at least three statutory schemes that require the public disclosure of conflicts between the public interest and a member of council's private interests (Chapters 171and 176of the Local Government Code and Chapter553 of the Government Code).

The purpose of Chapter 171 of the Local Government Code, the conflicts of interest statute, is to prevent members of council and other local officials from using their positions for hidden personal gain. The law requires the filing of an affidavit by any member of council whose private financial interests—or those of close relatives—would be affected by an action of the council. Whenever any contract, zoning decision, or other matter is pending before the council, each member of council must take the following steps:

(a) Examine the pending matter and determine whether the member or a related person has a substantial interest in the business or property where a decision of the city council on the matter would have a special economic effect on that business or property.

A member of council has a substantial interest in a business entity if:

1) the member or a close relative of the member owns 10 percent or more of the voting stock or shares or of the fair market value of the business entity or owns $15,000 or more of the fair market value of the business entity; or
2) funds received by the member or a close relative of the member from the business entity exceed 10 percent of the person's gross income for the previous year.

A member of council has a substantial interest in real property if the member's or a close relative of the member's interest is an equitable or legal ownership with a fair market value of $2,500 or more.

(b) If the answer to (a) is "yes," the member must file, before a vote or decision on any matter involving the business entity or real property, an affidavit disclosing the nature and extent of the interest in the matter if:

1) in the case of a substantial interest in a business entity, the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

The affidavit must be filed with the official record keeper of the city, who is usually the city secretary.

(c) In addition to filing the disclosure affidavit, the member of council must abstain from further participating in the discussion of the matter and abstain from voting on it. However, a member who is required to file an affidavit and does file the affidavit is not required to abstain in the matter in which he or she has an interest if a majority of the members of the city council are also required to file and do file affidavits on the same official action.

Nonetheless, the city council can vote to purchase goods or services from a business in which a member of the council has a substantial interest

if the member files a disclosure affidavit and then abstains from discussing and voting on the decision regarding the purchase.

Additionally, the city council must take a separate vote on any budget item specifically dedicated to a contract with an entity in which a member of the council has a substantial interest, and the affected member must abstain from that separate vote. The member who has complied in abstaining in such vote may vote on a final budget only after the matter in which there was an interest has been resolved.

An member of city council who knowingly violates Chapter 171 by failing to file an affidavit or abstaining from voting or participating in a matter in which the member has an interest commits a Class A misdemeanor which is punishable by confinement in jail for up to one year and a fine up to $4,000.

Chapter 176, a second conflicts disclosure statute, requires that mayors, councilmembers, and certain other executive city officers or agents file a "conflicts disclosure statement" with a city's records administrator within seven days of becoming aware of any of the following situations:

1. A city officer or the officer's family member has an employment or business relationship that results in taxable income of more than $2,500 with a person who has contracted with the city or with whom the city is considering doing business;
2. A city officer or the officer's family member receives and accepts one or more gifts with an aggregate value of $100 in the preceding 12 months from a person who conducts business or is being considered for business with the officer's city; or
3. A city officer has a family relationship with a person who conducts business or is being considered for business with the officer's city.

The chapter also requires a vendor who wishes to conduct business or be considered for business with a city to file a "conflict of interest questionnaire" if the vendor has a business relationship with the city and an employment or other relationship with an officer or officer's family member, gives a gift to either, or has a family relationship with a city officer.

An officer who knowingly fails to file the disclosure statement commits either a Class A, B, or C misdemeanor, depending on the amount of the contract.

A third conflicts disclosure statute, Chapter 553 of the Government Code, prevents members of council from using their positions for hidden personal gain related to the city's purchase or condemnation of property in which the member has a legal or equitable interest.

Whenever a city is deciding whether to purchase or condemn a piece of real property or tangible personal property, the individual officer should determine whether they have a legal or equitable interest in the property that is to be purchased or condemned. If the individual has a legal or equitable interest in the property, then the individual needs to file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation. The affidavit is filed with the county clerk of the county in which the official resides as well as the county clerk of each county in which the property is located.

The affidavit must include: (1) the name of the official; (2) the official's office, public title, or job designation; (3) a full description of the property; (4) a full description of the nature, type, and amount of interest in the property, including the percentage of ownership interest; (5) the date the official acquired an interest in the property; (6) the following verification: "I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code;" and (7) an acknowledgement of the same type required for recording a deed in the deed records of the county.

A public official who violates the affidavit requirement after having notice of the purchase or condemnation commits a Class A misdemeanor, which is punishable by up to one year in jail and a fine up to $4,000.

Nepotism

"Nepotism" is the award of employment or appointment on the basis of kinship. The practice is contrary to sound public policy, which is why prohibitions against nepotism are common in all states, including Texas.

The Texas nepotism statute, Chapter 573 of the Government Code, forbids the city council from hiring any person who is related to a member of the council within the second degree by affinity or within the third degree by consanguinity. This prohibition does not apply to a city with a population of 200 or less, or to close relatives of a member who were continuously employed by the city for: (1) at least 30 days, if the member is appointed; or (2) at least six months, if the member is elected. When a individual is allowed to continue employment with the city because the individual has been continuously employed for the requisite period of time, the member of council who is related to the individual shall not participate in the deliberation or voting on employment matters concerning the individual if such action applies only to the particular individual and is not taken with respect to a class or category of employees.

The nepotism statute does not apply to unpaid positions.

Since "affinity" and "consanguinity" are the controlling factors in determining nepotism, both terms need to be clearly understood. Affinity is kinship by marriage, as between a husband and wife, or between the husband and the blood relatives of the wife (or vice versa).

Two persons are related to each other by affinity if they are married to each other or the spouse of one of the persons is related by consanguinity to the other person.

Relatives related within the first degree of affinity include a public official's spouse, father-in-law, mother-in-law, sons-in-law, daughters-in-law, stepsons, and stepdaughters.

Relatives related within the second degree of affinity include a public official's sisters-in-law (brother's spouse or spouse's sister), brothers-in-law (sister's spouse or spouse's brother), spouse's grandmothers, spouse's grandfathers, spouse's granddaughters, and spouse's grandsons.

Termination of a marriage by divorce or the death of a spouse terminates relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is treated as continuing to exist as long as a child of the marriage is living.

Consanguinity is kinship by blood, as between a mother and child or sister and brother.

Two persons are related to each other by consanguinity if one is a descendant of the other or if they share a common ancestor.

Purchasing

Section 2252.908 of the Government Code provides that, with certain exceptions: (1) a city is prohibited from entering into a contract with a business entity unless the business entity submits a disclosure of interested parties (i.e., discloses a person who has a controlling interest in the business or who actively participates in facilitating the contract for the business) if the contract: (a) requires an action or vote by the city council before the contract may be signed; (b) has a value of at least $1 million; or (c) is for services that would require a person to register as a lobbyist; (2) the disclosure must be on a form prescribed by the Texas Ethics Commission; and (3) a city must acknowledge receipt of the disclosure with the Texas Ethics Commission not later than 30 days after receiving the disclosure.

Chapter Nine: Personal Liability of Members of City Council

A legal concept known as "governmental immunity" protects cities from being sued or held liable for various torts (a tort is a wrongful act resulting in injury to a person or property) and causes of action. But there are some exceptions to this general rule. For example, Chapter 101 of the Texas Civil Practice and Remedies Code (also known as the Texas Tort Claims Act) provides that a city may be liable for damages arising from the use of publicly-owned vehicles, premises defects, and injuries arising from conditions or use of property. Thus, a city (as an entity) is sometimes liable for limited damages resulting from the actions of its city officials and employees.

But what about mayors and councilmembers? Mayors and councilmembers across the state daily make decisions that impact the lives and property of thousands of people. Can these city officials be held personally responsible for damages resulting from decisions they make (or refuse to make) in their official capacity as members of the city's governing body?

In most instances, mayors and councilmembers will not face personal liability. Like the city itself, mayors and councilmembers are often protected by different types of immunity, the purpose of which is to allow them to make decisions in the public interest with confidence and without fear. However, immunity is not available in all instances. For that reason, it is important for mayors and councilmembers to have a basic understanding of the areas in which they face potential liability.

Liability Under State Law

We start by examining a civil tort suit, a common instance in which the issue of the personal liability of a mayor or councilmember may arise. Generally speaking, Texas courts have held that mayors and councilmembers are not personally liable when a suit arises from the performance of discretionary acts that are taken in good faith and are within the scope of their authority. This type of protection is commonly referred to as official immunity. A "discretionary act" involves personal judgment. The decision about where to place a traffic sign is one example of a discretionary act. An action taken in good faith is one that is taken without intent to do harm. Thus, councilmembers should ensure that discretionary actions are taken in good faith and pursuant to their authority as authorized by relevant state law, ordinances, or policies.

Generally speaking, mayors and councilmembers may be held personally liable for torts that arise from ministerial acts. A "ministerial act" is one performed as a matter of duty; an act which a mayor or councilmember must perform. Ministerial acts also include those performed in obedience to state law or federal laws which are so plain and explicit that nothing is left to discretion or judgment. For example, canvassing the results of a city election is a ministerial and non-discretionary duty. Failure to perform a ministerial act imperils a mayor or councilmember regardless of whether is the failure to act is done in good faith. A ministerial act required by law, but that is not performed at all, could also lead to liability. In sum, a mayor or councilmember could potentially be individually liable for damages to individuals injured because of the failure to properly perform a ministerial duty or negligently failing to perform the duty at all. Personal liability of most city officials is capped at $100,000 for actions brought in state court under the Texas Tort Claims Act.

Additionally, until recently, a mayor or councilmember could not be held personally liable for sexual harassment. In 2021, the Texas Legislature adopted Senate Bill 45, which expanded the definition of "employer" to include "any person who acts directly in the interests of an employer in relation to an employee." Under this new definition, it is possible that elected officials may be subject to individual liability for sexual harassment if they: (1) know or should have known that the conduct constituting sexual harassment was occurring; and (2) fail to take immediate and appropriate corrective action.

In addition to personal civil liability, a mayor or councilmember fulfilling his or her duties for the city may be subject to criminal liability as the result of a violation of certain state laws. Some of the most common state laws under which a mayor or councilmember may face criminal liability include

the Open Meetings Act, the Public Information Act, conflicts of interest and financial disclosure laws, purchasing laws, and nepotism laws. In addition, prohibitions found in the Texas Penal Code may be implicated as a result of serving as a mayor or councilmember, including laws dealing with bribery, gifts, honorariums, falsification of government documents, the misuse of information, abuse of official capacity, official oppression, forgery, and theft.

Finally, as an elected official, mayors and councilmembers may face both civil and criminal liability for failure to comply with certain state laws, such as those governing political contributions, political advertising, and campaign contributions.

Liability Under Federal Law

A mayor or councilmember may also face personal liability for violations of a person's rights under federal law. This usually occurs: (1) as the result of claims alleging violations of constitutional rights; or (2) in an employment context (e.g., a claim brought under the Fair Labor Standards Act or the Family Medical Leave Act).

The law customarily used to take action against city officials for violations of constitutional rights or violations of federal law is Section 1983, Title 42, of the United States Code, which provides:

> *Every person who, under color any statute, ordinance, regulation, custom, or usage, of any State . . . .subjects, or causes to be subjected, any citizen of the United states or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . .*

Various types of policy decisions related to both city employees and members of the public could render a mayor or councilmember liable under Section 1983. However, city officials are usually protected by qualified immunity. Similar to the official immunity defense under state law (described above), a mayor or councilmember may be protected by qualified immunity when sued under federal law. To be covered by qualified immunity, the official must show that the action taken: (1) was discretionary; (2) was within the official's authority to take; and (3) did not violate any clearly established statutory or constitutional right of which a reasonable person would have known.

It is rare that a mayor or councilmember is held personally liable under federal law for the decisions he or she makes as a member of the governing body. Even so, city officials should make sure that they have a reasonable basis for decisions made, and that applicable state and federal law is reviewed before those decisions are made, especially when those decisions impact specific individuals.

In sum, because liability questions are notoriously fact-sensitive, councilmembers and mayors should always seek the advice of the city attorney for any specific liability question.

Chapter Ten: Sources of Information

There is no comprehensive guide to everything there is to know about Texas cities, but there are many sources of information that can be helpful. Several are listed below.

Local Sources

Depending on the amount of time available, information on the finances, services, and other aspects of the city can be obtained by:

1. Reading the city's code of ordinances;
2. Reviewing the minutes of council meetings held during the past several months;
3. Studying the current budget, the previous year's financial report, and other key financial documents;
4. Visiting the various city departments to learn how the city conducts its day-to-day operations; and
5. Conferring with past and present members of the council, the local newspaper editor, civic leaders, and others who have followed the city's affairs over the years.

Texas Municipal League

The Texas Municipal League is an association of cities that exists for one reason: to serve city officials. TML offers members of the city council and other city officials a broad range of services – including training seminars and conferences, technical assistance, legal information, and many other services. The League office welcomes all inquiries from its member officials, no matter how ordinary or unusual. The League is also willing to assist members of the press in understanding cities.

National Resources

American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601, 312-431-9100 (phone), 312-786-6700 (fax), www.planning.org . Major publications: *Planning*, *Journal of the APA*, and *Zoning Practice*. The APA also publishes a number of guides to zoning, subdivision development, and other aspects of municipal planning.

American Public Works Association, 1200 Main Street, Suite 1400, Kansas City, Missouri 64105-2100, 816-472-6100. www.apwa.net
Monthly publication: *APWA Reporter*. APWA also publishes several public works-related manuals.

American Society for Public Administration, 1730 Rhode Island Ave. NW, Suite 500, Washington, D.C. 20036, 202-393-7878. Bi-Monthly publication: *Public Administration Review* features articles for councilmembers interested in municipal administrative and organizational processes and theory. *Public Integrity*, published bimonthly, addresses ethical issues affecting government and society. ASPA's quarterly newspaper, *PA TIMES*, covers developments in the academic and professional field of public administration. www.aspanet.org

Government Finance Officers Association, 203 N. LaSalle St., Suite 2700, Chicago, Illinois 60601-1210, 312-977-9700. Major publications include the weekly *GFOA Newsletter* and bimonthly *Government Finance Review*. GFOA also publishes a wealth of excellent operating manuals on the topics of budgeting, debt management, financial forecasting, and related items. www.gfoa.org

International Association of Chiefs of Police, 44 Canal Center Plaza, Suite 200, Alexandria, Virginia 22314, 703-836-6767. Major Publication: monthly *Police Chiefs Magazine*. www.theiacp.org

International Association of Fire Chiefs, 4795 Meadow Wood Lane, Suite 100, Chantilly, Virginia 20151, 703-273-0911. Major publication: *On Scene* newsletter. www.iafc.org

International City/County Management Association (ICMA), 777 North Capitol St. N.E., Suite 500, Washington, D.C. 20002-4201, 202-962-3680. Major publication: *Public Management.* Other publications: *LGR: Local Government Review* (biannual); *SmartBrief* (daily newsletter); and *Leadership Matters* (weekly newsletter). ICMA also publishes a series of manuals on different aspects of city government. www.icma.org

International Institute of Municipal Clerks, 8331 Utica Ave., Suite 200, Rancho Cucamonga, California 91730, 909-944-4162. Major Publications: *IIMC News Digest*, *Consent Agendas*, *IIMC Meeting Administration Handbook*, and *Language of Local Government*. IIMC provides training and information to city clerks and city secretaries. www. iimc.com

International Municipal Lawyers Association, 51 Monroe Street, Suite 404, Rockville, MD 20850 202-466-5424. Bimonthly publication: *Municipal Lawyer*. IMLA also publishes a variety of documents of special interest to city attorneys. www.imla.org

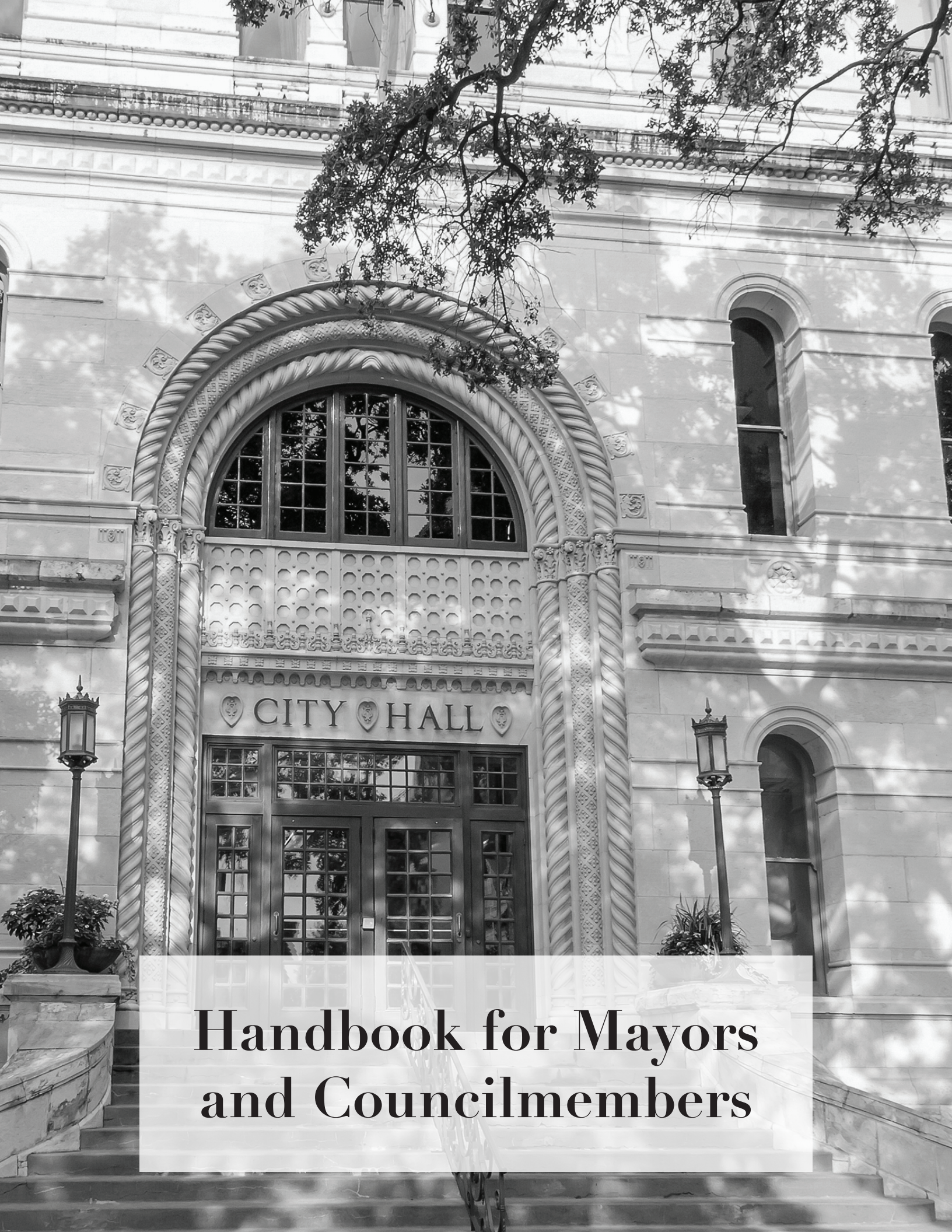
International Public Management Association for Human Resources, 1617 Duke St., Alexandria, Virginia 22314, 703-549-7100. Major publications: *Public Personnel Management*, *HR News*, and *HR Bulletin*. IPMA-HR is a source of excellent information on productivity, employee performance appraisal, and other aspects of municipal personnel administration. www.ipma-hr.org

National Association of Towns and Townships, 1901 Pennsylvania Avenue, NW, Suite 700, Washington, D.C., 20006, 202-331-8500. Major Publication: *Weekly Updates*. NATaT offers technical assistance, educational services, and public policy support to local government officials from small communities. www.natat.org

National Civic League, 190 E. 9th Ave, Suite 200, Denver, Colorado 80203, 303-571-4343. Major Publication: *National Civic Review*. NCL serves as a resource for information on citizen participation in state and local government and provides guides, model charters, and laws on specific subjects. NCL also sponsors the All-America City Award. www.ncl.org

National League of Cities, 660 North Capitol St. NW, Washington, D.C. 20001, 1-877-827-2385. Major Publication: *Cities Speak Blog*. Additionally, the organization conducts two national conventions of city officials, the first of which focuses on city-related federal programs, while the second emphasizes methods of improving municipal operations. www.nlc.org

U.S. Conference of Mayors, 1620 I Street N.W., Washington, D.C. 20006, 202-293-7330. USCM provides current information on federal policy developments of interest to cities over the population of 30,000. www.usmayors.org



Handbook for Mayors and Councilmembers

OFFICIAL PUBLICATION OF THE TEXAS MUNICIPAL LEAGUE

TEXAS TOWN & CITY

January 21
VOLUME CVIII
NUMBER 1

HOW CITIES WORK


City of College Station Police Headquarters


City of Seguin Public Library

City of Allen Central Fire Station


City of Bellaire City Hall + Civic Center

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Our Home
Our Decisions

Our Home, Our Decisions:
Local Governments Providing Essential Services for Our Diverse State

Cities, the government closest to the people, embody the idea that "We the People" should be able to continue making decisions based on the needs of each unique community in Texas. Cities provide the services that we cannot do without - services that reflect the will of the local taxpayers and recognize that not all laws are able to be "one size fits all." **Because of the unique patchwork of cities in our state, we must be able to retain our ability to govern locally and continue making decisions that represent the needs of the community.**

For this purpose, Our Home, Our Decisions was created to emphasize the necessity for local decision making and ensuring that the diverse needs of our communities can continue to be met by local governments.

With the idea that no two areas in the state are alike, the legislature began creating cities upon statehood to work closely with the community to more effectively address local needs. The locally-elected city councils in those cities decide – based on the needs of their citizens – how to provide appropriate services. Each city is different and the needs of each community widely ranges. We often say, what works in the Piney Woods of East Texas won't always work in the Great Plains of the Panhandle and that rings true all across the state. But that is what makes our state great – the diversity and unique needs that can be addressed by the government closest to the people.

Cities rarely seek funding from the state, and they typically receive very little from the state. Cities need to **be allowed to make their own decisions about how to keep their local communities thriving, benefiting the overall success of the state.** For these reasons, we have created the Our Home, Our Decisions campaign to amplify and celebrate the diversity of Texas.

1. Ensure that local decisions are made locally and oppose attempts to harm the ability of local governments to represent their constituents without state interference.

2. Preserve the ability for local governments to retain the experts needed to achieve the goals of their communities.

3. Allow local governments the flexibility to fund essential services for their community such as law enforcement and first responders, roads and bridges, clean water, broadband connectivity, and more.

Join Us in Celebrating the Diversity of Texas:
Our Home, Our Decisions

To learn more, visit www.ourhomeourdecisions.org or call 512-231-7400
Legislative direct contact: Monty Wynn monty@tml.org

The 87th Texas Legislature
Keep Your Finger on the Pulse!

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TML LEGISLATIVE SERIES

FOUR WEBINARS AND A WORKSHOP

The 87th session of the Texas Legislature begins in January. This may be the most important legislative session in recent history for Texas cities. Help your city plan an active and consistent role in the League's efforts by participating in the 2021 Legislative Series Webinars and Workshop.

Legislative Preview Webinar: What to Expect This Session
Thursday, January 14 – 10:30-11:30 a.m.

Legislative Status Report Webinar #1: Keep Your Finger on the Pulse
Thursday, March 11 – 10:30-11:30 a.m.

Legislative Status Report Webinar #2: Be Heard at the Capitol
Thursday, April 8 – 10:30-11:30 a.m.

Legislative Status Report Webinar #3: What to Expect in the Final Days
Thursday, May 6 – 10:30-11:30 a.m.

Legislative Wrap-Up: An Insider's Perspective
Monday, June 21 – Workshop (Hilton Austin)

TEXAS TOWN & CITY

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CONTENTS ★ IN EACH ISSUE

ABOUT THE COVER
How Cities Work
Learn what Texas cities do and how they do it in this biennial publication.
Cover illustration by Lindy N. Jordaan

ABOUT ★ TML

The Texas Municipal League exists solely to provide services to Texas cities. Since its formation in 1913, the League's mission has remained the same: to serve the needs and advocate the interests of its members. Membership in the League is voluntary and is open to any city in Texas. From the original 14 members, TML's membership has grown to more than 1,150 cities. Over 16,000 mayors, councilmembers, city managers, city attorneys, and department heads are member officials of the League by virtue of their cities'participation.

The League provides a variety of services to its member cities. One of the principal purposes of the League is to advocate municipal interests at the state and federal levels. Among the thousands of bills introduced during each session of the Texas Legislature are hundreds of bills that would affect cities. The League, working through its Legislative Services Department, attempts to defeat detrimental city-related bills and to facilitate the passage of legislation designed to improve the ability of municipal governments to operate effectively.

The League employs full-time attorneys who are available to provide member cities with information on municipal legal matters. On a daily basis, the legal staff responds to member cities' written and oral questions on a wide variety of legal matters. The League annually conducts a variety of conferences and training seminars to enhance the knowledge and skills of municipal officials in the state. In addition, the League also publishes a variety of printed materials to assist member cities in performing their duties. The best known of these is the League's monthly magazine, *Texas Town & City*. Each issue focuses on a variety of contemporary municipal issues, including survey results to respond to member inquiries.

For additional information on any of these services, contact the **Texas Municipal League** at 512-231-7400 or visit our website, www.tml.org.

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TML Intergovernmental Risk Pool
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MESSAGE ★ FROM THE PRESIDENT

KAREN HUNT
MAYOR, CITY OF COPPELL
TML PRESIDENT

Dear Texas City Official,

By the time you read this magazine, lawmakers will already be at work in Austin considering thousands of bills, many of which could affect your city.

With so many bills potentially impacting cities, you might assume that legislators and their staff have a detailed understanding about how Texas cities operate. But you'd often be wrong! Most have no background in city government, and they often don't check with the experts—you and your city staff—before they dive in with their bill filing ideas that could affect your operations in many ways.

Why do lawmakers sometimes file bills that affect entities without fully understanding their effects? The answer to the question is special interest groups. Nearly every industry that interacts with local government has an advocacy organization in Austin that takes bills to friendly legislators to be filed, often verbatim. Unless legislators hear about the impacts of those bills on cities from people who understand them, there's a good likelihood those bills will get passed word-for-word, with no one weighing in on their effects.

That's why this issue of the magazine exists—to explain in detail "How Cities Work." Think of this issue as a textbook on the basics—city taxes, utilities, solid waste, zoning, public safety, and much more.

We urge you to know your legislators and share articles as needed this legislative session, or to use the articles when preparing talking points to communicate with your delegation. Now more than ever, success at the Texas Capitol depends on timely and determined input from the grassroots. And as I've mentioned before in this space—you ARE the grassroots!

Karen Hunt
Mayor, City of Coppell
TML President

Our Home Our Decisions

IN THIS ISSUE: OUR HOME, OUR DECISIONS

By **Bennett Sandlin**, TML Executive Director

As you read this issue of *Texas Town & City*, the 87th Texas Legislature has convened and is hard at work. The 2021 regular session will not end until Monday, May 31, 2021. Between now and then, lawmakers will consider thousands of bills. Unfortunately, many of those bills would, if enacted, erode municipal authority or otherwise limit the ability of Texas cities to carry out the important functions and provide the vital services expected by municipal residents.

Cities, the government closest to the people, embody the idea that "We the People" should be able to continue making decisions based on the needs of each unique community in Texas. Cities provide the services that we cannot do without - services that reflect the will of the local taxpayers and recognize that not all laws are able to be "one size fits all." **Because of the unique patchwork of cities in our state, we must be able to retain our ability to govern locally and continue making decisions that represent the needs of the community.**

With the idea that no two areas in the state are alike, the legislature began creating cities upon statehood to work closely with the community to address local needs more effectively. The locally-elected city councils in those cities decide – based on the needs of their citizens – how to provide appropriate services. Each city is different, and the needs of each community widely ranges. We often say, what works in the Piney Woods of East Texas won't always work in the Great Plains of the Panhandle and that rings true all across the state. But that is what makes our state great – the diversity and unique needs that can be addressed by the government closest to the people.

Cities rarely seek funding from the state, and they typically receive very little from the state. Cities need to be allowed to make their own decisions about how to keep their local communities thriving, benefiting the overall success of the state. For these reasons, we have created **the Our Home, Our Decisions** campaign to amplify and celebrate the diversity of Texas. I encourage every one of you to get involved with the campaign and use the resources we will continue making available during the legislative session, and after.

Further, this issue of our magazine is a tool to help city officials explain how Texas cities are powerful engines of

economic growth, as well as safe and pleasant places for people to grow up, raise families, and retire.

In this issue of *Texas Town & City,* we highlight:

- The sources of municipal revenue and the ways in which the legislature can damage that revenue
- The value of building codes
- Municipal economic development efforts and the ways in which property tax caps threaten those efforts
- The status of municipal solid waste programs
- Municipal transportation and public works and the importance of maintaining right-of-way authority, compensation for use of rights-of-way, and funding sources for drainage utilities
- Municipal participation in utility rate cases
- The provision of municipal water and wastewater services, including funding for the State Water Plan
- The connection between infrastructure and revenue caps
- The high cost of providing public safety services
- The importance of annexation authority to the future of Texas cities and to the state's economy
- The ways in which zoning authority protects citizens and their property values
- The importance of libraries and library funding
- The value of municipal parks and recreation programs

Also in this issue is a description of the 2021/2022 TML legislative program, the key feature of which is opposing any legislation that would harm the ability of cities to provide the services and facilities enumerated above.

While some state leaders will try to reduce municipal revenue or chip away at municipal authority, the vast majority of Texans knows that their city leaders are trustworthy stewards and should be allowed to answer the needs of their citizens. To a very great extent, economic growth in Texas is the result of municipal efforts to ensure the availability of infrastructure, the public safety, and the quality of life necessary for job creation. State policymakers should be very reluctant indeed to harm cities, because as our cities go, so goes our entire beloved state.

We look forward to working with you in these important months ahead as we advocate for municipal government in Texas. We're counting on you, our members, to actively help in this mission.

If you have any questions, please feel free to contact a member of the TML legislative department.

To learn more about Our Home, Our Decisions, visit www.ourhomeourdecisions.org.

Thank you for your support and assistance. ★

THAT FREE DRINK COULD COST MORE THAN YOU THINK... THE COST OF A CYBER ATTACK

The email looked legitimate. The message, complete with recognizable Starbucks images, enticed the reader to click and redeem.

> "Mmm, Caramel Brulée Latte, so luxuriously silky and sweet. Sipping one feels like a big, warm hug. Hot and cool at the same time, the Peppermint Mocha is a boost for your brain and a party for your taste buds. Have you tried the Toasted White Chocolate Mocha? With subtly caramelized white chocolate sauce it almost tastes like sitting in front of a roaring fire."
>
> **Your company has partnered with Starbucks to give you a treat. Choose your drink below to get a voucher and get it FREE in the store!"**

It looked legitimate, except for one small detail… it came from starbooks.com, not Starbucks.com. This was an actual email, and many missed that one small difference. This detail is easily overlooked, especially when someone receives an exciting and believable offer. This is just one example of what employees and employers face on a daily basis. Any entity with a computer and a person at the keyboard is a potential target. Working remotely and the increased dependence on technology to accommodate this has opened a whole new window of opportunity for the cybercriminal, and social engineering is one of their most valuable tools.

Earlier this year, the FBI reported that it had received almost the same number of social engineering complaints in the first five months of 2020 as it had in all of 2019. So what is social engineering? It is a manipulation technique that takes advantage of human error to gain private information/access or influences a person to take some action that is not in their best interest. We have all seen some examples of these attempts in our email inboxes: your bank saying your password has expired, your friend who asks you to wire them some money because they are traveling and lost their wallet, or the famous prince from overseas who wants to send you millions of dollars. Some attempts are more obvious than others. However, it is safe to say that "human

hacking" is a threat, and we should all be aware of some of the most common tactics being used to attack us.

Phishing is one of the most common types of social engineering attacks. Emails that appear to be from a familiar or trusted source can lure a recipient into letting their guard down. These attempts are often coupled with a sense of urgency or an enticement that is too hard to resist. Clicking a link or opening an attachment can seem harmless at first but can introduce malware onto your systems. Initiating a money transfer is also a goal of the attacker.

Pretexting is another commonly used method. This could be an attacker using a fake identity to convince you to provide private information. An IT service provider or a fellow employee needing login credentials is a widely used means. This could be done via email or even over the phone.

Baiting entices or deceives a victim with the promise of goods. The lure of a free software, movie, or music download might seem like a fair exchange for just filling out a form or visiting a website (where malicious code is lurking).

With attacks coming from so many different directions, how do we defend our organizations? Awareness, training, and simulated phishing attempts are a good place to start. Enabling multi-factor authentication adds a layer of protection in the event of a credential compromise. Implementing zero standing privilege, which allows an authorized user a limited time access to certain systems, is another way to safeguard your network. In the event those credentials are compromised, the bad actor would only have a narrow window of time in which they could gain access.

Combatting social engineering is all about being skeptical and thinking clearly. Don't be afraid to ask questions and verify. And if one of these attempts is successful and makes it through to your systems, make sure you have the right coverage in place to assist you. Since 2016, the Risk Pool has provided Cyber Liability and Data Breach coverage at no cost to its members who have Liability or Property coverage. Contact your member services manager for more information on this coverage and ways your city can minimize its exposures. This partnership between the Pool and its members is an example of how Texas communities are stronger together. ★

HOW DOES THIS WORK:
RISK POOLING TO CONTROL HEALTHCARE SPEND

What's a Risk Pool?

Public entity risk pools use collective purchasing power and creative program designs to reduce property and liability claims, save taxpayer dollars, and manage risk for public entities so they can stay focused on the services they provide to their communities.

The TML Health Benefits Pool is an intergovernmental risk pool that provides health coverage and employee benefits. Local government entities such as Texas cities, towns, water districts, and emergency services districts join TML Health through an intergovernmental agreement. The Pool was created by its members to help manage the cost of healthcare benefits and give public employees access to high quality healthcare they could afford.

So How Does It Work?

The Pool is governed by a Board of Directors who are elected and appointed municipal officials from all across the state of Texas. As municipal leaders themselves, they understand the needs of Texas public entities, and direct the Pool accordingly.

Because members of the Pool move in and out of the high-cost category, as they suffer one-time catastrophic injury or illness, develop a chronic illness, or improve the management of a chronic condition, the Pool offsets the costs of the members who have an expensive year with those of the members who have a less expensive year.

These employers come together to share their financial risks, costs, and benefits associated with their employee health benefits. Each employer group contributes a set amount to the Pool each month for every covered employee, which the Pool then uses to pay all of the medical, prescription, and administrative costs for the member groups' public employees.

Because the Pool operates as a nonprofit, when member groups have a good year and healthcare claims are low, or the Pool's investments perform well, it doesn't keep the extra money—those savings go right back to members in next year's rates.

As a self-insured nonprofit risk pool, TML Health:

- doesn't seek to generate profits for shareholders
- avoids costs from premium taxes and regulatory assessments
- reduces overhead and improve quality through specific focus on member-owner needs
- is free to focus on long-term risk management over short-term premium gains
- emphasizes helping pool members avoid risk and reduce losses

What Does That Look Like?

To help shield municipalities from the rising costs of healthcare, the Pool uses its collective purchasing power to negotiate lower costs for member groups. That means the Pool goes through the request for proposal (RFP) process on municipalities' behalf, such as the recent request for proposals for prescription drug benefits, which resulted in a pharmacy benefit management partnership with lower prices, expected to save millions of dollars in drug costs across the risk pool. The Pool then passes these savings on to member groups.

About TML Health Benefits Pool

TML Health Benefits Pool brings together hundreds of Texas public entities to leverage collective purchasing power and risk sharing to stabilize the cost of health benefits and deliver the lowest long term costs, while offering additional services such as wellness programs, virtual health checkups, telemedicine, and online and phone enrollment. By sharing in the Pool, TML Health's members share the rewards of superior health coverage—lower costs, better health outcomes, and more personalized service. ★

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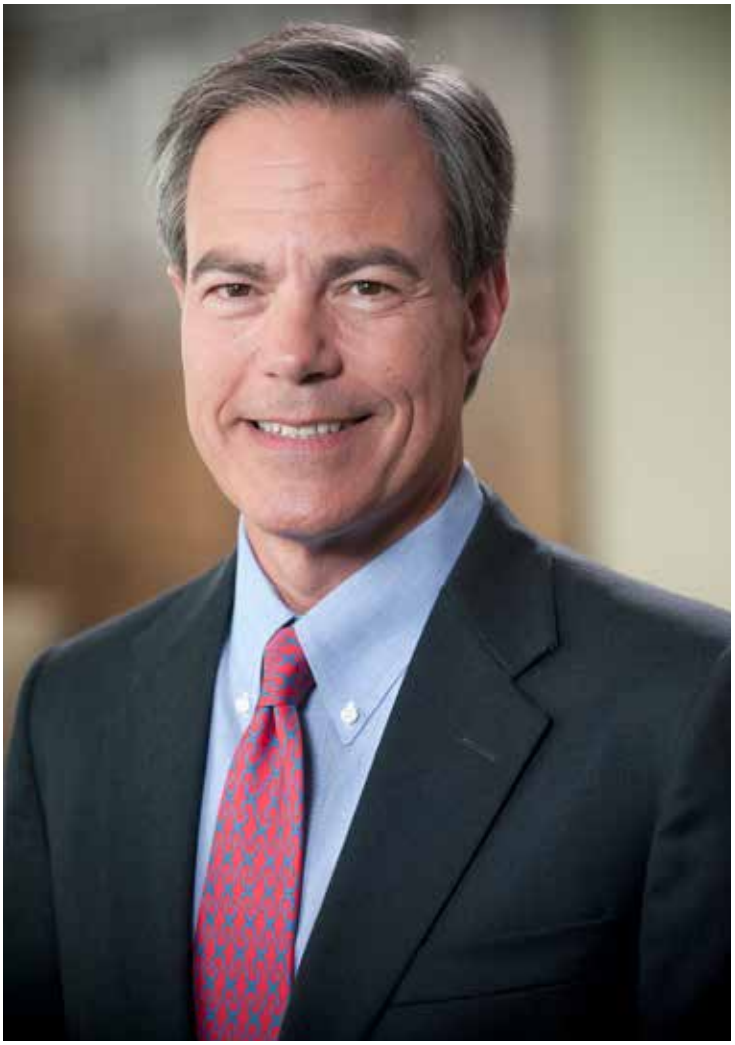

INTERVIEW WITH SPEAKER JOE STRAUS

TEXAS MUNICIPAL LEAGUE LEGISLATIVE HALL OF HONOR INDUCTEE

This interview with Speaker Joe Straus, Texas Municipal League (TML) Legislative Hall of Honor Inductee, was video-recorded and presented at the virtual TML Annual Conference and Exhibition on October 14, 2020.

Bennett Sandlin: Hello, I'm Bennett Sandlin executive director of the Texas Municipal League (TML). Today, it is my distinct honor to recognize Joe Straus. As just the sixth inductee into the TML Legislative Hall of Honor, former Texas House Speaker Joe Straus has spent his entire career at the intersection of public policy, business, and politics. He served as speaker of the 150-member Texas House from 2009 to 2019 making him the longest serving Republican speaker in Texas history. And today, he's chairman of the political action committee, Texas Forever Forward.

Under the leadership of Speaker Straus, the Texas House focused on improving public schools and workforce readiness, funding the State's water plan, directing billions of additional dollars to transportation improvements, increasing transparency in state spending, and balancing the biennial Texas budget amid both prosperous and challenging economic conditions. Speaker Straus prioritized mental health care and the protection of abused and neglected children. In 2017, he led the fight against discriminatory

legislation. And for his strong and thoughtful leadership on that and other issues, *The Dallas Morning News* named him 2017 Texan of the Year.

Six months after leaving the Texas House, Speaker Straus launched the Texas Forever Forward political action committee to promote principled leadership and support candidates, emerging leaders, and organizations and causes that focus on Texas' future. Priorities championed by Texas Forever Forward include economic growth, public and higher education, inclusivity, mental healthcare, infrastructure, and civic participation.

Nationally recognized for his commitment to public service, Speaker Straus serves on the Brookings Institute Board of Trustees, and he's a member of the class of 2009 Aspen Institute Rodel Fellowship in Public Leadership. A national leader within the Republican Party, Speaker Straus is the past chair of the Republican Legislative Campaign Committee, and served on the board of directors of the Republican State Leadership committee.

Straus is a principal with La Cima Partners, LLC, a strategic consulting business. He is also a partner in Bennett & Straus, LLC, a San Antonio-based insurance, investments, and executive benefits firm. He is a fifth-generation Texan, a San Antonio native, and a graduate of Vanderbilt University. He and his wife, Julie, live in San Antonio and have two adult daughters.

Now it's my pleasure to present you, Speaker Straus with this plaque honoring your induction into the TML Legislative Hall of Honor. We wish you were here with us today. But these are challenging times, so I'm going to present this plaque to you virtually. And rest assured, it will be on its way to your office just as soon as we're done visiting today.

The plaque reads "The Texas Municipal League gratefully awards this expression of appreciation to Joe Straus, former Speaker of the House of Representatives, and proudly inducts him into the TML Legislative Hall of Honor for dedicated service in the Texas House of Representatives and for extraordinary efforts on behalf of Texas cities." It's signed on October 14, 2020 by me and TML 2019-2020 President Eddie Daffern, Mayor of Staples. Congratulations, Mr. Speaker.

Joe Straus: Thank you very much. Bennett, I'm very honored to be receiving the award (or will be receiving it soon). Please keep that plastic on there. I don't want any scratches.

BS: Yes, sir.

JS: I'm thankful for the recognition, and appreciate the partnership that we've had over the years. I've always tried to be an ally of TML. We've done some good things together and prevented some bad things over the course of my public service in Austin. But most of all, I want to say how much I appreciate your leadership and your organization's leadership in very difficult times. It seems that local leaders have had to bear the brunt of most of the effects of the pandemic that we're going through, and I think that local decision makers have done a fantastic job in very, very trying circumstances. So, your work is more important than ever. You all have acquitted yourselves really well through this difficult time, and we're not out of it yet unfortunately.

Going forward, I hope that whatever platform, or platforms, I can still continue to be a voice in support of local decision making. I think that's a very important aspect of our State's governance.

BS: Thank you, Mr. Speaker, for accepting this award and for agreeing to talk a bit about the prospects that Texas cities face and what is sure to be a challenging 2021 legislative session. You alluded to it, but why do you think members of the state legislature now put less value on the concept of local control than they did in the past? What do you think the source of that is?

JS: The short answer is I'm not exactly sure, but it sure is unfortunate. It doesn't help governing at the state level, and it certainly doesn't help governing at the local level. I hope that changes. I hope that the standoff or disagreement isn't permanent.

You know, I grew up as a Republican and was fortunate to work for the first Republican elected statewide in Texas, since Reconstruction. That was Senator John Tower who along with Senator Barry Goldwater were probably the two most conservative members of the United States Senate at that time. I can remember Senator Tower saying repeatedly that the best decisions that are made are made closest to the citizens, which meant *not* in Washington. And in this case, not always in Austin.

And I still believe that's a conservative principle - to allow local citizens to govern themselves whenever possible. Now, I guess some of the friction may just be a symptom of what we're seeing and political polarization. And I'd have to believe that many of mayors in our larger urban areas are probably not Republicans. Although, that's not true in Fort Worth and El Paso, so none of this can be said with any certainty. But I believe it's unfortunate that partisanship, if that's actually the root cause of this, has seeped down into relationships between state and local officials. I hope that changes. It needs to change, especially in the pandemic era that we're going through with all of the additional burdens that everyone is facing. The need for cooperation and partnership is greater now than ever.

And certainly, I also want to say that I'm not a defender of every decision being made in the local jurisdiction. But that's not the point. The principle ought to be that, wherever possible, it should be the rule, not the exception, that local officials should make every decision that impacts their local constituents.

BS: Do you have any tips for the mayors and councilmembers watching today on how to communicate more effectively with their representatives and senators to try to restore and repair that relationship?

JS: My first bit of advice is not to give up. And certainly do not wait until the next legislative session begins to communicate with your legislators, with your state senators, and with your statewide leaders. The time to show up for conversations is not when there's a crisis halfway through a legislative session. It's right now and it's ongoing.

And I guess the other advice, since I'm in the advice-giving business right now, would be to approach those elected officials in ways that show a concern for their political welfare. Do not come in as opponents or showing frustration, but come in seeking common ground. My experience was that most of the members of the Texas House of Representatives wanted to have good relationships and did have supportive relationships with the various mayors of their communities. I would focus on the positive and keep the communication going through TML and through individual city leaders reaching out, and start sooner rather than later.

BS: You talk about coronavirus, Mr. Speaker. What other issues do you think will be at the forefront when the legislature convenes in January?

JS: Well, the Coronavirus is going to be the issue, unfortunately, I believe going forward. We're not out of the woods on this yet. There are some signs that are hopeful in terms of vaccines. Making progress on a vaccine and some of the metrics that are followed by policymakers seem to be going in the right direction. But there's no question that this is going to be a tremendous challenge in the next session, even if we continue on the right and better path.

There are going to be incredible challenges for the healthcare system. There are incredible challenges in our public and higher education systems. I'm glad that my kids are not kids anymore and are out of school, but I'm around a lot of people and work with people who have children who are back to school now. There's no guarantee that they're going to stay there and for the better part of the last six months or more, they haven't been in a classroom. Nor have they been around other kids much. So this is going to cause a lot of lingering challenges in healthcare and education.

I also worry about our economy with so many small businesses that are the lifeblood of local communities on the brink of closing, if they haven't closed already, and a lot of people out of work. And I think you know the result of this pandemic at the state level is going to be extreme budget pressures. Usually the only requirement of a legislature is

to pass a balanced budget, but to pass a balanced budget next year is going to be a Herculean task. We thought until recently that there was a surplus in our current budget and we're now told that there's close to a $5 billion shortfall before they even begin writing the next two-year budget. So there's a lot of work to do and a lot of challenges out there that are very, very important.

And think that I'm going to leave redistricting off to the side there. But the legislature in the last session did some great work on education. House Bill 3 was an important bill that did a lot of good things. It increased teacher pay, and it expanded pre-K education to full day to those children who currently qualify. But it also was a very expensive piece of legislation – not only because of those things, but because of the compression of tax rates. In the future as property values rise, the State will be on the hook for more and more funding. So the legislature last session left an open-ended question about how they were going to pay for it.

Those challenges haven't gone away. They've only been made more severe because of the pandemic and the economy that we're going to be facing for the next few years. So plenty of challenges out there, not to mention the issue of conducting a legislative session with physical distancing. It's going to be a trying time. All the more reason for our local leaders to be engaged early in working on some of these things.

BS: One of your priorities when you were in the House was always mental health and that, of course, has tie-ins to Coronavirus that are unique. What do you think the challenges are on the mental health front for the 2021 session?

JS: Well, I'm glad you asked that question. The legislature has made significant strides forward in mental health in funding and in some policy changes that are really important. So I'd say first and foremost in a tough budget year, don't lose the momentum that has been created over the

last four years or so. The pandemic has only exacerbated some of the problems in the mental health world and in our system. That combination of isolation and anxiety, and fear of the unknown and of the future – across all age groups and economic segments of our society – are going to be challenging. Mental health issues such as substance abuse, depression, and suicide prevention are not going away. They're only going to get worse. And so it's important that the legislature keep their eye on the ball and keep the momentum going there.

Some of the encouraging things that have happened during this pandemic – some of it is federal and some of it is state - include relaxing the rules on telemedicine and telehealth which have made access to mental health care much easier. I think it ought to be looked at as being codified into permanent law. There may be a number of other areas that, as a result of the pandemic, can be helpful long term in mental health and healthcare generally.

BS: Let me ask a kind of inside baseball question. A lot of mayors have asked me who's going to be the next speaker of the house, and I said, we don't know that because we don't know if the house is going to stay Republican or Democrat. That tightening of the numbers in the house, how is that going to affect the session? And what are your thoughts on how that affects the dynamic?

JS: I don't have any doubt at all. It's going to be a very closely divided institution. But, you know, it couldn't have been much closer of a divide when I was elected Speaker in 2009. There were 76 Republicans and 74 Democrats, and if 20 or so votes had switched from Republican to Democrat in Irving, Texas, we would have had an unprecedented 75-75 tie.

There are a number of seats hotly contested and very competitive right now. I think the Republicans will maintain the majority. And I'm helping a number of the incumbents hang on to their seats, but you never know. In my experience, a closely divided House was not a negative one; it was actually pretty positive. We made a real effort to work together. Rather than have a standoff or a situation where nobody won and we all lost, we reached out – much of it behind the scenes – we made compromises, did some trading of priorities, and it worked out. I remember the vote on the 2009 budget was unanimous - 149 to 0. It shows you what can be done when you work at it. And I think next year, regardless of which party has the majority and regardless of who is President of the United States, we're going to be facing extraordinary challenges that will require bipartisanship and cooperation.

And that's just in the legislature, in the state capitol, but it also translates to TML. I hope that spirit that I'm talking about here, which we've seen before, translates into more cooperation and better governance. Because Lord knows we've got our hands full with the challenges the going forward. I think this is the only way to get through it.

BS: Mr. Speaker, that willingness to seek bipartisan compromise and work together is why we're giving you this award today. We appreciate you spending time with us, and telling us what to expect next year. On behalf of TML, thank you very much.

JS: Thank you, Bennett. It's always good to be with you. I look forward to getting back to Austin and seeing you in person soon. ★

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WHAT CAN SMALL CITIES DO LEGISLATIVELY?

The goings-on at the Texas Capitol every two years may seem like a big-city process since the legislature meets in Austin and many of the lobbyists and their firms are based in big cities. But 80 percent of the Texas Municipal League's (TML) member cities are under 10,000 population, and a large number of legislators and their staff have roots in small cities.

The League routinely calls on mayors, councilmembers, and city managers from small cities to testify, make phone calls, or get the word out about all the issues that Texas cities face. With due respect to the larger cities, often times nothing shouts "credibility" more than a small city mayor engaged on an important issue like telecommunications law or water policy. Texans like to think of themselves as small town and rural at heart, and our legislature is no exception. It's important that city officials from small cities make their voices heard.

With this in mind, the League needs your help mobilizing our membership at key points during the 2021 legislative session. One tool that has proven to be highly effective is the Grassroots Involvement Program (GRIP). GRIP is an online survey that asks how well you know various state legislators, and if you are willing to communicate with those legislators during legislative session.

If you would like to support our advocacy work during the 2021 legislative session, please participate in the GRIP survey by visiting https://bit.ly/TMLGRIP2021.

A heads-up about this program: if you're an official from a small city, it is highly likely that you will be among the first to be called! We mean what we say—small cities matter to TML and to the legislature, and we need you as a partner in our efforts to protect your ability to make decisions for your residents and community.

The best thing you can do as an elected official in a small city is get to know your state legislators – not just during legislative sessions, but year-round. Give them a call, invite them to city hall, and share your town's concerns and successes. Ask how you can help them. Many of our legislators started out as mayors, councilmembers, commissioners, or school board members. They love to "talk shop."

For a complete list of contact information regarding your representatives, visit the state's "Who Represents Me" website at https://wrm.capitol.texas.gov/home. If you have any questions about the GRIP survey, contact JJ Rocha at jj@tml.org or 512-231-7400. ★

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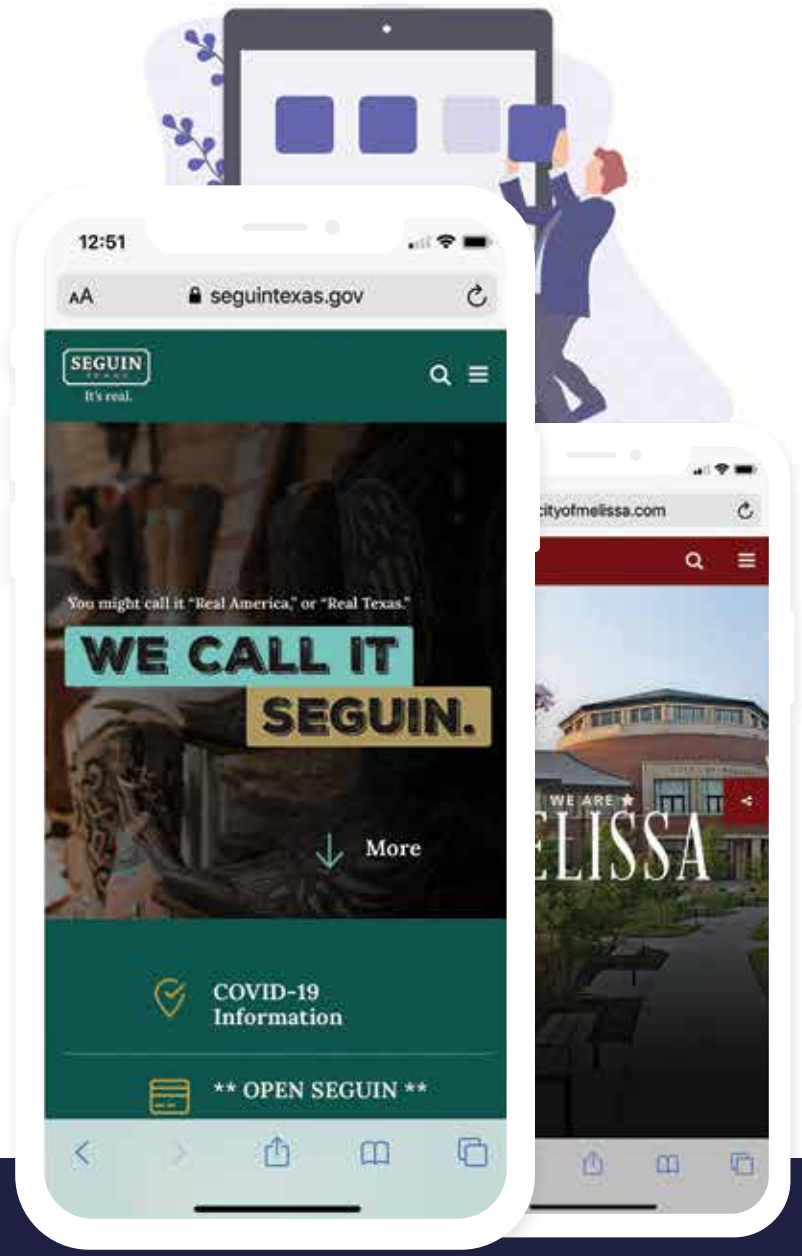

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LEGAL ★ Q&A

Q What is the TML legal services department?

A The League's legal services department provides general guidance to city officials on legal issues. The League hired its first lawyer in the 1950s. Since that time, the legal services department's staff has expanded to meet the growing needs of our member cities. Under the direction of the TML General Counsel, the current staff of three attorneys, a part-time law clerk, and a legal assistant performs numerous functions for the League's member cities. The main role of the department is to answer inquiries from the elected and appointed officials of the League's member cities about legal issues within their official responsibilities.

Q What is the department's most important service?

A The key service that the League's legal services department provides is responding to legal inquiries from member city officials. The legal staff responds to hundreds of phone calls, emails, and letters each week. In fact, over the last five years, the attorneys have provided legal advice to more than 75 percent of the League's more than 1,150 member cities. The inquiries range from simple questions to consultations on cutting-edge legal matters.

Q How does the legal department support the League's legislative activities?

A The legal staff provides support for the TML legislative services department on legislative matters throughout the legislative sessions, and during the interim. That support includes legal research, bill analysis, drafting of legislation, testimony on city-related bills, and coordination of city officials' testimony, among other things. During the 2019 regular session, TML attorneys reviewed and analyzed more than 7,500 bills and resolutions, and testified on bills before many committees of the Texas Legislature.

Q What other services does the department provide?

A The legal staff performs various other functions:

- Writing and updating the TML *Home Rule and General Law Handbooks*. For the last update, the legal staff incorporated approximately 200 bills and dozens of other legal changes into the handbooks.
- In association with the Texas City Attorneys Association, providing "amicus curiae (friend of the court)" briefs in both state and federal appellate court cases and on attorney general opinion requests that could adversely affect our member cities. Over the past two years, TML has filed over 20 briefs.
- Preparing legal question-and-answer columns like this one and other articles for *Texas Town & City*.
- Researching and writing articles for the *TML Legislative Update*.
- Conducting the "Agency Watch" program, which consists of monitoring 50 state agencies for any rulemakings or other actions that may adversely affect our member cities, and participating or filing comments when appropriate. For instance, the League has participated in rulemakings or provided other input at the following state agencies: (1) Commission on Environmental Quality; (2) Public Utility Commission; (3) Department of State Health Services; and (4) Railroad Commission.
- Preparing materials for and presenting at numerous TML and TML affiliate workshops, small cities' problem-solving clinics, and other seminars, as well as providing speakers with expertise in city issues to other organizations. Over the past year, TML lawyers have spoken at many workshops and seminars.

Q How do I contact the legal department?

A The legal staff is available for phone consultation at 512-231-7400 from 8:00 a.m.-5:00 p.m. Monday through Friday. The most common way that city officials submit inquiries is through emails to legalinfo@tml.org. A great deal of information is also located on the "Legal Research" section of the League's website at www.tml.org.

Q What else do I need to know about the legal department?

A The League's attorneys serve as a resource to provide general guidance on legal issues. We do not directly represent your city, and our legal guidance should never be substituted for that of your local counsel. ★




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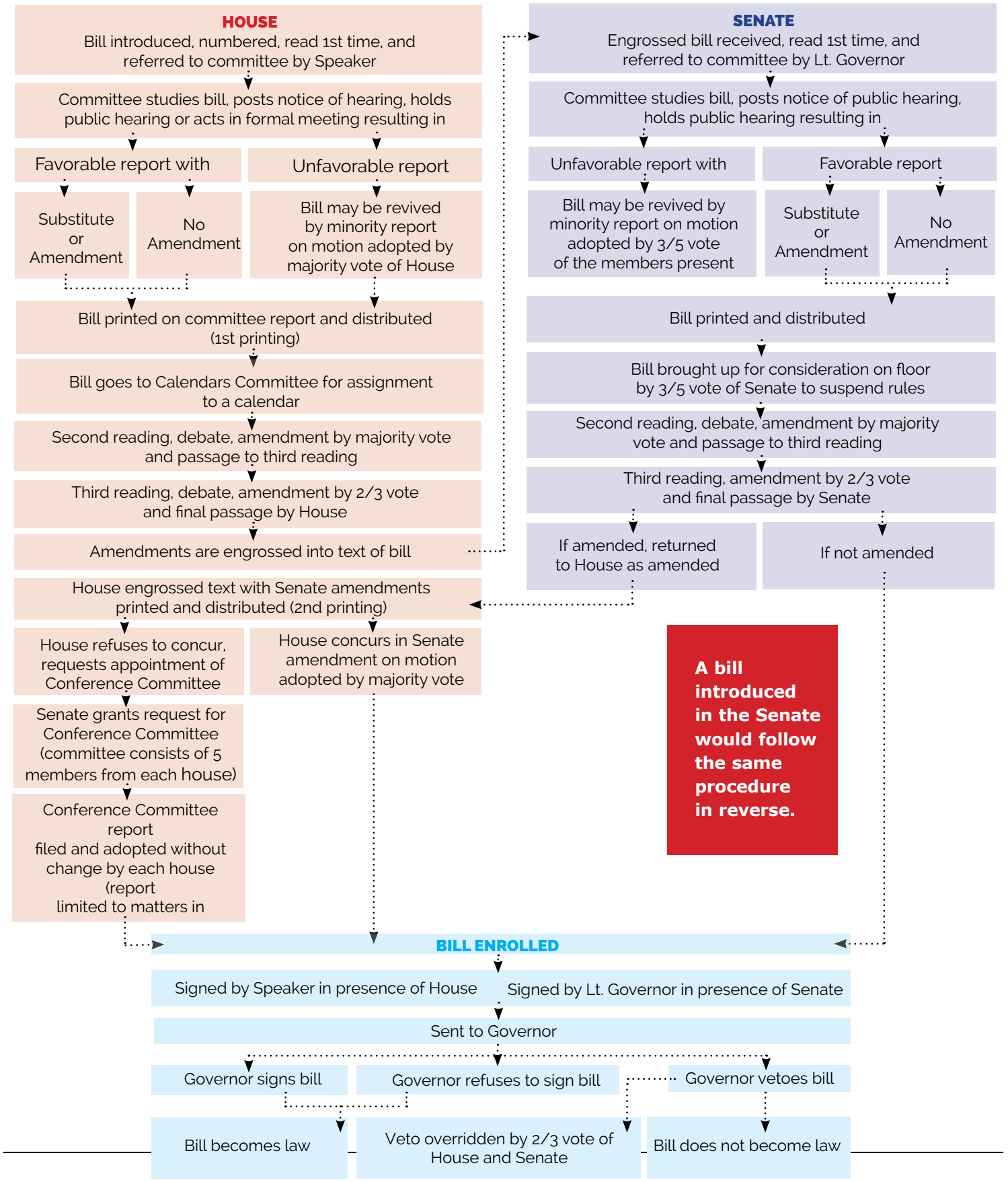
TML Health Benefits Pool

The Texas Legislative Process for Bills and Resolutions

This diagram displays the sequential flow of a bill from the time it is introduced in the House of Representatives to final passage and transmittal to the Governor.



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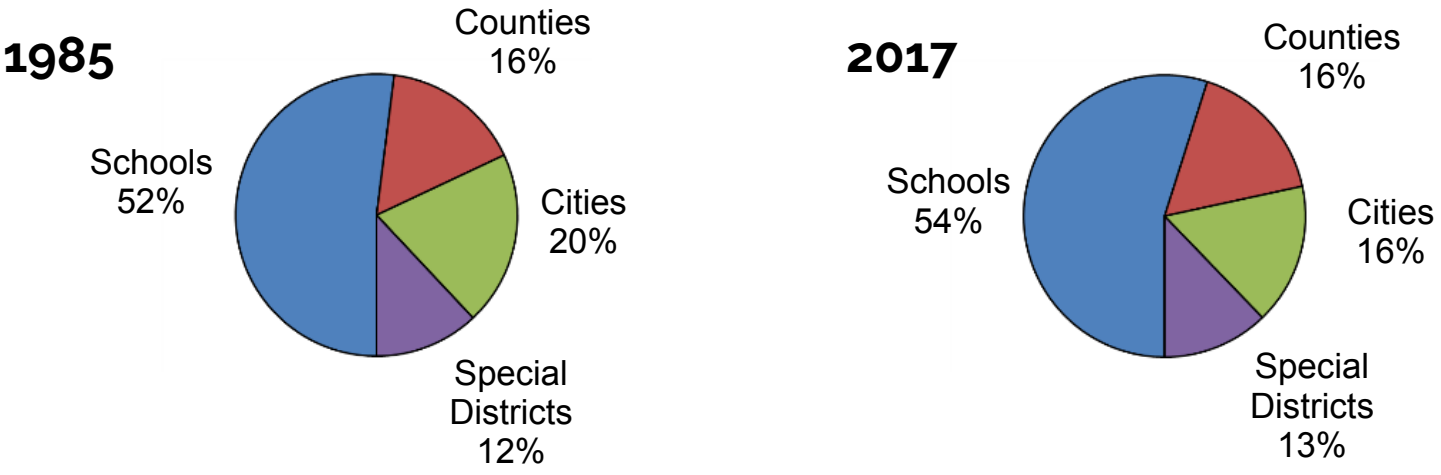
CITY PROPERTY TAXES: TREMENDOUS BANG FOR THE BUCK

Texas cities depend heavily on property tax revenue. Property taxes help fund many of the services that residents demand including police, fire, streets, and parks. But as Chart 1 shows, city property taxes constitute a small portion of a typical homeowner's property tax bill.

Chart 1

Distribution of Property Tax Collections

Source: Texas Comptroller's Biennial Property Tax Report



How do Texas cities provide so many services with such a small share of a typical property tax bill? Is it with financial help from the state? Not quite.

Unlike other states, Texas provides no general-purpose state aid to cities to help pay for streets, public safety, or other city services. The state forces cities to generate their own revenue. That's why (as the chart below shows) per capita state tax revenue is relatively low, while per capita local tax revenue is comparatively high.

Chart 2

State and Local Government Tax Revenue, 2018
Source: U.S. Census Bureau

	U.S.	Texas
Per capita state and local	$5,384	$4,470 (29th)
Per capita state	$3,126	$2,102 (49th)
Per capita local	$2,258	$2,368 (13th)
Percent local	41.9%	53.0%

But Chart 2 focuses on "local governments" (cities, counties, schools, and districts). What about cities only? For this information, we turn to a publication of the National League of Cities (NLC), *Cities and State Fiscal Structure.*

One section of this report tabulates, for each state, a statistic the authors refer to as "own-source capacity." This is a measurement of the extent to which decisions made by city officials actually determine the city's fiscal direction. Since Texas cities take care of themselves without intergovernmental aid, it comes as no surprise that Texas ranks second in the nation in municipal own-source capacity.

The flip side of that coin, however, is the report's measure of state aid to cities. Here again, the NLC report replicates previous research: Texas trails only Georgia, Oklahoma, and West Virginia in state aid—the share of municipal revenue that comes from state government sources.

These two findings of the NLC report once again establish these facts: (1) the State of Texas relies very heavily on Texas cities to generate the revenue necessary for municipal facilities and services; (2) the state gives cities the capacity to generate that revenue; but (3) the state gives cities virtually no state financial aid.

In addition to forcing local governments to generate comparatively large amounts of tax revenue, the State of Texas also forces those local governments to rely too heavily on property taxes. It does this by denying them other revenue sources. While this is especially true for public schools which rely almost exclusively on the property tax, it is also true for cities and counties. In fact, of the $2,368 shown in Chart 2 as per capita local government tax revenue in 2018 in Texas, a whopping $1,968 (83.1 percent) came from the property tax.

These two fiscal conditions, which create the property tax mess in Texas, are unlikely to change unless the State of Texas takes one (or both) of two actions:

1. Inject more state money into public services and facilities, especially public schools. This means even more state revenue than was provided through past school funding efforts.

2. Open more revenue sources for counties and cities.

Additional attempts to reduce the property tax burden in Texas will either be ineffective or will create unintended, negative consequences.

In a nutshell:

1. Texas cities provide vital services that benefit their citizens;

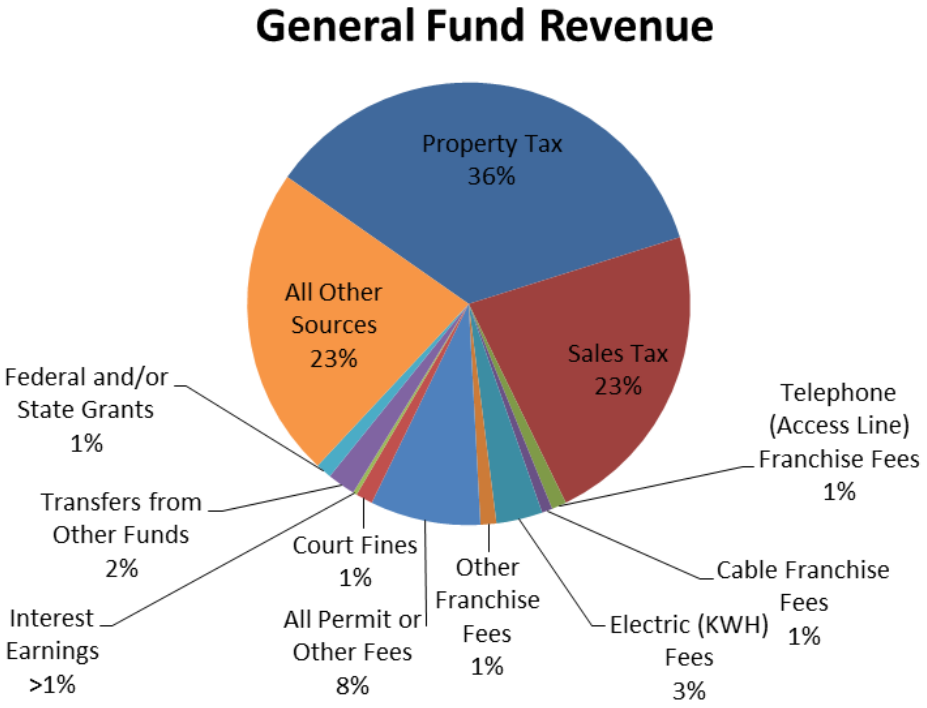
2. Texas cities provide those services with less aid from the state, as compared to other states; and

3. Texas cities manage all of this despite a very small share of the total property tax levy and with reasonable annual increases in those taxes. ★

WHERE DO TEXAS CITIES GET THEIR MONEY?

City government is where the rubber meets the road. Cities pave our streets, fight crime and fires, prepare us for disaster, bring water to our taps, take our trash away, build and maintain our parks—the list goes on and on. These services cost money. This article describes the sources of municipal revenue and expenditures.

A 2018 Texas Municipal League survey shows that municipal general fund revenue in Texas is made up of the following sources:



Conspicuously absent from this list is financial assistance from the state. This is unusual—most states provide direct financial assistance to cities in recognition of the fact that cities provide basic services on which the entire state depends.

Instead of revenue, Texas cities receive something equally important from the state—broad authority to govern themselves, including the authority to raise their own revenue. This local authority has worked to the benefit of cities and the state for many decades and should continue into the future.

Here's more information on each source of municipal revenue:

Property Taxes
Property taxes are the leading source of city revenue. Though crucial to city budgets, city property taxes make up just a fraction of a property owner's total property tax bill.

Most cities under 5,000 population have statutory authority to levy property taxes at a rate of up to $1.50 per $100 of assessed value. Most cities over 5,000 population have statutory authority to levy property taxes at a rate of up to $2.50 per $100 of assessed value. Despite this broad authority, the average city property tax rate was only $.53 for tax year 2018.

City property tax levies are tied by law to fluctuating property tax values. As values increase, the city must adjust its rate or face potential rollback elections. In reality, such tax rollback elections are rare. City rates have held relatively steady for years, both in terms of actual rates and in terms of total levy as adjusted for inflation and rising income.

Sales Taxes
Sales taxes are a major source of city revenue. Nearly 93 percent of Texas cities levy a basic one-cent city sales tax. The revenue can be used for any purpose other than payment of debt. Many cities, though not all, also impose additional sales taxes in varying amounts of up to one cent. These additional sales taxes are known as dedicated taxes, because their proceeds may be spent only for certain purposes. Some popular dedicated sales taxes include mass transit, economic development, street maintenance, property tax relief, and sports venue taxes. All city sales taxes, including the basic one-cent sales tax, require a local-option election of the citizens. Collection of sales taxes is performed by the Texas comptroller, who "rebates" the city share on a monthly basis. The comptroller retains a small portion of the city tax revenue to cover the state's administrative costs.

Right-of-Way Rentals
When utilities and other industries use city property to distribute their services, cities are permitted by law to collect rental fees, also known as "franchise" fees, for the use of public property. Franchise fees are calculated by various methods, depending on industry type.

Permits and Fees
Cities may collect fees for issuing permits for building construction, environmental regulation, and other services. Because cities incur costs to regulate in these areas, the permit fees must be tied to the cost of providing the service.

Court Fines
A city that operates a municipal court may impose fines for violations of traffic laws and city ordinances. Maximum fines typically range from $200 for traffic violations, and up to $2,000 for city ordinance violations relating to health and safety. Much of a city's fine revenue offsets the costs of law enforcement and operation of the municipal court system.

Interest Earnings
When a city invests its funds, it must closely follow the mandates of the Public Funds Investment Act. Because of the twin concerns of safety and liquidity, investment income is a relatively small source of city revenue.

Transfers from Other Funds
Many cities operate utilities and other optional services that generate substantial gross revenues. By law, the fees for such services must closely offset the cost of providing the service. In addition to the cost factor, cities are permitted to retain a reasonable "return," which can then be transferred to the general fund. This return amounts to less than six percent of overall city revenue.

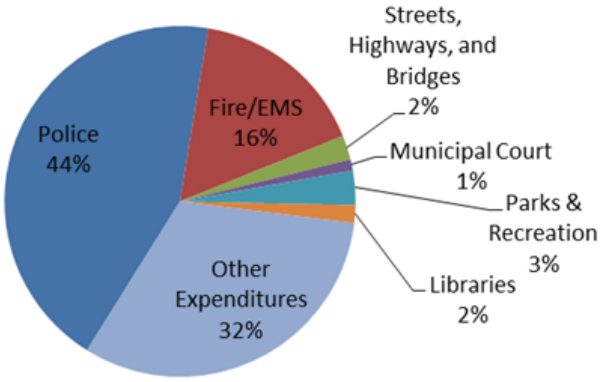
Other Sources
City revenue can take various other forms, including user fees for some services, amusement taxes, and hotel occupancy taxes.

The Bottom Line
The state could put municipal revenue at risk in at least two ways. First, the state could increasingly look to cities for revenue to fund state programs. When a state provides direct financial assistance to its cities, such trading of revenue might be workable. Texas is not such a state. Texas cities receive virtually no direct funding from the state, and cannot afford to fund the state's obligations. Second, the state could erode the statutory authority under which cities raise their own revenue. While cities are indeed subservient to the state, city officials hope that the respectful nature of the fiscal relationship between Texas cities and the state will continue for years to come.

Did You Know? Many people mistakenly believe that cities derive substantial general revenue from their courts. In reality, the first $84 of most traffic tickets goes directly to the state. What's left over, if any, can be used by the city. Unfortunately, city courts are increasingly being used as a backdoor revenue source for the state.

Expenditures
Core city services like police, fire, and EMS account for the majority of expenditures in a survey conducted by TML. In addition, cities spend revenue on streets, municipal courts, parks, and libraries. "Other Expenditures" in the survey include primarily administrative and personnel costs.

General Fund Expenditures



Putting Local Debt in Context

The story about debt coming out of certain Austin think tanks goes something like this: the state has its fiscal house in order, but local governments are greedy, profligate spenders running up the taxpayers' credit card. It's a powerful narrative, but it isn't true.

A recent report issued by the Texas Bond Review Board shows total outstanding state and local debt for the past few years. From 2014-2019, total outstanding local debt increased from $205.15 billion to $239.9 billion, a 16.9 percent increase. Meanwhile, total outstanding city debt increased from roughly $67 billion to $77 billion, a 15 percent increase during the same time frame. For the same period, total outstanding state debt increased from $44.3 billion to $59.9 billion, a 35.2 percent increase. In other words, local debt (and city debt) is increasing at a lesser rate as state debt in recent years.

At $239 billion, the amount of total local debt is certainly significant. However, only a small portion of that—$34 billion—is tax-supported city debt. Another $42 billion is city debt supported by the revenues of city utilities and not by property taxes. The largest portion is tax-supported school district debt at $87 billion.

School funding is a constitutional obligation of state government. The state has chosen to discharge that obligation by creating local school districts that levy the needed taxes. In reality, the $87 billion of school district debt ought to be thought of as a state debt because that's how the state has chosen to fund schools. Shift that $87 billion over to the state debt column and a vastly different picture about which governments may be falling dangerously into debt emerges. In any event, the numbers clearly show that it isn't Texas cities.

The recent focus on local debt (despite the fact that state debt is growing faster) likely relates to the reality that Texas state government, for better or worse, has gotten out of the business of building new state infrastructure with state dollars. Instead, locals are expected to pick up the slack for things like roads and reservoirs.

Consider the water funding proposition that passed in November 2014—it ultimately spends zero state dollars. Instead, through the use of a revolving fund, it *encourages cities to take on debt* to build our state's important reservoirs and other water projects. This is a perfect example of the state essentially forcing locals to take on debt to do the state's work, then blaming the same locals for having taken on the debt in the first place.

Texas cities are willing to partner with state government to build infrastructure in our great state, but should not be considered scapegoats in that partnership. ★

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The building code of 4,000 years ago was simple but brutal. According to an ancient Hammurabi code, "If a builder builds a house and does not make its construction firm, and the house collapses and causes the death of the owner, that builder shall be put to death."

The first building codes in the United States, established in 1625, addressed fire safety and specified materials for roof coverings. In 1630, Boston outlawed wooden chimneys and thatch roof coverings. In the late 1770s, George Washington recommended height and area limitations on wood frame buildings in his plans for the District of Columbia. In 1788, the nation's first-known formal building code was written in Winston-Salem, North Carolina. Larger United States cities began establishing building codes in the early 1800s.

Today, most populous cities in Texas have adopted modern construction codes. The professionals enforcing current building codes in Texas maintain the vigilance of the ancient code of Hammurabi, but with a significantly more civilized approach that emphasizes knowledge and education. Building code regulations enforced in Texas cities ensure minimum standards for safe homes, schools, workplaces, and other buildings.

Scott McDonald, Denton's director of development services, points out that "during these tough economic times, the enforcement of construction codes is even more important." According to McDonald, "The active enforcement of construction codes not only provides a minimum standard for the structural and life safety components of the homes, schools, churches, and businesses, it can also provide energy efficiency standards."

"Buildings constructed to meet updated codes and energy efficient standards protect property values for years into the future, [and] they provide a sustainable stock of housing and commercial options in a community," he adds.

Prior to 2001, Texas had no statewide standard for any residential or commercial buildings. Each city chose which, if any, building codes to adopt for construction within the city limits, and each city amended its code to meet local concerns.

In 2001, the Texas Legislature adopted the International Residential Code (IRC) and the National Electrical Code (NEC) as the standard building codes for residential construction in Texas cities. Under the statute, cities are authorized to make amendments to these codes to meet local concerns. Also in 2001, the legislature also adopted energy efficiency standards for residential, commercial, and industrial construction.

In 2005, the Texas Legislature adopted the International Building Code for most commercial and multi-family construction, but nothing in the bill prohibits a city from adopting local amendments to the International Building Code. Later sessions included revisions to the International Energy Conservation Code.

Uniform building codes can make construction and inspection easier and more cost-effective. However, because Texas is a vast state with many different climates and topographical features, uniform codes serve only as standards, and each city should be allowed to amend its codes to meet that city's needs. In 2009, the legislature added procedures that larger cities must follow when reviewing or amending their building codes. More recently in 2019, the Texas legislature adopted H.B. 2439, which impacts a city's ability to control building materials or construction methods of residential or commercial buildings within the city. Generally, H.B. 2439 provides, with some exceptions, that a city may not prohibit or limit the use or installation of a building product or material in the construction, renovation, maintenance or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance or other alteration of the building. Additionally, a city may not establish a standard for a building product, material or aesthetic method in construction, renovation, maintenance or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material or aesthetic method under a national model code published within the last three code cycles that applies to the renovation, maintenance or other alteration of the building. While a city can continue to amend its building codes, such amendments may not be in conflict with the provisions of H.B. 2439.

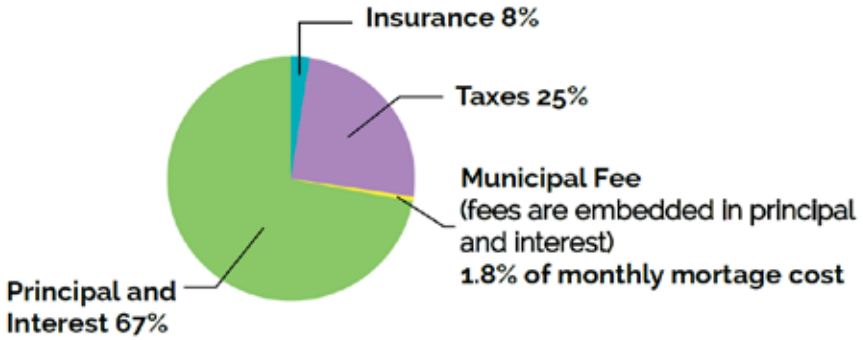
Under most cities' codes, a person who wishes to build a structure must apply for a permit. City officials review the necessary information and issue a permit if the structure

complies with that city's regulations. The amount of time needed to review the permit application varies from city to city and from project to project based on several factors, including the complexity of the city's code and the project. Because of many issues affecting each individual city and building project, a blanket requirement that a permit be issued in a certain amount of time would place an untenable burden on city building officials.

Similarly, building permit fees vary widely based on several factors, including the number and type of inspections and the sophistication of the city's permitting process. While some have claimed that city fees are responsible for the rising costs of housing in Texas, a survey commissioned by the Texas Municipal League shows that building and inspection fees constitute only a tiny fraction of a homebuyer's mortgage payment (see Chart 1). A city is not limited by statute as to the amount the city can charge for building and related permits, but a city cannot charge more than is reasonably related or necessary to administer the permitting process as that could be deemed an unconstitutional tax. Additionally, H.B. 852, which was adopted by the legislature in 2019 prohibits a city from basing its building permit fees on the cost of a proposed structure. Specifically, a city, in determining the amount of a building permit or inspection fee required in connection with the construction or improvement of a residential dwelling, may not consider: (1) the value of the dwelling: or (2) the cost of constructing or improving the dwelling. As a result, cities have opted to use square-feet based fees, a flat fee schedule or other non-cost-based and reasonable calculations to determine reasonable permit fees. ★

Chart 1

The Role of Municipal Fees in Monthly Mortgage Costs
(Average of Eight Representative Texas Cities, 2003)



CITY ECONOMIC DEVELOPMENT

Texas cities are the first—and often the only—engine of economic development in the state. Until the controversial Texas Enterprise Fund was created, cities were the only entity that routinely granted incentives necessary to attract new business to the state. With the Enterprise Fund up and running, larger cities have partnered with the state to attract such major developments as a Texas Instruments facility and a Toyota plant. Smaller cities are usually on their own to attract business.

Until the late 1980s, using city resources to attract business was arguably unconstitutional. In 1987, Article 3, Section 52-a of the Texas Constitution was added to make it clear that economic development serves a public purpose. From that point on, three major channels of city economic development began to open for cities: Chapter 380 agreements; the Type A/Type B economic development sales tax; and property tax incentives.

Chapter 380 Agreements

Chapter 380 of the Local Government Code authorizes cities to establish programs for grants and loans of city resources for economic development purposes. Though it is the broadest economic development tool for cities, Chapter 380 is often overlooked in favor of other incentives. Cities using 380 agreements must be careful not to simply present a blank check to business and industry prospects: A program providing for checks and balances on a business's use of Chapter 380 money is required by law. Examples of these checks and balances might be performance agreements tying grant money to the creation of a certain number of jobs, or requiring the business to stay in the city for a certain length of time.

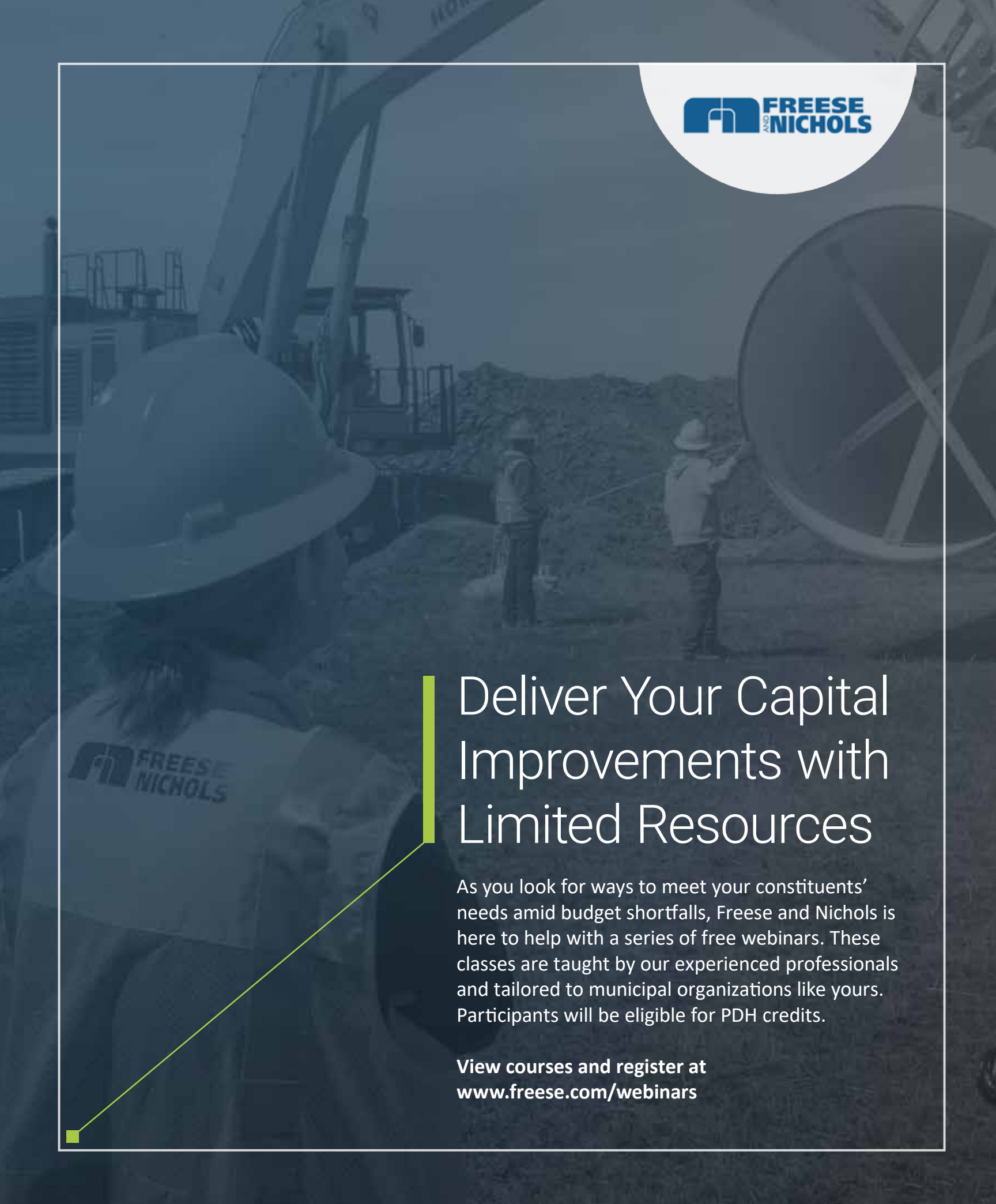
Type A/Type B Economic Development Sales Tax

More than 500 Texas cities have adopted a Type A or Type B economic development sales tax. Some cities have both taxes. The tax was created in 1989 and authority to spend Type A/Type B tax money gradually expanded over the next decade to cover all forms of commercial, retail, and traditional industrial economic development. An important bill, H.B. 2912, passed in 2003. H.B. 2912 scaled back the authority of some Type A and Type B economic development corporations. Following the passage of H.B. 2912, the sales tax could no longer be spent on retail, commercial, or service industries. Instead, the tax could be spent on basic industrial and manufacturing businesses, among a limited amount of other authorized expenditures. The authority for some, but not all, Type B corporations to engage in retail, commercial, and service economic development was restored in 2005.

The Type A/Type B sales tax remains an important economic development tool for many cities that have the available land and workforce to attract industry. Additionally, instead of a Type A or Type B economic development sales tax, some cities have adopted a municipal development district (MDD) sales tax that may be levied in a specified area in the city or in the city's extraterritorial jurisdiction. The MDD sales tax closely resembles the traditional economic development sales tax, and the scope of projects that may be funded with an MDD tax is slightly broader. There are some key differences in how an MDD is administered as compared to an EDC, however, including a bit less statutory clarity on the city's oversight of an MDD.

Property Tax Incentives

Property taxes may be directly tapped to promote economic development in two ways: tax abatement and tax increment financing. Both function by either forgiving (abatement) or dedicating to improvements (increment financing) any net increase in property tax revenue as a result of a business moving to town or upgrading existing facilities. Property tax incentives can never forgive or decrease the present taxable value of the land and facilities upon which they are granted. This key feature of the incentives—that all current taxes must continue to be paid—belies the common stereotype that tax incentives are "giveaways." On the contrary, when done properly, tax incentives create new taxable value that never would have come to town absent the incentive, thus lowering the overall tax burden on other properties. ★



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When it comes to saving money on electricity, most cities think of cost per kWH first—but that's just part of the equation even in the best of times. So, what can be done in times like *these?*

There's so much more to consider than that. Saving money is top priority for every city right now. And so, we thought we'd run through some of the many ways cities can trim what they spend on electricity. Many of these solutions require no special expertise at all. Others, do. So let's start with the lowest hanging fruit:

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These are no-to-low-cost common solutions: 1. Are you paying transmission charges for meters you're not even using? **2.** Have you swapped out old-tech lights for LEDs? **3.** Have you added occupancy sensors to restrooms and other infrequently used spaces? **4.** Do you set building thermostats a couple of degrees higher during warm weather, and lower in cool weather?

The rest involve some serious up-front investment but may be attainable with the right planning and partner's help. Some companies out there even offer special financing options to help you not only save now, but in the long term through: **5.** Daylight Harvesting, **6.** Building Management Systems (BMS), **7.** Photovoltaic (PV) Solar, **8.** Battery Storage, **9.** Facility Task Management, **10.** Capacity Management Systems, **11.** Automated Curtailment, and **12.** HVAC Upgrades.

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CITIES KEEP THE GARBAGE FROM PILING UP

Garbage collection and disposal is one of the most recognizable and widely used city services. This vital service protects the public health and the environment. A city can choose to operate its own garbage collection and disposal system or grant a franchise to a private company (or companies) to handle those tasks.

"If future generations are to remember us with gratitude rather than contempt, we must leave them something more than the miracles of technology. We must leave them a glimpse of the world as it was in the beginning, not just after we got through with it."

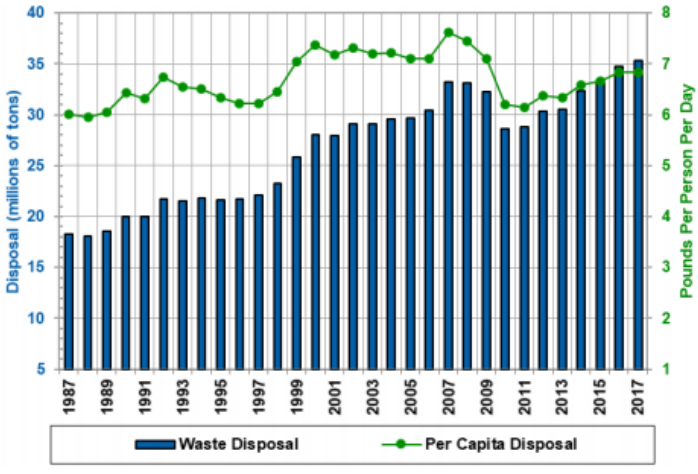
-President Lyndon B. Johnson

Waste generation is a function of two variables – population and economy – both of which are growing in Texas. In Texas, the definition of "municipal solid waste" includes waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities including garbage, rubbish, ashes, street cleanings, dead animals, abandoned autos, and all other solid waste other than industrial solid waste. According to the Texas Commission on Environmental Quality (TCEQ), Texans disposed of approximately 36.8 million tons of municipal solid waste in 2019. That's about 6.96 pounds per person per day, a slight decrease from the 2018 rate of 7.22 pounds. During this period, the state's population increased by 1.02 percent.

Did You Know?

Texas cities have been authorized to provide or contract with a private company to provide garbage collection services within city limits since 1971. Texas law recognizes that this authority is essential to preserve the public health and safety of all the residents of a city. Uncollected garbage can easily result in various health problems. This law routinely comes under attack from certain groups, but the bottom line is that timely, efficient, and effective garbage collection through city service prevents problems from occurring. Open piles of garbage attract disease-carrying rodents and insects, and often wash into drainage systems where they contribute to floods and waterborne disease.

Texas Total and Per Capita for MSW Landfill Disposal



Source: TCEQ, Municipal Solid Waste in Texas: A Year in Review - FY2019 Data Summary and Analysis (September 2020)
Figure 3 located here: https://www.tceq.texas.gov/assets/public/comm_exec/pubs/as/187-20.pdf

"Unless someone like you cares a whole awful lot, nothing is going to get better – It's not."

-The Lorax by Dr. Seuss

Cities have statutory authority to offer recycling programs to their citizens. Recycling helps reduce the production of solid waste that a city must dispose of and reduces the costs of operating a municipal solid waste disposal system. In addition, recycling may also create more jobs than disposal programs do. Of course, statewide recycling mandates wouldn't take into account the various factors that make different parts of Texas unique, so recycling should be implemented locally in a way that is appropriate for each city. ★

Recycling of Municipal Solid Waste (MSW) in the United States 1960-2017

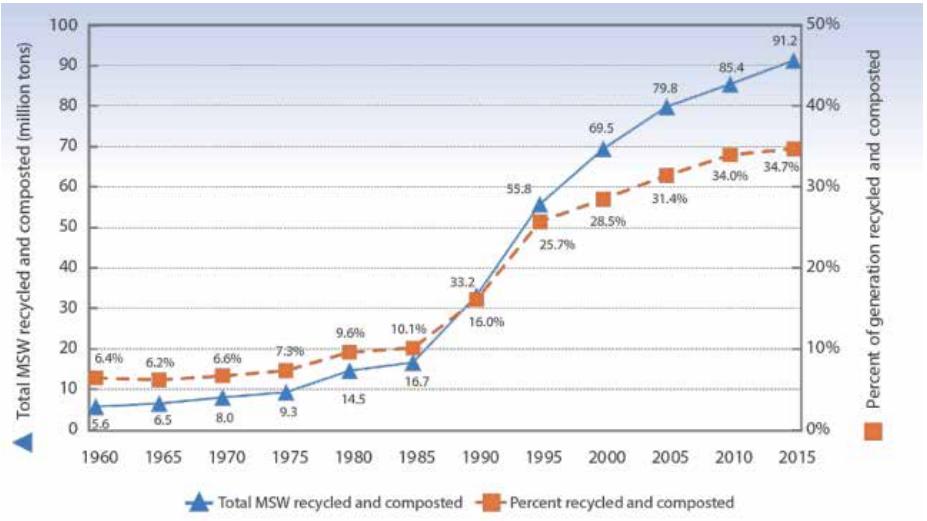


Figure 2 located here: https://www.epa.gov/sites/production/files/2019-11/documents/2017_facts_and_figures_fact_sheet_final.pdf

Where Does It Go After I Place It at the Curb? How Much Does This Service Cost?

After household garbage is collected, it often goes to a facility known as a transfer station where waste is consolidated into larger loads for shipment to its ultimate destination: a landfill or a waste-to-energy plant. Recyclable material goes to processing facilities where it becomes raw materials for new products.

In 2017, 52.1 percent of municipal solid waste generated in the United States was ultimately disposed of in landfills; 12.7 percent was disposed of through waste incineration with energy recovery; and 35.2 percent was recovered for recycling or composting.

According to data collected by the National Solid Wastes Management Association, the typical U.S. monthly household bill for waste collection in 2003-04 ranged between $12 and $20 per month. The cost of governmental compliance and the rising costs of fuel and equipment has led to an increase in the costs of collection and disposal in some communities. However, even with such increases, residential trash collection and disposal is still inexpensive relative to other utilities and household services, such as cell phone bills and cable television.

Collection and disposal costs have gone up in some communities for various reasons including the rising costs of fuel and equipment, as well as the rising costs of complying with new environmental regulations. Despite these increases, residential trash collection and disposal is still a bargain for United States consumers when compared to other utilities and services like cellular phone and cable television service.

Sources:

EPA, Advancing Sustainable Materials Management: 2017 Fact Sheet (November 2019)

National Solid Wastes Management Association, Residential Trash Collection: An Essential Service at a Bargain Price

PUTTING THE "WORKS" IN PUBLIC WORKS

Streets and Traffic

Citizens expect to travel easily from one place to another and want their commute to be problem-free. A city's public works department makes that possible. Public works employees are constantly striving to keep driving conditions safe by building, maintaining, and repairing city streets. These efforts are not limited to streets, but also include street lights, sidewalks, and other infrastructure that is crucial to cities. However, funding such maintenance efforts, which benefit the entire State economy, is a challenging task for Texas cities. Unlike many other states, Texas cities receive no state aid to offset the benefits that city streets provide. In those other states, a portion of vehicle registration fees or gasoline taxes are returned to cities for this purpose; not so in Texas. However, the Texas Legislature has granted Texas cities the authority to impose a street maintenance sales tax to be used to maintain city streets. Many cities have adopted this tax.

Traffic Signals: Coordinating Intersections Isn't Free. According to the City of Austin, after a traffic signal request is granted for an intersection, it costs approximately $200,000 to construct and install a single traffic signal.

Right-of-Way Authority and Utilities

Many Texas cities are experiencing an unprecedented level of activity in their streets and rights-of-way (ROW). This is the result of an explosion in new communications technology, the growth of competition in the telecommunications industry, and the expansion of electric distribution lines to newly developing areas. Sometimes, these activities can have a detrimental effect on public safety, traffic flow, city infrastructure, and efficient city administration. On occasion, excavations caused a breach in major water lines, and other ROW activities caused front-page incidents due to heavy traffic. Cities have had their utility lines cut, their streets barricaded and torn up, and suffered breaches in their major water lines. These actions significantly shorten the life expectancy for city streets, and make them unsuitable for traffic.

The new most recent ROW issues have arisen due to the planned proliferation of "small cell nodes." A small cell node is an antenna and related equipment that can provide very large bandwidth at a very short range. They are, by definition, deployed in densely-populated areas as a means to provide the broadband capacity that people and business want and need. One overarching principle relating to small cell deployment is clear: cities and businesses want better cellular/broadband service. Everyone wants the best technology for educational and businesses opportunities.

Senate Bill 1004, passed in 2017, attempted to help companies roll out their small cell facilities. The bill requires a city to allow access for cell nodes and related equipment in city rights-of-way, and it also entitles cell companies and others to place equipment on city light poles, traffic poles, street signs, and other facilities. That mandate can pose a public safety threat. More troubling, however, is that the bill limits cities to a rental fee of $250 per node, far less than the amount companies must pay on the open market.

Similarly, S.B. 1152 passed in 2019, eliminated certain franchise fees. The bill authorized a cable or phone company to stop paying the lesser of its state cable franchise or telephone access line fees, whichever are less for the company statewide. Under the bill, compensation of the use of city's right-of-way is no longer based on the value of the right-of-way to the companies, rather its effect is to force city taxpayers to subsidize the cost of doing business for the companies.

As a result, a coalition of cities filed a lawsuit challenging S.B. 1004's unconstitutional cap on small cell rental fees and S.B. 1152's eliminate of certain franchise fees. The lawsuits assert that the cap and the franchise fee elimination are a taxpayer subsidy to the cellular industry and telecommunication industry because they allow nearly free or discounted use of taxpayer-owned rights-of-way and facilities. Put simply, the bill takes the money every city resident pays in taxes and hands it directly to cell phone and telecommunications providers. Both lawsuits are pending.

Adding fuel to those flames, the Federal Communications Commission (FCC), in 2017, also adopted an order preempting municipal authority over small cells and related equipment, further usurping local right-of-way authority and capping right-of-way rental fees for small cell deployment. In response, a national coalition of cities led by the City of Portland filed a lawsuit challenging the FCC order. In August 2020, a court of appeals court upheld the provision of the FCC's order that limits a city's right-of-way fees to a recurring fee of $270 per site, per year, and expressly limits the ability of a city to recover any cost not directly related to rights-of-way maintenance, charging fees above cost recovery, or recovering "unreasonable" costs, such as excessive contractor or consultant fees.

Right-of-Way Compensation
The Texas Constitution prohibits a city from allowing the use of its rights-of-way for free. Thus, cities collect compensation in the form of rent (based on various state and federal statutes) from utility providers. Some have attempted to characterize this rent as a "tax." That characterization is incorrect. Instead, the rent is a cost of doing business for a utility that uses a city's property (just as a utility would have to rent property or obtain an easement from a private landowner). Utilities such as satellite providers do not pay the rent when they have no facilities on city property. In any case, the law authorizes compensation that provides significant revenue for cities.

Local Participation: Cities Help Pay for State Highways

Although amendments to the Texas Constitution in 2013 and 2015 boosted Texas Department of Transportation (TxDOT) funding significantly, TxDOT continues to ask for "local participation" in many of its projects. Local participation is sometimes referred to as a "pay-to-play" system imposed by TxDOT on local governments that wish to see highway projects in their area move forward. Moreover, TxDOT sent a letter in summer 2013 to cities with a population of more than 50,000 – as well as select smaller cities adjoining or surrounded by those larger cities – informing them that TxDOT intended to consider transferring all maintenance of certain non-controlled-access state highways to the cities in which they are located. TxDOT dubbed the proposal "Turnback." The agency later stated the program was always intended to be a "voluntary participation program." In any case, cities pitch in more than $100 million annually in cash and much more in right-of-way donations and in-kind services. In addition, the state gasoline tax paid by cities accounts for many more millions of dollars paid by cities for the state transportation system.

Federal Storm Water Mandates and Municipal Drainage Utilities

Federal Storm Water Mandates

During rainfall, storm water runs off impervious areas such as paved streets, parking lots, and rooftops. The storm water contains pollutants that may adversely affect water quality. Thus, the federal Clean Water Act requires cities to obtain a permit from the United States Environmental Protection Agency (EPA) before allowing the discharge of storm water from a storm sewer system into rivers and lakes. In Texas, the EPA has delegated the administration of the storm water permitting program (known as the "National Pollution Discharge Elimination System" or "NPDES") to the Texas Commission on Environmental Quality (TCEQ).

Most medium and large cities in Texas, such as Dallas, Houston, San Antonio, Austin, Abilene, and others, currently operate under a "Phase I" permit. Since the early 1990s, "Phase I" cities were required to develop a storm water management program that would reduce storm water pollutants. Many other Texas cities are subject to the "Phase II" general permit. The Phase II program began in 1999 and requires more than 400 of the state's smaller cities to also develop storm water management programs. At a minimum, the programs must include public education and participation, detection of unwanted discharges into sewers, construction site storm water runoff controls, and pollution prevention measures.

In addition, cities operating under the Phase II permit must issue an annual report to the TCEQ that includes information regarding the status of compliance with permit conditions, an assessment of the appropriateness of best management practices, a description of progress toward reducing the discharge of pollutants to the maximum extent practicable, the measurable goals for each of the minimum control measures, and an evaluation of the program's progress. TCEQ, in compliance with federal law, reissued the Phase II general permit for small cities in 2013.

All Texas cities subject to the NPDES program are required to identify and apply management practices to reduce storm water pollution. Unsurprisingly, implementing such practices comes at a high monetary cost, especially in light of the fact that the mandate is not funded by the state.

In 2003, the Texas Legislature enacted a law that exempted state colleges and universities from paying municipal storm water utility fees. The rationale for that exemption (presumably) was that a taxpayer-funded entity shouldn't be required to pay a fee to another taxpayer-funded entity. In 2007, private universities sought and obtained the same exemption. The exemption of private colleges and universities has had detrimental effects on some cities. These private entities benefit from the flood prevention and storm water control provided by storm water utilities, and both public and private universities generally have very large areas of impervious cover that contribute to runoff. The exemptions have resulted in a cost shifting to residents and businesses. Further, a city council can consider exempting public school districts, public agencies, and religious groups. If a city council chooses to do so, the same cost shifting result may occur. ★

Municipal Drainage Utilities

As a means to protect citizens from the devastating effects of flooding and to offset the costs of unfunded federal storm water mandates, the Local Government Code authorizes Texas cities to establish municipal storm water drainage utilities. The utilities are generally funded by fees on properties that are benefited by the improvements. The fees must be nondiscriminatory and must be directly related to drainage.

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THE GROWING NEED FOR WATER AND WASTEWATER SERVICES

The population in Texas is expected to grow to at least 50 million by 2070. By 2070, municipal water use is expected to constitute the highest demand of all water uses. Providing safe, clean, and reliable drinking water to meet this demand presents a challenge for most Texas cities. Investments in drinking water and wastewater systems protect public health, aid in protecting the environment, provide fire protection, and ensure that there is an adequate water supply to support the state's growing population, businesses, and industries.

Adequate water supply is often a determining factor in economic development. Businesses and industries are going to choose locations with a stable and sufficient water supply over those states or regions without quality and adequate supplies of water.

The Environmental Protection Agency (EPA) estimates that America's drinking water systems alone will have to invest up to $271 billion over the next 25 years to keep up with the growing demand for drinking water and the nation's aging drinking water infrastructure. Over the next decade, Texas cities will have to expend millions of dollars on waste and wastewater systems to keep pace with the tremendous population growth in Texas, especially since the United States Conference of Mayors estimates that 95 percent of spending on water infrastructure is made at the local level. In addition to meeting the growing demands for water services and replacing aging infrastructure, the investment is also necessary to ensure compliance with the federally-mandated Clean Water Act and Safe Water Drinking Act.

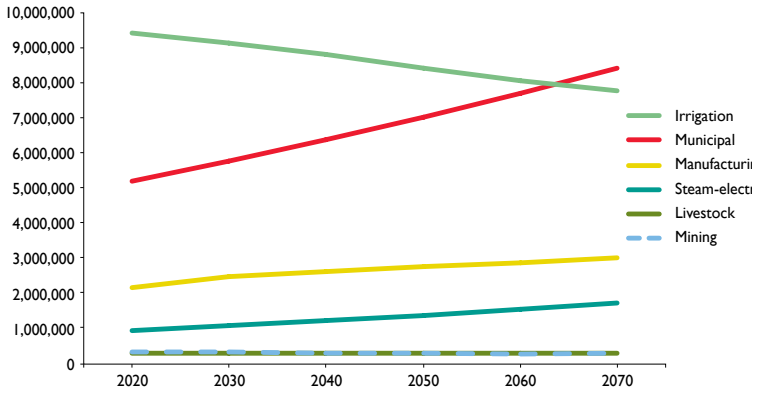
Many water utility systems in Texas are decades old. Some systems have come to the end of their useful lifespan, and upgrades may no longer be sufficient. Some cities may even have to replace these essential utilities completely. Upgrading or replacing a water or wastewater system is a costly undertaking that requires the commitment of large sums of capital investment. However, the return is generally well worth the large expenditure.

Municipal wastewater treatment plants prevent billions of gallons of pollutants from reaching our rivers and lakes each year. Additionally, the provision of safe drinking water to our suburban areas has allowed our state to grow at unprecedented levels.

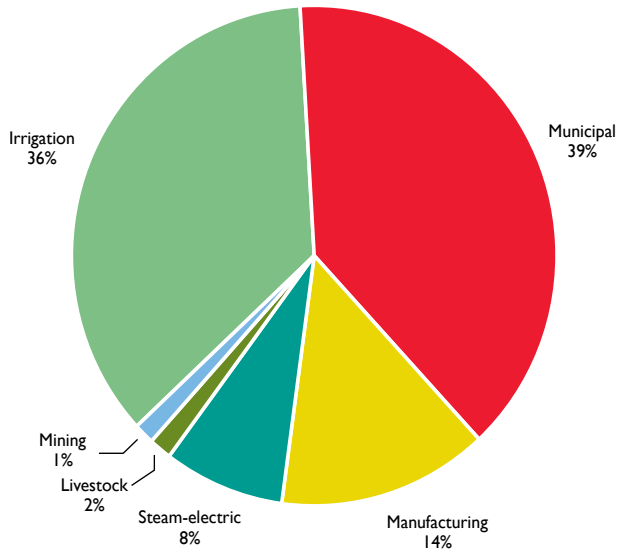
Unfortunately, many Texas cities are struggling to keep up with the costs of complying with increasingly stringent federally and state-mandated regulations. The budget pressures associated with meeting these new standards or facing stiff fines from regulating agencies often force cities to delay needed expansion of their water utility systems. ★

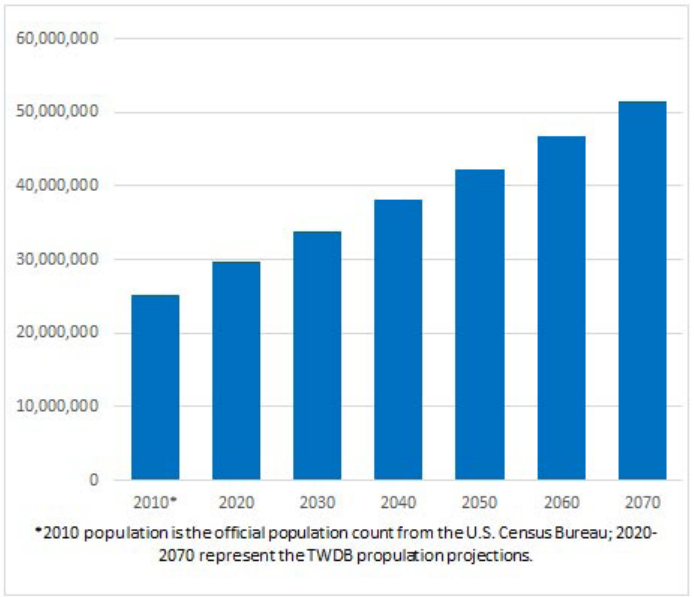
See Funding the State Water Plan on page 48 for information on how some of these needed improvements should be funded.

Projected annual water demand by water use category (acre-feet)

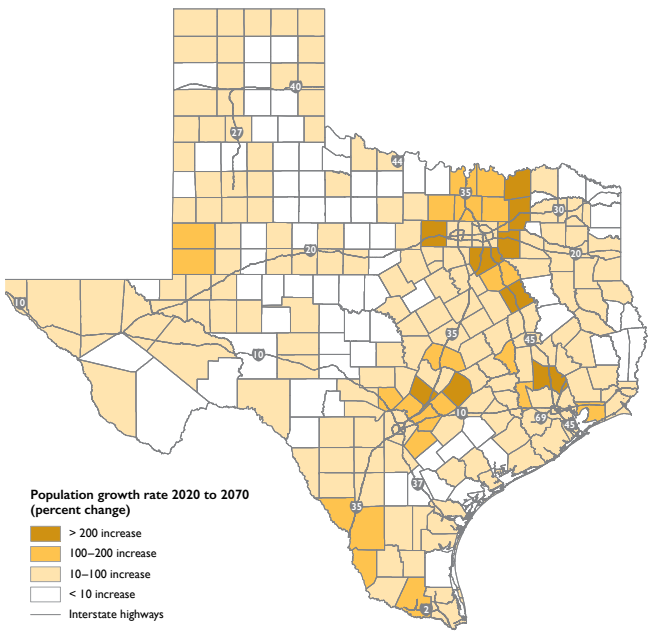


Water use category shares of projected annual water demand in 2070





Projected population growth in Texas counties



Source: Texas Water Development Board, State and Regional Population Projection for 2020-2070

WATER CONSERVATION

Although water conservation is an important issue for Texas, city officials have generally resisted the imposition of a uniform, statewide water conservation program that does not take into account the needs, financial and otherwise, of different parts of the state.

In past years, the Texas legislature enacted numerous bills related to statewide water conservation standards, including a recent requirement that cities draft, implement, and submit drought contingency and water conservation plans. The legislature also created the Water Conservation Advisory Council (WCAC) tasked with, among other responsibilities, developing numerous Best Management Practices (BMPs) (a voluntary efficiency measure intended to save a quantifiable amount of water, either directly or indirectly, when implemented within a specified timeframe). BMPs, including municipal BMPs, are available at www.twdb.texas.gov/conservation/BMPs/index.asp.

In addition, the Texas legislature, in recent years, passed bills which require the Texas Water Development Board and the Texas Commission on Environmental Quality to develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used, by a city, in developing water conservation plans and preparing certain reports required by state law. The methodology and guidance include: (1) a method of calculating total water use, including water billed and nonrevenue water used; (2) a method of calculating water use for each sector of water users; (3) a method of calculating total water use by a city in gallons per capita per day; (4) a method of classifying water users within sectors; (5) a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in gallons per capita per day; (6) a method of calculating water use in the industrial, agricultural, commercial, and institutional sectors that is not dependent on a city's population; and (7) guidelines on the use of service populations by a city in developing a per-capita-based method of calculation, including guidance on the use of permanent and temporary populations in making calculations.

The resulting "Guidance and Methodology for Reporting on Water Conservation and Water Use" is intended to guide water providers through the process. This guidance is available at www.twdb.texas.gov/conservation/doc/SB181Guidance.pdf?d=4490.499999956228.

Another water conservation issue is that of mandatory water conservation rates. The legislature, in the past, proposed legislation that would take away a city's exclusive authority to set water rates within its city limits, but no such legislation has passed. As a result, the ability to set water rates within the city limits remains with each city's governing body, which comports with the Texas Municipal League's members' view that local control is best.

While water was one of the main topics of the 2013 legislative session, fewer water-related bills were filed in the 2015 legislative session, and a handful of water conservation bills were passed in the 2017 legislative session. No legislation related to water conservation was passed during the 2019 legislative session, and no interim charges relating to such were issued for study prior to the 2019 and 2021 legislative sessions.

Water restrictions, conservation education, and higher prices have played a role in Texans using less water. According to a League survey, the average monthly residential water consumption is decreasing each year (with a few outliers), averaging a total of 5,586 gallons in 2019 compared to 8,581 in 2002. Which method of addressing water shortages—restricting usage, repairing/replacing inefficient infrastructure, or scarcity pricing—is the best? Whatever a city council decides is right for its city is usually the correct method. In other words, local control is the best method.

Interestingly, one side effect of lower water use is a loss of millions of dollars in anticipated revenue to some cities. For example, the City of Wichita Falls has reported that conservation efforts have resulted in a water revenue reduction of nine million dollars from fiscal year 2012-2013 to fiscal year 2013-2014. Anticipated water revenue is generally budgeted to pay for fixed or capital infrastructure costs and in certain cases, to pay off debt, including debt issued to finance new wastewater plants or water-related projects.

Each city has a unique perspective and resulting priorities for expending resources to conserve water. Climate, population density, availability of water resources, and the ratio of industrial to residential water use in the city are a few of the various factors that affect conservation decisions across the state. Water conservation continues to be a major issue in many cities in Texas, and cities should continue implementing water conservation strategies that are appropriate for their specific community. ★

Cities offer a variety of different programs to encourage water conservation.

For example, the City of San Marcos offers:

Tiered Water Rate System
Water rates increase as consumption increases.

Rebate/Incentive Programs
The City of San Marcos provides rebates to those customers who purchase and install qualifying water conserving items.

Irrigation System Evaluations
Free irrigation system check-ups for both residential and commercial water customers.

Indoor Water Surveys
Free indoor water surveys to customers who would like to save water and money. City staff will evaluate your home or business to make sure you are using water as efficiently as possible.

Public and School Education Programs

FUNDING THE STATE WATER PLAN

The Texas State Water Plan provides for the orderly development, management, and conservation of water resources in the state. The plan's goal is to ensure that sufficient water will be available at a reasonable cost to protect the public health, further economic development, and protect the agricultural and natural resources of the entire state.

The State Water Plan is the culmination of a regional planning process that the Texas Legislature established in 1997. Every five years, 16 planning groups — one for each regional water planning area — assess the projected population, water demands, and water supplies in their area for the next 50 years. Each planning group holds public hearings and meetings to develop its regional water plan, which lists the water supply projects needed to meet their water shortages. Once a regional water planning group adopts its regional water plan, the plan is then sent to the Texas Water Development Board (TWDB) for approval. The TWDB ultimately compiles the information to make the State Water Plan. The most recent iteration is the 2017 State Water Plan, adopted on May 19, 2016.

The 2017 State Water Plan tells us that our population will continue its rapid growth. Texas' population is expected to increase more than 70 percent between 2020 and 2070, from 29.5 million to 51 million, with over half of this growth occurring in Regions C and H. Water demands are projected to increase less significantly, by approximately 17 percent between 2020 and 2070, from 18.4 million to 21.6 million acre-feet per year. Notably, municipal demands are anticipated to grow by the greatest total amount, from 5.2 million acre-feet per year in 2020 to 8.4 million in 2070. Steam-electric (power generation) demand is expected to increase in greater proportion than any other water use category, from 953,000 acre-feet per year in 2020 to 1.7 million in 2070. Agricultural irrigation demand is expected to decrease, from 9.4 million acre-feet per year in 2020 to about 7.8 million in 2070, due to more efficient irrigation systems, reduced groundwater supplies, and the trans-

fer of water rights from agricultural to municipal users. Manufacturing and livestock demands are expected to increase, while mining demand is expected to decline over the next 50 years.

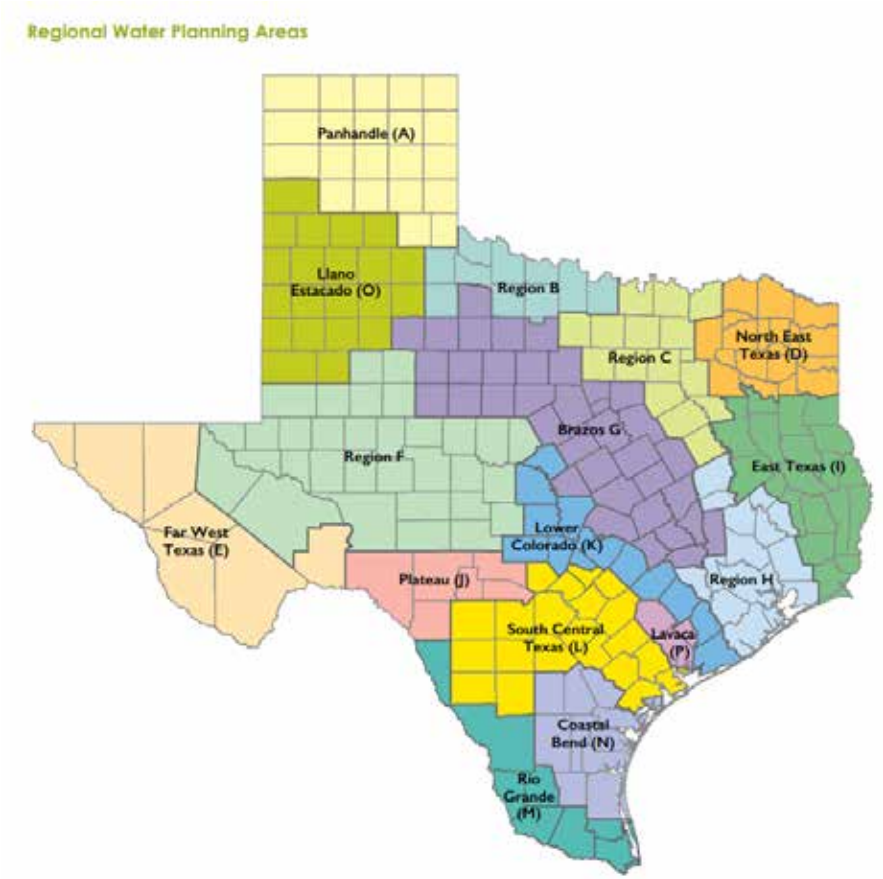
Texas' existing water supplies — those that can already be relied on in the event of drought — are expected to decline by approximately 11 percent between 2020 and 2070, from 15.2 million to 13.6 million acre-feet per year. Water user groups face a potential water shortage of 4.8 million acre-feet per year in 2020 and 8.9 million acre-feet per year in 2070 in record drought conditions.

The 2017 State Water Plan provides a roadmap for how to address the water needs that accompany our expected growth by identifying water management strategies and their associated costs for communities all across Texas. Approximately 5,500 water management strategies recommended in the 2017 plan would provide 3.4 million acre-feet per year in additional water supplies to water user groups in 2020 and 8.5 million acre-feet per year in 2070.

The estimated capital cost to design, construct, and implement the approximately 2,500 recommended water management strategy projects by 2070 is $62.8 billion. Water management strategies can include conservation, drought management, reservoirs, wells, water reuse, desalination plants, and others.

The information in this plan is critical to ensuring that Texas has adequate and affordable water supplies now and in the future. Without employing water management strategies, approximately one-third of Texas' population would have less than half of the municipal water supplies they will require during a drought of record in 2070. If Texas does not implement the State Water Plan, estimated annual economic losses resulting from water shortages will range from approximately $73 billion in 2020 to $151 billion in 2070.

For more information on the 2017 State Water Plan, as well as resources on how to get involved with your regional planning group and financial assistance for cities, visit the Texas Water Development Board at www.twdb.texas.gov. ★



THE CONNECTION BETWEEN INFRASTRUCTURE AND PROPERTY TAX LIMITATIONS

With the exception of construction, repair, and maintenance of the state highway system, infrastructure in Texas is primarily the responsibility of local governments. Streets, bridges, drinking water systems, and wastewater facilities are funded by local entities. Although some loans and very limited grant funds are available for some water projects, the fact remains that city streets, water systems, and wastewater utilities are built and maintained with city-generated revenue.

Texas cities are on their own when it comes to paying for these infrastructure projects. The paucity of state aid to Texas cities is well-documented. While most states (including virtually all of the most populous states) provide substantial financial assistance to cities to help pay for infrastructure, such grant programs generally do not exist in Texas.

In fact, it can be argued that funds flow the other way—from local entities to the state. In recent years, the Texas Department of Transportation received almost $100 million annually in revenue called "Local Participation" from cities alone. (Other entities provide local participation funds as well.) This is city money that helps pay for improvements to the state highway system.

Much of the local revenue that is used to fund infrastructure projects comes from the property tax. That fact raises an interesting question: if the Texas Legislature passes additional legislation that limits municipal property tax revenue, will municipal investment in infrastructure decrease?

The answer is: yes.

The evidence is in the Texas Municipal League's fiscal conditions survey. When asked which cost-cutting measures were employed to balance the current-year budgets, cities consistently identify "postponed capital spending" as the most commonly used tactic. (Please see Chart 1 below.)

Chart 1

Cost-Saving Measures

Percent of All Cities

	2013	2014	2015	2016	2017	2018	2019	2020
Hiring freeze	7.6%	4.4%	3.8%	2.9%	3.2%	4.9%	2.9%	2.1%
Wage freeze	5.9%	4.2%	3.4%	3.5%	4.5%	2.9%	2.6%	1.6%
Reduced services	3.2%	2.6%	1.3%	2.5%	2.1%	2.0%	1.3%	2.0%
Eliminated services	1.7%	1.5%	1.3%	0.6%	0.8%	1.3%	2.0%	1.6%
Reduced salaries	1.3%	0.9%	0.4%	0.4%	0.4%	0.2%	0.0%	0.0%
Laid off employees	4.5%	3.8%	3.0%	1.4%	3.2%	3.1%	1.9%	1.2%
Postponed capital spending	36.9%	29.7%	36.0%	28.7%	26.4%	24.4%	22.0%	22.2%

Similarly, when asked to identify how they would respond to diminishing revenue in future years, city officials almost always select "postpone capital spending" as the top choice. (Please see Chart 2.)

Chart 2

If Revenues Remain Constant or Diminish, What Will Cities Do?

Percent of All Cities

First Response	2012	2013	2014	2015	2016	2017	2018	2019	2020
Postpone capital spending	24.6%	24.1%	27.6%	28.5%	29.4%	23.1%	27.4%	26.8%	36.5%
Impose hiring freeze	32.7%	32.1%	26.6%	22.0%	16.4%	17.6%	18.2%	12.9%	17.3%
Increase user fees	10.6%	10.9%	10.2%	14.5%	10.5%	11.3%	13.4%	13.2%	7.2%
Raise property tax	4.2%	8.2%	7.6%	8.0%	6.6%	9.7%	7.6%	9.4%	7.6%
Impose wage freeze	9.3%	7.3%	6.7%	6.5%	5.1%	3.5%	5.1%	5.6%	10.1%

Here's the bottom line: Any legislation that would further restrict the ability of cities to generate property tax revenue will result in reduced spending on infrastructure, particularly city streets and bridges. Those spending cuts will harm regional economies and the state's economy.

Without municipal investment in the infrastructure needed for industrial and commercial activity, the state's job creation and economic growth will be severely damaged. And the most certain way to limit the construction and maintenance of infrastructure is to further restrict the growth of tax revenue. ★

THE HIGH COST OF PROVIDING PUBLIC SAFETY

Ensuring that citizens have a safe city in which to live and work is of the utmost importance to the state. Cities strive to promote the health, safety, and welfare of all their citizens. Unfortunately, providing a high level of public safety does not come cheap.

Most citizens automatically turn to government in times of need. In cities, that translates to spending tax dollars on public safety services. Of these public safety services, cities expend a considerable amount of their resources in anticipation of emergencies, occurrences that the public at large generally doesn't want to think about. Public safety includes traditional fire protection (fighting house fires), traditional police protection (patrolling streets for traffic violations and criminal activity), and responding to numerous 911 calls.

However, in today's world, "public safety" has expanded to encompass:

- responding to hurricanes and other natural disasters;
- preventing and responding to terrorist threats and attacks;
- enforcing federal homeland security mandates;
- providing emergency medical services (EMS) and ambulance services;
- providing border security;
- responding to hazardous materials issues;
- responding to pandemic disease and other public health disasters;
- participating in drug task forces; and
- conducting search and rescue operations, along with a host of other activities.

Police, fire, and EMS now must protect our homeland and be ready to respond to terrorist attacks with chemical, biological, and weapons of mass destruction. That's a tall order, considering the cost of standard public safety training and equipment.

For example, it costs approximately $2,000 to provide basic protective equipment for a single structural firefighter. Of course, the equipment needed to enter a burning building is specialized and much more costly than the standard issue equipment. (See firefighter diagram.) In addition to the expensive equipment necessary for firefighters to safely carry out their jobs, they must also receive continuous training. This training often comes with a high price tag and must be supplemented on an ongoing basis.

TEXAS CITIES ASSIST WITH DISASTER RESPONSE AND RELIEF

Over the past several years, cities played a major role in disaster response, relief, and rebuilding efforts as various natural disasters hit Texas. According to the City of Houston, the city was responsible for $500 million in the recovery effort after Hurricane Harvey. The city rushed to repair vital infrastructure, dedicating countless resources to restoring necessary services to citizens. The City of Galveston, hard-hit by Hurricane Ike in 2008, expended $500 million to repair and replace housing, city buildings, and utility infrastructure, not to mention millions more to repair roads, revitalize the business community, and much more. Even though the federal government ultimately reimbursed some of these expenditures, the ability of cities to react quickly and decisively during and after a natural disaster is an invaluable service. In 2013, the City of West responded to a fertilizer plant explosion that devastated its city. The city not only paid the price of emergency response in dollars, but also lost many of its volunteer firefighters, one of which was the city secretary. Disasters like the West explosion can lead to legislation that seeks to impose additional mandates on cities, but does not provide the necessary funding.

The COVID-19 pandemic continues to emphasize Texas cities' important role during public health emergencies. In response to the pandemic, cities' police departments have been tasked with enforcing the governor's orders, including the mask mandate and business capacity limitations, as well as any local orders like curfews. The costs for public health emergencies will continue to fall on cities because urban populations are often the most affected. ★

Median Salary for Police Officer and Firefighter

Police Patrol Officer:
$67,600.00 plus benefits annually
Firefighter:
$54,650.00 plus benefits annually
Source: United States Department of Labor

Helmet and hood:
$381

"Pass" alarm to monitor firefighter while deployed:
$495

Self-contained breathing apparatus:
$2928

Firefighter pager:
$459

Heat-reflective, fire-resistant coat:
$1,200

Gloves:
$87

Heat-reflective, fire-resistant pants:
$600

Puncture-proof, heat-resistant boots:
$370

Total: $6,520

ANNEXATION: A DANGEROUS POLICY EXPERIMENT IS UNDERWAY

On May 24, 2019, municipal annexation as it existed for over a century was over. On that date, House Bill 347 became effective. The bill requires landowner or voter approval of most annexations by any city in Texas. History shows that the state's grant of annexation power to Texas' home rule cities had always been one of our least understood and most contentious governance issues. It was also one of the most important from the perspective of how the state dealt with its massive population growth. Prior to 2019, the legislature rarely acted to broadly limit municipal annexation. Even when major reforms passed, the core authority remained largely intact. Why is that? It was because key legislators understood that cities support the state's economy through the services and growth management they provide. With the passage of House Bill 347, it is clear the legislature has lost sight of the reasons behind annexation.

According to many national authorities, the annexation power of Texas cities had been a key difference between the flourishing cities of Texas and the declining urban areas in other parts of the nation. A 2003 report issued by The Perryman Group, a well-respected economic and financial analysis firm, predicts that overly-restrictive annexation policies will harm the Texas economy by reducing gross state product, personal income, sales, employment, and population. The Perryman report concludes that restrictions on annexation will mean that "the entire character of the Texas economy will be changed in a way which notably limits its capacity to support future growth and prosperity." If you think those numbers are exaggerated, just look at what happened to four once-great American cities that were prevented from growing. In 1950, Detroit, Baltimore, Cleveland, and St. Louis were the fifth, sixth, seventh, and eighth largest cities in the nation in population. All four of them were prevented from expanding their city limits. Sixty years later, in 2010, all four cities had about the same number of square miles they had in 1950.

Over the six decades from 1950 to 2010, Detroit suffered a population loss of 61 percent. Baltimore's population declined 35 percent. Cleveland lost 57 percent of its population and St. Louis lost 63 percent of its population. Without the ability to take in areas of growth, those cities died.

	Land Area Sq. Mi.		Population Rank		City Population		Population Change	Median household Income in 2013
	1950	2010	1950	2010	1950	2010		
Detroit	140	140	5	20	1,849,568	713,777	-61%	$26,325
Baltimore	79	81	6	24	949,708	620,961	-35%	$41,385
Cleveland	75	78	7	48	914,808	396,815	-57%	$26,217
St. Louis	61	62	8	61	856,796	319,294	-63%	$34,582

In contrast to the four cities that experienced a death spiral due to annexation limitations, look at what happened in four Texas cities between 1950 and 2010 without similar restrictions on their ability to grow.

	Land Area Sq. Mi.		Population Rank		City Population		Population Change	Median household Income in 2013
	1950	2010	1950	2010	1950	2010		
Houston	160	600	14	4	596,163	2,099,451	252%	$45,010
San Antonio	70	461	25	7	408,442	1,327,407	225%	$45,722
Dallas	112	341	22	9	434,462	1,197,816	176%	$42,846
Austin	32	297	73	14	132,459	790,390	497%	$53,946

Certainly other factors were at play, but it seems clear that annexation authority plays a big role in the success of a city (and therefore the state). More recently, the League commissioned a study of only southern states with similar demographics to Texas. That study found that, among a comparison set of 13 states, three key findings emerge:

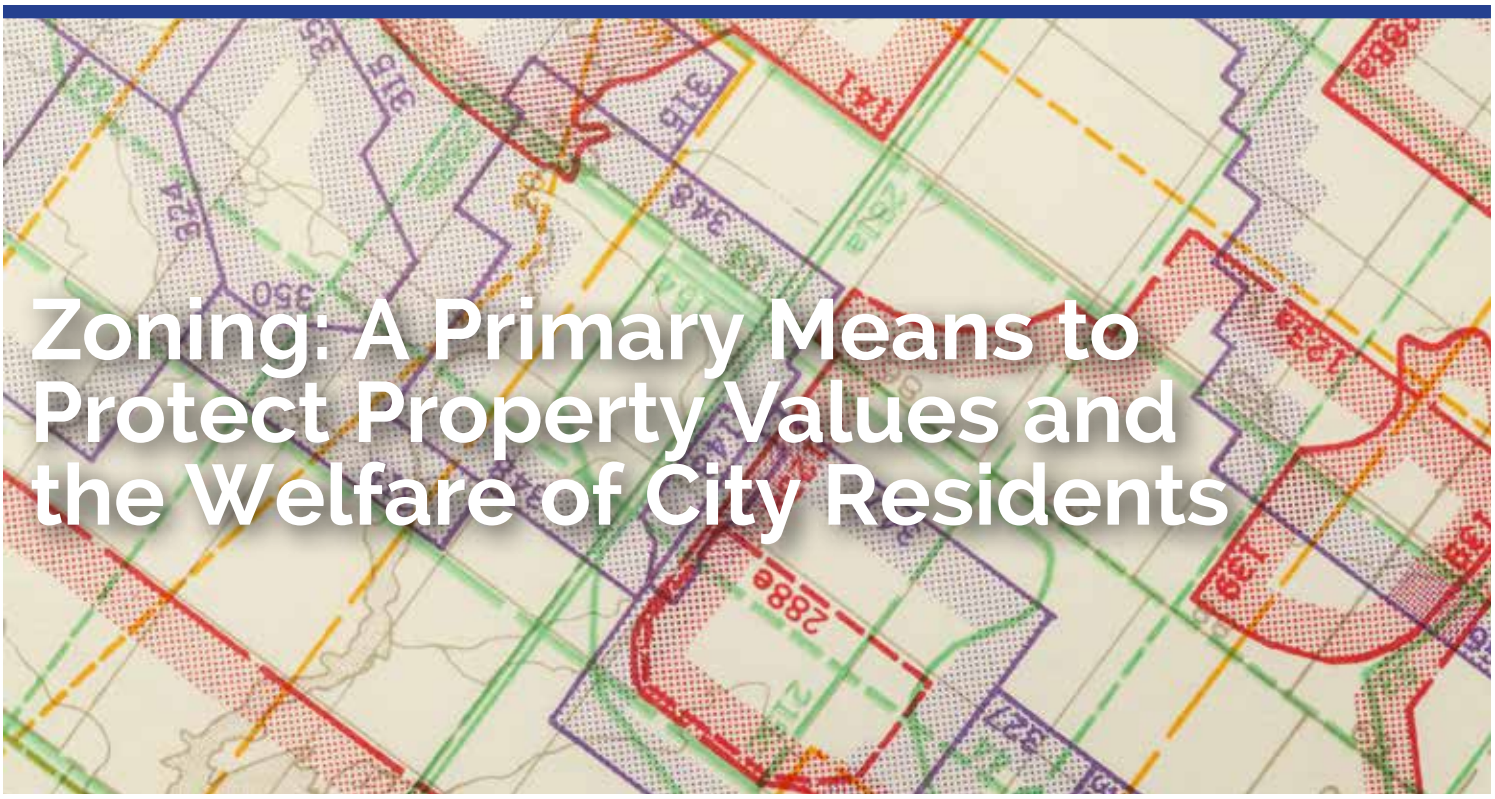
1. States in which city councils decide whether to annex have seen their cities grow faster over the past 25 years, both economically and demographically, than other states that limit annexation.

2. In terms of annexation activity (as measured by change in city size), states in which city councils decide whether to annex have actually seen their cities physically grow more slowly from 1990 to 2010 than other states that limit annexation.

3. When measured by bond ratings tied to the issuance of general obligation bonds, states in which city councils decide whether to annex have better ratings than other states that limit annexation.

In short, municipal annexation had been an engine that drives the Texas economy, and turning off that engine will likely be detrimental to the state's financial future.

Why is this policy experiment of severely hampering city annexation authority particularly dangerous in Texas? Texas cities, unlike the cities of other states, don't receive general state financial assistance or state revenue-sharing. Texas is now one of the only states in the nation that denies both state financial assistance and annexation authority to its cities. Restricting annexation authority without implementing fiscal assistance programs under which the state helps cities pay for the infrastructure on which the entire state depends wasn't well-thought-out. Prior to H.B. 347, state leaders realized that annexation was a means of ensuring that residents and businesses outside a city's corporate limits who benefit from access to the city's facilities and services share the tax burden associated with constructing and maintaining those facilities and services. Now, in a state that adds 1,400 people each day to its population, it is unclear how cities will manage that incredible growth and keep the Texas miracle alive. ★



Zoning: A Primary Means to Protect Property Values and the Welfare of City Residents

What is zoning? Zoning is arguably one of the most important functions of local government. Zoning is the division of a city into districts that permit compatible land uses, such as residential, commercial, industrial, or agricultural. Zoning authority empowers a city to protect residential neighborhoods, promote economic development, and restrict hazardous land uses to appropriate areas of the city. It is used to lessen street congestion; promote safety from fires and other dangers; promote health; provide adequate light and air; prevent overcrowding of land; and facilitate the provision of adequate transportation, utilities, schools, parks, and other public facilities.

How does zoning occur? Chapter 211 of the Texas Local Government Code contains many procedural requirements that must be followed when a city zones property, including strict notice and hearing provisions. The requirements ensure that city and neighborhood residents have a strong voice anytime a zoning change is considered. In addition, Chapter 211 provides for the creation of a planning and zoning commission to make recommendations on the adoption of the original regulations, as well as to hear proposed amendments. Finally, a board of adjustment may be appointed to hear requests for variances from the regulations.

Why is there zoning? Zoning authority is often demanded by the residents of cities. Citizens, acting through neighborhood and preservation groups, generally support it wholeheartedly because zoning minimizes conflicts between land uses and maintains property values. "For example, assume a beautiful home on a half-acre lot has just been built. Six months after construction and move-in, the property owner next door decides to put in a restaurant. This means parking problems and late-night noise. Without a zoning ordinance, there may be nothing to prohibit the adjacent landowner from building the restaurant or a manufacturing facility, for that matter." Jennifer Evans, *A Citizen's Guide to Texas Zoning*, Texas A&M Real Estate Center, Report 1294 (April 1999).

Who decides zoning? "The same [zoning] ordinance that protects property from what occurs next door also limits the development of property." *Id*. This sometimes creates a conflict that is resolved through a local process. Because it is dependent on knowledge of local conditions and the needs of individual communities, the power to zone is best exercised by local officials – the level of government that is closest to the people. For example, most would agree that a person from a small town in the Texas Panhandle cannot possibly know what type of zoning is best for a large city on the Gulf Coast.

Appropriate Use of Manufactured and Modular Housing

The Texas Manufactured Housing Standards Act allows cities to regulate the location of "manufactured homes," which must meet federal construction regulations. Other state law regulates industrialized housing and buildings, and allows cities to require that "modular homes," which meet the more stringent requirements of the International Residential Code, have an appearance and value similar to nearby homes. Many cities take advantage of these provisions to protect property values and the safety of residents, while at the same time offering viable housing alternatives for lower income families. The Texas Municipal League is not opposed to this type of housing, but strongly advocates the authority of cities to retain local control over when, where, and how this type of dwelling is installed. ★

Zoning Changes and Property Values

State laws that require compensation when a property's value is affected by a zoning change are extremely rare in the United States. Rather, the United States Supreme Court and various state courts have set forth tests that are used to determine whether a zoning regulation requires compensation to a property owner.

In fact, the Supreme Court of Texas upheld a city's authority to make reasonable zoning changes. In that case, a city rezoned a residential area to provide for larger lot sizes. The rezoning was designed to create more open space, less traffic, greater setbacks, less noise, and similar results. The Court concluded that a city has a legitimate governmental interest in such results and in preserving the rate and character of community growth. The Court also found that no "taking" of the owner's property occurred, because the regulation did not impose a great economic impact on the owner.

Any legislative requirement that compensation should be paid every time a zoning change reduces the value of a property would create an untenable situation under which cities would either: (1) go bankrupt; or (2) be forced to relinquish their zoning power. Moreover, the reality is that most zoning changes are initiated by a property owner and *increase* the value of land.

Why Zoning Matters

A 2008 survey found that the three main things that "attached" people to their communities were: (1) social offerings, such as entertainment venues and places to meet; (2) openness (how welcoming a place is); and (3) the area's aesthetics (physical beauty and green spaces). Zoning facilitates each of those attributes by working to create and maintain healthy, attractive, livable, and prosperous communities.

Zoning Is Linked to Economic Development

A 2006 study on the effect of zoning on economic development in rural areas concluded that zoning facilitated, rather than impeded, economic development. The authors summarized the benefits of zoning to include: (1) predictability in land use for both business and residents; (2) the assurance that personal and commercial investments will be protected; (3) the ability to guide future development and prevent haphazard, harmful, or unwanted development; and (4) the minimization of potential conflict between industry and residents.

Zoning Is Linked to Tourism

Tourism generates billions of dollars in Texas. In discussing the role that a community's image plays in tourism one author explains that the more communities "come to look and feel just like everyplace else, the less reason there is to visit. On the other hand, the more a community does to enhance its uniqueness, the more people will want to visit. This is the reason why local land use planning and urban design standards are so important."

Sources: Gallup & John S. and James L. Knight Foundation, *Soul of the Community Survey* (2008), *available at*: https://knightfoundation.org/sotc.

Joy Wilkins et al., *Does Rural Land-use Planning and Zoning Enhance Local Economic Development?*, Economic Development Journal (Fall 2006), *available at* https://www.iedconline.org/web-pages/resources-publications/economic-development-journal-fall-2006.

Edward T. McMahon, *Responsible Tourism: How to Preserve the Goose that Lays the Golden Egg*, Virginia Town & City, 9 (May 2015), *available at*: https://www.vml.org/vol-50-no-4-may-2015.

KEEPING THE POWER ON: CITIES AND ELECTRICITY

Cities have various interests relating to how they and their citizens get electric service, how cities with municipally-owned electric utilities provide service, and the prices that everyone pays for electricity. Cities also receive franchise fees from utilities that use their rights-of-way, and they have original jurisdiction over the rates of investor owned utilities in their cities.

How electricity is provided in Texas is complex and based on many moving parts in an always-changing puzzle. The following questions and answers provide a "primer" on the issues facing cities in this area.

Note: See the section in this magazine issue titled "Cities Refuse to Accept Utility Rate Hikes Without a Fight" to learn more about how cities without their own electric utility keep rates reasonable for their citizens.

What are the different ways that cities and their citizens get their electricity?

Cities and their citizens generally get their electricity in one of three ways: (1) from a municipally-owned utility (MOU); (2) from an investor-owned utility (IOU); or (3) from a rural electric cooperative (Coop). Each of those providers usually has a monopoly in the areas they serve, based on a certificate from the Texas Public Utility Commission (PUC). (Note: a few areas of the state are served by river authorities and municipal power agencies. Also, with regard to an IOU, only the transmission and distribution component discussed below has a geographical monopoly in the deregulated market.)

After deregulation, MOUs and Coops retain that monopoly status, unless they choose—by a vote of their governing body—to adopt customer choice. The reasons for allowing MOUs and Coops discretion to retain their monopoly status are many, but one of the most important is that MOU and Coop rates are governed by a city council or board of directors—the members of which are elected by the customers. The city council or board of directors is therefore directly accountable to the customers they serve.

IOUs are also governed by a board of directors, but they are accountable to their shareholders, rather than their customers. The rates of investor-owned transmission and distribution utility (discussed below) are regulated by the PUC in a way that should—in theory—cover costs of operation and allow for a reasonable profit.

What is electric deregulation, and why should city officials care?

In 1999, legislation was enacted to deregulate the portion of the state that is served by IOUs. MOUs and Coops are given the option to participate in the deregulated market by "opting in" to competition. However, to date no MOU has opted in.

Prior to deregulation being fully implemented in 2002, a single IOU performed all of the things necessary to provide service to customers within its designated service area. In simple terms, the legislation "broke up" or "unbundled" IOU monopolies. Those utilities were divided up into different components: generation, transmission and distribution, and retail service. Some utilities sold one or two of those parts of their business, while others created subsidiary companies to run them.

Generation companies make the power with power plants, wind farms, and other means. Transmission and distribution companies move the power from the generators to other parts of the state with huge transmission lines, and ultimately distribute it to the customers through smaller distribution lines.

While the generation and retail portions of the market are now deregulated, the rates of transmission and distribution utilities are still regulated by cities and the PUC. That is necessary because the companies that generate power must have a reliable way to get that power to the retail companies that actually sell the power to customers.

The numerous retail companies essentially speculate how much generation will cost them. They then offer price plans to consumers accordingly. They are the ones with which customers in a deregulated area interact. Customers can switch retail companies to try to get the best possible rate.

Certain areas of the state—including the Panhandle, El Paso, and certain areas in the northeast and southeast portions of the state—are served by IOUs, but have not been deregulated. Those areas are not a part of the main transmission grid in Texas, so deregulation is impractical.

Whether deregulation has been beneficial to cities and their citizens remains the subject of heated debate. One thing is certain: deregulation has changed the way cities in the deregulated market purchase power for city facilities. One of the ways cities and other political subdivisions do that is by a process called aggregation. Aggregation means just what it says: cities join together or "aggregate" to purchase energy at a better price than they could obtain themselves. (Note: state law also authorizes citizens to aggregate, but the logistics of that process have made it all but useless. Previous legislative efforts to allow cities to automatically bundle-up their citizens and negotiate on the citizens' behalf have failed.) The most well-known aggregation group is called the Texas Coalition for Affordable Power, which represents more than 100 cities.

Why aren't MOUs opting into the deregulated market?

Even though they are not required to do so, MOUs have the discretion to opt in to the deregulated market. Many state leaders continue to applaud the Texas deregulated market as one that has created lower prices. That is questionable for a number of reasons. It would also appear that MOUs aren't convinced, and that their citizens prefer the consistently lower prices and better service that they provide. It's a case of "if it ain't broke, don't fix it." MOUs can wait and see if opting into deregulation would really benefit their customers. Also, an MOU that opts in is essentially stuck with that decision. Further, opting into competition would require an MOU to undertake the complex and expensive process of breaking up its service into the three components of the deregulated market (generation, transmission and distribution, and retail).

What are recent criticisms levied against MOUs?

Some MOUs have been recently criticized for transferring some of their profits to the city's general fund. Interestingly, even larger cities that transfer large amounts of revenue have electric rates that are comparable to, or lower than, IOUs serving the deregulated market.

In addition, cities may or may not charge their MOUs franchise fees for the use of the city's rights-of-way. Thus, the transfer is often analogous to a franchise payment that the city would receive from an IOU that uses the city's rights-of-way. In any case, it is currently up to each city's council to decide how to handle transfers. Another way to look at transfers is that they are very similar to the return on investment that IOUs give back to their shareholders. But in the case of an MOU, the "shareholders" are the taxpayers of the city. Transferred revenue is used to pay for services (police, fire, EMS, and streets) that are used by the customers of the MOU. The transferred revenue is used to keep property tax rates low, which benefits the taxpayers served by the MOU.

What are electric franchise fees?

Electric franchise fees are fees paid by IOUs or Coops (and in some cases, MOUs that provide service in other cities) that use a city's rights-of-way to provide service. Some argue that franchise fees of any type are a "hidden tax" on utility service. Of course, the municipal position is that the fees are authorized by state law. In fact, the Texas Constitution prohibits a city from giving away anything of value (for example, the use of city property) to a private entity. Thus, the city position is that the fees are nothing more than "rental" payments for the use of city property. ★

CITIES REFUSE TO ACCEPT UTILITY RATE HIKES WITHOUT A FIGHT

Texas cities have a long history of participation in the ratemaking process for both gas and electric utilities in the State of Texas. Prior to the enactment of the Public Utility Regulatory Act (PURA) in 1975 and the Gas Utility Regulatory Act (GURA) in 1983, utility rates were set exclusively at the city level, with any appeals of municipal rate ordinances decided in the courts.

Currently, under PURA and GURA, cities have original jurisdiction over the utility rates within their city limits. This means that the Railroad Commission (RRC) and the Public Utility Commission (PUC) have original jurisdiction over gas and electric rates in service areas outside city limits and also within the city limits of those cities that have ceded their original jurisdiction to the agency. In addition, the PUC and RRC have appellate jurisdiction over rate ordinances and orders of cities concerning electric and gas utility service within a city's limits.

Recognizing the important role that cities play in the regulation of utilities, hundreds of cities across the state participate in ratemaking proceedings at both the PUC and RRC in order to ensure fair, just, and reasonable rates, as well as adequate and efficient services for the city and its residents.

Historically, cities have formed coalitions to represent the collective interests of cities and their citizens before the regulatory agencies and courts. By forming coalitions, cities have been able to present a strong voice for consumers for more than 30 years. This has served to reduce the costs that cities and their residents pay for electric and gas service. Cities' active participation in rate cases demonstrates their concern for reliability, quality of service, and the prices their citizens pay for gas and electricity. In numerous instances, without city participation, rate increases would have gone into effect without any party scrutinizing the utility's application.

Both PURA and GURA allow cities to be reimbursed by the utility company for their reasonable rate case expenses associated with participation in ratemaking proceedings. In providing for the reimbursement of rate case expenses in the statutes, the Texas Legislature has acknowledged the important role that cities play in protecting citizens from unreasonable utility costs. Because utility companies ultimately pass these expenses on to consumers, cities are always cost-conscious. Cities must balance the cost of participation in a ratemaking proceeding against the need to protect their residents' interests. In prior cases, however, municipal participation has resulted in a net savings for ratepayers because the utility's rate increase was reduced by an amount far in excess of the expenses incurred by the cities. Cities' participation in utility ratemaking proceedings has proven time and again to be a good value for consumers. ★

City coalitions have found expenses like these, which utilities tried to pass on to customers:

- Hotel expenses of nearly $1,000 per night for executives to stay at a New York City hotel
- Tens of thousands of dollars' worth of art for the utility's office
- Dinners in New York City, Dallas, and Philadelphia restaurants costing more than $200 per person
- More than $1.5 million in employee "financial incentives"

A private, investor-owned utility is allowed to incur expenses like those listed above, but the company itself (i.e. its shareholders), not the utility customers it serves, should pay for those costs. It's unreasonable to ask to raise customer rates to cover these kinds of expenses, and cities are the first line of defense against such requests.

THRIVING LIBRARIES REFLECT THRIVING CITIES

"Libraries allow children to ask questions about the world and find the answers. And the wonderful thing is that once a child learns to use a library, the doors to learning are always open."
Laura Bush

The Texas State Library and Archives Commission's (TSLAC) Current Library Directory lists 550 public libraries and 340 branches and bookmobiles in Texas. Taxpayers consistently give public libraries – both city and county – a high rank among community services.

Libraries impact the local economy and workforce development. In a 2008 public opinion survey, conducted on behalf of the Texas Library Association (TLA), 83 percent of Texas voters believed that public libraries support the economy through job skills training, career and job information, and resources for local businesses. A recent study conducted for the TSLAC documented various specific examples of libraries (1) enabling businesses and self-employed individuals to improve their economic activities; (2) assisting individuals to obtain employment; and (3) providing

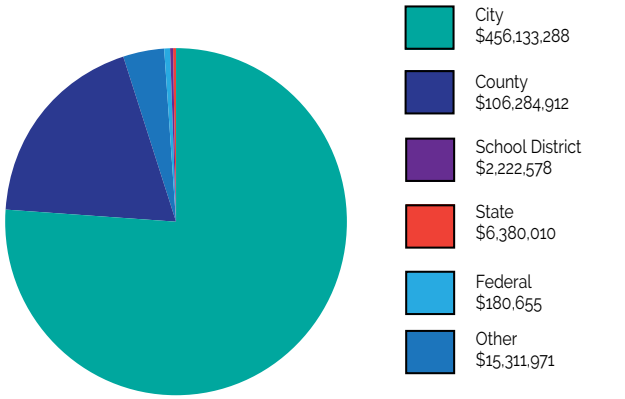
educational and occupational programs that meet the needs of Texas communities and regions. Additionally, some businesses—particularly those requiring a highly skilled workforce—look to the city's library as a barometer of local commitment to workforce readiness.

Libraries impact literacy and education. Public library patrons include preschoolers, afterschoolers, homeschoolers, distance learners, and researchers. Through story time hours, reading programs, ESL classes, and other local services, libraries represent the public's bridge to structured educational campuses. The 2008 TLA public opinion poll found that Texas voters were nearly unanimous in their belief that public libraries create educational opportunities for all citizens (97 percent agreed).

Libraries impact communities. Communities value their city libraries as centers of information and learning and a gathering point for ideas and discussion. The 2008 TLA public opinion survey found that 95 percent of Texas voters believed that public libraries improve the quality of life in their community. Approximately 75 percent of public libraries serve communities smaller than 25,000 in population. In small Texas cities, the library may be the only community gathering place.

As shown in the accompanying chart, cities are the largest source of income for public libraries in Texas. ★

Texas Public Libraries: 2019 Revenue by Source



Total = $586,513,414

Source: Texas State Library and Archives Commission, Texas Public Library Statistics, Statewide Comparison Statistics: 1997 to 2019

Texas Public Libraries: A Great Investment

A study found that, in 2015, Texas public libraries collectively provided $2.628 billion in economic benefits while costing $566 million. That is a return of $4.64 for each dollar invested. This chart from the study shows how Texas compares to some other cities, counties, and states:

JURSDICTION	YEAR	RETURN ON THE DOLLOR
STATES		
Minnesota	FY2010	$4.62
COUNTIES		
Salt Lake County, UT	2012	$5.47-$6.07
Santa Clara County, CA	2012	$2.50-$5.17
Toledo Lucas County, OH	2015	$3.87
CITIES		
Toronto	2012	$4.63
TEXAS	FY2015	$4.64

Table 4.2. Return on Investment in Recent Reports
Texas voters get it! In a 2008 public opinion survey, 94 percent of Texas voters agreed that public libraries are a good value for the tax dollar.

Sources: Jan. 2017, Texas Public Libraries: Economic Benefits and Return on Investment, Prepared for TSLAC by Bureau of Business Research, IC2 Institute, Univ. of Tex. at Austin.
Fall 2008, KRC Public Opinion Survey conducted on behalf of the Texas Library Association

Did you know Americans are happier in states that spend more on "public goods" such as libraries?

In a study published in 2019 in the journal *Social Science Research,* Dr. Patrick Flavin of Baylor University found that Americans are happier in states where governments spend more on things that you can't exclude people from using ("public goods"). He found another benefit of spending money on public goods is that such amenities generally boost home values.

Baylor University. "Americans are happier in states that spend more on libraries, parks and highways: Such 'public goods' also are less likely to spark political conflict." ScienceDaily. ScienceDaily, 7 January 2019. www.sciencedaily.com/releases/2019/01/190107075713.htm

TEXANS KEEP HEALTHY IN CITY PARKS

City parks are the front line in the battle of the bulge, and they help keep Texans feeling their best at home and while away. Texas cities face obstacles in promoting fitness, such as extreme weather, modern lifestyles, and funding challenges. In 2018, WalletHub included several Texas cities on the nation's fattest cities list. The magazine ranked the nation's 100 largest cities by considering various factors—such percentage of obese adults, availability of parks and recreation facilities, fruit and vegetable consumption, and high cholesterol percentages—when ranking city health and fitness.

Texas cities provide programs that improve the quality of life for individual participants and the overall community. All Texans, including youth and seniors, benefit from the opportunity to increase their health and reduce stress. Opportunities to build partnerships, enhance diversity, and learn tolerance through teamwork strengthen communities.

Several studies emphasize the importance of park access. Youth with access to places for physical activity are less likely to be overweight or obese, and individuals who live closer to parks use them more frequently than those who

live farther away. Further, evidence also suggests that using recreation facilities and parks may lead to healthy lifestyle choices such as alternative modes of transport like biking or walking.

According to the American Planning Association, there is evidence that when cities provide parks, it can make communities safer. City parks encourage youth to step away from their televisions and computer games for real social interaction while playing basketball, softball, soccer, gymnastics, or simply enjoying sunshine and wildflowers.

City parks provide outdoor recreation resources such as pools, softball fields, and Frisbee golf courses. Cities also provide indoor recreation activities for sports, arts, and nature programs. While most cities have hiking trails, some cities are investing in new interests such as dog parks and skate parks. Many cities even provide classes to encourage hobbies and various self-help classes such as income tax and language skills. ★

The Texas Economy Keeps Healthy in Local Parks – Figures from 2015

- $280.90 in economic activity was generated per person due to parks and recreation (24th in the United States).
- Local parks across the state supported 60,176 jobs (3rd in the United States).
- By adding the effects of operations and maintenance, capital spending, and tourism, a total gross impact can be derived. Across the state, the total impact of local parks leads to an addition to business activity including $7.715 billion in economic activity (3rd in the United States).
- The labor income to the state from local parks activity is approximately $2.9 billion per year (3rd in the United States).

Source: National Park and Recreation Association

The Role of Parks During the Pandemic

Parks and trails have always been a place for enjoyment and relaxation. However, the pandemic has highlighted their essential role in supporting physical and mental health.

The Centers for Disease Control and Prevention has flagged mental health as a top concern associated with the COVID-19 outbreak. Parks provide a connection to the outdoors and green space as well as opportunities for physical activity which studies demonstrate reduces stress and improves mental health. In fact, the shelter-in-place orders issued by Governor Greg Abbott early in the pandemic listed "visiting parks, hunting or fishing, or engaging in physical activity like jogging or bicycling" as essential daily activities, meaning that people were not prohibited from engaging in these activities (so long as facilities were open and safety precautions were followed).

Whether local, state, or national parks, there has been a premium on open spaces where people can recreate safely while maintaining distance from those outside of their immediate household. More than 190 million people in the United States went to parks, trails, or open space during the first three months of the pandemic. In May 2020, two in three park and recreation leaders reported increased usage of their agency's parks compared to the same time last year (with a median rise of 25 percent), while more than 80 percent report increased usage of their trails (with a median rise of 35 percent).

Sources: Joint Statement on Using Parks and Open Space While Maintaining Physical Distancing (March 18, 2020); 2020 NPRA Engagement with Parks Report; NPRA Parks Snapshot May 2020

INVESTING IN TOMORROW'S LEADERS:
CITY GOVERNMENTS INVOLVE YOUTH

Many Texas cities have created special programs to engage and involve youth. These programs can take many different forms—from presentations at local schools, to special recognition programs; mentoring or internship programs, to formal youth advisory commissions. At the heart of these programs is a desire to educate youth on the mechanics of city government, provide an outlet for youth to voice their ideas and concerns, and make sure that the city is nurturing their future leaders.

Some of the most comprehensive youth programs are formal youth advisory commissions (YACs). YACs are often authorized by city ordinance; have a well-defined mission statement, bylaws, and application process; and meet regularly. YAC commissioners participate in community service projects, provide input to city staff and elected officials on city policy matters, develop and organize youth activities, and serve as role models to their peers.

City officials know that, whatever the format, developing relationships with the city's youth is an investment in tomorrow's leaders and in the city's future. ★

THE TEXAS MUNICIPAL RETIREMENT SYSTEM: PROVEN SUCCESS

Many states around the country are faced with huge deficits in public worker pension plans. That has prompted lawmakers in those states to seek large-scale reforms in their retirement systems. Over the last few years, many states have undertaken major efforts to address those deficits by converting public pensions from defined benefit to defined contribution plans, which are similar to a 401(k). As those funding crises across the country continue, the drumbeat for "reform" in Texas pensions will continue to grow louder.

In Texas, the Texas Municipal Retirement System (TMRS) is responsible for the administration of a majority of city retirement plans covering both public safety and civilian city employees. The system is made up of 888 member cities, 180,000 contributing members, and 70,000 annuitants.

TMRS has taken great strides in recent sessions to make improvements in the system that provide retirement benefits to a majority of Texas city employees. The reforms have stabilized benefits and lowered city contribution rates, while ultimately using fewer tax dollars to fund pensions. They will also require training by pension system employees.

There are numerous reasons why TMRS has been so successful. TMRS relies on an advisory board of 12 members, including TMRS retirees, elected officials, pension experts, as well as representatives from both labor and employer groups. This advisory group thoroughly vets all legislative proposals while moving forward only with those that have consensus. The unified front during session provides for easy passage of the needed reforms.

TMRS has proven to be a well-funded model for pensions around the country. It should not be included in discussion about other, improperly funded pensions. ★

ADVOCACY IS VITAL

The Texas 87th Legislative Session began on January 12, 2021. Before, during, and after the session, League staff works directly with legislators on items of municipal interest. However, our influence is directly affected by your city's efforts to be heard. Help your city plan an active and consistent role in the League's legislative effort.

Stay Well Informed

The League provides several ways for members to stay informed about legislative issues. The *Legislative Update* is the primary legislative communication between the League and its members. It is sent electronically as part of the *TML Exchange* email to member city officials on Fridays.

The legislative portion of the League website (www.tml.org; click on "Policy" and then "Legislative Information") is another important information source. There you will find a link to the current issue of the *Legislative Update* newsletter, as well as an index to past issues of the newsletter, summaries of legislative hot topics, and the League's legislative program.

The 2021 legislative session will address many issues that will involve Texas cities and their ability to meet citizen demands for services. The League's best advocates for protection of municipal authority are its members—elected and appointed officials from cities of all sizes and geographic areas. TML needs your participation.

Contact Legislators Early and Often

Your legislators need to hear from you, or they're forced to make decisions on local government issues without fully appreciating the impact they will have on cities in their district. Meet formally at least once a year prior to the session to review key issues. Ask if phone calls, emails, letters, or personal contact works best for them during the session. Encourage your legislators to work with League staff, too.

Keep the League Informed

The League advocacy team includes Director of Grassroots and Legislative Services Monty Wynn, Legislative Counsel Bill Longley, Grassroots and Legislative Services Manager JJ Rocha, and **you**. Always send copies of your correspondence to and from legislators to the League. League staff can work more effectively with your legislators when we know what you've said and received in return. It also allows us to incorporate your local circumstances into our commentary. Emails can be forwarded to legislative@tml.org.

Stick to It

It's a fact of life in public policy that things take time. Your consistent participation in the legislative process is essential to long-term success. ★

The League Leads Advocacy Efforts.

One of the primary functions of the League is to unify cities and speak as the voice for city government in Texas. Each legislative session, the League staff works with city officials to educate state legislators about the needs of Texas cities.

Calendar of 2021 Legislative Session

January 12
First day of 87th Regular Session

January 14
TML Webinar - Legislative Preview *

March 11
TML Webinar - Legislative Status Report #1 *

March 12
Deadline for filing bills

April 8
TML Webinar—Legislative Status Report #2 *

May 6
TML Webinar—Legislative Status Report #3 *

May 31
Last day of 87th Regular Session

June 21
Onsite Workshop—Legislative Wrap-Up—Austin *

* Register your city to participate in these essential updates on key legislative actions at https://tmllegislativeseries.org.

ABOUT

TML TEXAS MUNICIPAL LEAGUE

Empowering Texas cities to serve their citizens

Whether you are a city government novice or veteran, the Texas Municipal League (TML) has the resources, tools, and training to help you succeed in your leadership role.

Since its formation in 1913 by 14 cities, the League's mission has remained constant – to serve the needs and advocate the interests of its member cities.

Today, TML serves more than 1,150 member cities. That means about 16,000 mayors, councilmembers, city managers, city attorneys, and city department heads are member officials through their cities' participation.

How Is TML Organized?

TML has 15 regions that were formed in 1958 and are the League's grassroots. Regions work to foster the exchange of information among cities and help the TML Board of Directors develop policy that represents the state's diverse interests. Each region elects officers, including a representative who serves on the TML Board, and conducts meetings at least twice each year.

The League also has 21 affiliate organizations that represent specific professional disciplines in municipal government. For example, the Texas City Management Association (TCMA) is the professional association for city managers in Texas. TCMA is its own association, as well as a TML affiliate with a representative on the TML Board. Each affiliate group has its own membership criteria and dues structure that is separate from the League's.

TML is governed by a board of directors composed of a representative from each of the 15 regions, a representative from each of the 21 affiliate organizations, eight at-large directors (one from each of the state's largest cities), past TML presidents still in municipal office, a president and a president-elect, and two ex officio directors from the TML health and risk pools.

The Board appoints an executive director to manage the affairs of the League under the Board's general direction. Bennett Sandlin is the current executive director and has been serving in this role since October 2010.

TML employs a staff of 32 full-time employees and has seven departments: Administrative Services, Affiliate Services, Business Development, Communications and Training, Grassroots and Legislative Services, and Member Services.

What Does TML Do?

Legislative Advocacy

One of the principle purposes of the League is to advance and represent the interests of Texas cities at the state and federal levels.

The Texas Legislature meets for 140 days each odd-numbered year and meets frequently in special "called" sessions. There are hundreds of bills that adversely impact cities among the thousands of bills introduced each legislative session. Most would erode the authority of Texas cities to govern their own affairs or impose mandates that do not provide a commensurate level of compensation.

The League makes every effort to assure that bad-for-city bills are defeated and bills that help cities operate more effectively are passed.

Through the years, thousands of proposals that would have undermined city government have been defeated. The League's legislative track record is one of unparalleled success.

Policy Development Process

Protecting the interest of Texas cities during each legislative session requires considerable planning to establish legislative priorities. While the TML legislative philosophy is based on protecting the ability of cities to govern their own local affairs, positions must be taken on dozens of issues that affect cities.

The process of adopting positions on legislation begins a full year before the regular legislative session convenes. In non-legislative years, the TML president appoints delegates to a two-day Legislative Policy Summit, where attendees deliberate and make policy recommendations.

The final report of the policy summit and any resolutions submitted by the general membership are then considered by the TML general membership at the annual business meeting held during the annual conference. Finally, the TML Board adopts a legislative program based on these approved resolutions.

The League uses this process to determine which issues are most important to Texas cities and how best to allocate its legislative resources.

Legal Services

The League employs full-time attorneys who are available to provide legal information on municipal issues to member cities, as well as example documents to assist cities in drafting ordinances and other required legal notices. The legal staff provides cities with information on changes in federal and state laws and regulations, as well as city-related developments in the courts. During legislative sessions, the legal staff is frequently called on to provide testimony to legislative committees on a variety of city issues.

In addition, the legal staff is available to deliver workshops on a variety of legal subjects to small cities' problem-solving clinics, affiliate organizations, and regional groups.

Information and Research

One of the main reasons that TML was formed back in 1913 was to provide information to member cities. Today, this remains an important service. TML staff has information on virtually every topic affecting Texas cities and can be reached by email, telephone, or regular mail.

The League offers several publications, most notably *Texas Town & City* magazine, *Legislative Update*, and the *Handbook for Mayors and Councilmembers,* to keep members informed on emerging municipal issues. In addition, the League provides issue papers on a variety of municipal issues and maintains research files that facilitate services to member officials.

TML also sends out several annual surveys that collect information on salaries, water and wastewater rates, taxation and debt levels, and general fiscal conditions.

Conferences and Training

TML conducts a variety of conferences, workshops, and webinars to enhance the knowledge and skills of municipal officials.

The TML Annual Conference and Exhibition is one of the nation's largest gatherings of city officials. The 2021 Annual Conference will be held October 6-8 in Houston. In addition to keynote sessions, workshops, and the annual business meeting, the conference features an impressive exhibit hall with more than 350 companies representing products and services that benefit Texas cities.

The League also offers training opportunities designed specifically for elected officials. The Elected Officials' Conference, co-hosted by TML and the Texas Association of Mayors, Councilmembers and Commissioners, will be held in San Antonio on March 17-19, 2021 (circumstances allowing). This event focuses on key issues for newly elected and veteran city officials on topics like economic development, media relations, infrastructure, citizen engagement, revenue sources, government trends, and leadership.

In addition, TML holds several Newly Elected City Officials' Orientations each year. The 2021 summer orientations will be held July 29-30 in San Antonio and August 12-13 in Bastrop. A winter workshop will take place in January 2022. These events offer training on the basics of serving on the governing body, and provide an overview on city regulation, financial oversight responsibilities, ethical governance, council-staff relations, economic development, the Texas Open Meetings Act, and more.

TML conducts other timely workshops and webinars for both elected and appointed officials throughout the year, including the Economic Development Conference, Public Funds Investment Act Training, Budget and Tax Rate Workshops, Leadership Academy, Small Cities' Problem-Solving Clinics, and the

TML AFFILIATES

American Planning Association Texas Chapter (APATX)

Association of Hispanic Municipal Officials (AHMO)

Building Officials Association of Texas (BOAT)

Government Finance Officers Association of Texas (GFOAT)

Texas Association of Black City Council Members (TABCCM)

Texas Association of Governmental Information Technology Managers (TAGITM)

Texas Association of Mayors, Councilmembers and Commissioners (TAMCC)

Texas Association of Municipal Health Officials (TAMHO)

Texas Association of Municipal Information Officers (TAMIO)

Texas Chapter of American Public Works Association (Texas Chapter of APWA)

Texas City Attorneys Association (TCAA)

Texas City Management Association (TCMA)

Texas Court Clerks Association (TCCA)

Texas Fire Chiefs Association (TFCA)

Texas Municipal Clerks Association, Inc. (TMCA)

Texas Municipal Human Resources Association (TMHRA)

Texas Municipal Library Directors Association (TMLDA)

Texas Municipal Utilities Association (TMUA)

Texas Police Chiefs Association (TPCA)

Texas Public Purchasing Association (TxPPA)

Texas Recreation and Park Society (TRAPS)

TML REGIONS

Region 2 Amarillo Area

Region 3 Caprock – Lubbock Area

Region 4 Permian Basin Region – Odessa Area

Region 5 Red River Valley – Wichita Falls Area

Region 6 Hub of Texas – Abilene Area

Region 7 Alamo Region – San Antonio Area

Region 8 Where the West Begins – Fort Worth Area

Region 9 Heart of Texas Region – Waco Area

Region 10 Highland Lakes Region – Austin Area

Region 11 Coastal Bend Region – Corpus Christi Area

Region 12 Lower Rio Grande Valley – Rio Grande Valley Area

Region 13 North Central Texas Region – Dallas Area

Region 14 San Jacinto Region – Houston Area

Region 15 Tyler-Longview Area

Region 16 Golden Pine and Oil Region – Beaumont-Lufkin Area

Legislative Series.

Federal Representation

Through its membership in the National League of Cities, the Southern Municipal Conference, and other similar organizations, TML has a voice in Washington, D.C. working with these groups to ensure that Texas cities are heard in congressional offices and in the headquarters of various federal agencies.

Business Development

Working through the League's Business Development Department, TML connects cities with products, services, and solutions offered by the private sector. Engaging the participation of event sponsors, exhibitors, and advertisers, also helps TML provide essential and affordable programs and services to member city officials.

Health and Risk Pools

For more than 40 years, the TML health and risk pools have provided Texas cities with quality coverage specifically designed to meet municipal needs. These pools are separate entities, but maintain a close working relationship with TML.

Benefit coverage for municipal employees and their families has become a major expense item in virtually every city budget. Cities throughout the state are holding the line on these costs by participating in the TML Health Benefits Pool (TML Health).

The TML Intergovernmental Risk Pool (TMLIRP) works to reduce the cost of property and casualty risks in Texas cities. In addition to providing a stable risk financing system, the TMLIRP offers education to its members to avoid and reduce risks, control losses, and stay informed on other aspects of risk management.

The League Today

TML is committed to helping city leaders in Texas meet today's governing challenges. The League prides itself on 108 years of service to Texas cities, and looks forward to providing the resources, knowledge, and advocacy to support city officials into the future. ★

EVERY CRISIS BRINGS OPPORTUNITIES

By **Mary Kelly**, PhD, CSP, CDR, U.S. Navy (ret),
Leadership Speaker and Author

During every crisis, there are always opportunities. Most of those opportunities can be found in one of five buckets.

People – With a sizeable number of people currently unemployed in the United States, now is a great time to hire the right talent, adequately train them, develop them for future opportunities, and ultimately, plan on promoting them. For most organizations, people are our number one asset.

Training – It is difficult to think about spending money on training when every expenditure is being closely examined. However, especially in this new environment, people need quality training to stay current in their field and continue to do great work. Ideally, training should be interesting, engaging, helpful, timely, and focused on helping people develop personally and professionally. During times of crisis, training is often one of the first budget cuts. As of this writing, many major airlines are trying to decide whether or not they furlough pilots. The problem with laying people off is that there is no guarantee you'll get them back. In the case of an airline, bringing a pilot back involves a whole series of trainings. It is time intensive for the staff and there are only certain available simulators. Not keeping up with quality training may be more expensive in the long run.

Process Improvement – During times of crisis, we have to make sure that we are looking hard at every step of what it is we do. The United States had such good economic progress over the past 10 years that it allowed some businesses to be complacent. Companies were stuck in status quo because status quo was frankly, pretty darn good. But now, every business is being critically examined. We have to look at how we can be more effective, more efficient, and more responsive to our partners, suppliers, and customers.

Asking questions like:

- What do we need to stop doing because it doesn't really matter?
- What can we simplify or streamline?
- What part of our strategy needs to change so that we are maximizing our people's time and our resources?

Resources – In every recession, leaders have to carefully look at their available resources and make tough decisions. Resources are generally defined as land, labor, capital, human capital, and entrepreneurship.

Some leaders have had to make the difficult decision to furlough quality workers simply because business is down. Making tough decisions is part of a leader's job, but the complexity is compounded by the vast amount of uncertainty. Leaders have to look at available resources and think about where they realign, reallocate, redesign, repurpose, or retool what is available.

Technology – Winston Churchill once said, "never let a good crisis go to waste." Tough times are also times of innovation, technological advancement, and developing new skill sets. This is a time of forced acceleration and implementation of technology. Leaders need to look at what they can automate, innovate, or create that will make them unique and give them a competitive advantage.

How can leaders stay focused and strategic when they are also having to support other team members, be responsive to their customers, and care for their families?

1. Prioritize what needs to be done and identify the problems that have to be solved first.
2. Break down large tasks. People need quicker wins, so making jobs seem easier will give people a sense of accomplishment.
3. Praise people for their efforts. Reward results.
4. Keep people accountable by creating deadlines and reminding people of those due dates.
5. Clarify roles and responsibilities so that people are not confused on what they need to do to be successful.
6. Communicate more than you think the team needs. During times of stress, people don't always hear or read everything. Communicate, communicate, and communicate more.
   Keep a positive attitude! The attitude of a leader is contagious, so stay positive and focus on the future.

Leadership is important. Now more than ever. ★

Commander/Doctor Mary Kelly is leadership advisor and strategist. Mary is found at Mary@ProductiveLeaders.com.

INSTAGRAM HIGHLIGHTS ★ CELEBRATING CITIES

@beltontxparks
This past year has been a challenging one for our department. One thing that has remained unchanged is our commitment to maintaining exceptional parks and trails for our community. More than ever, residents need parks and trails for the sake of their mental and physical health. We encourage all of you to take advantage of the respite that a visit to a park can provide.

#beltontx #lovemybelton #mytexascity #citiesprovide

#MyTexasCity
#CitiesProvide

@tml_texas

SHOWCASE YOUR CITY

Do you want to see your city highlighted here? It's easy! You can get involved and share photos a few different ways!

- Tag us on Instagram @TML_Texas
- Use the hashtags #MyTexasCity and #CitiesProvide

@visitcctexas
We're thankful for our local art community and the public art found all around the city What's your go-to mural to snap a pic in front of in Corpus Christi?

Photo credit: **@a_sirio**
Artist credit: **@thedaskone**

Available for a Limited Time...

www.tmlconference.org

Explore this interactive gallery of municipal services, products, and resources designed specifically for the Texas city official.

Marketplace browsing is **FREE** and open to all Texas cities **through January 2021**.

Visit the Marketplace Today!

REVENUE MANUAL FOR TEXAS CITIES

This manual covers nearly every known source of revenue available to Texas cities. The material is presented in a simple question-and-answer format. Many of the questions and answers presented come directly from questions routinely received by the TML Legal Department.

The manual is organized alphabetically by type of revenue. Within each section, very basic questions are addressed first: what is this revenue source; how is it adopted; which types of cities can adopt it; how much can it generate; etc. Accordingly, the manual should be useful to city officials and staff first as a source of new revenue ideas, and then as a basic how-to guide for each source of revenue. Extensive footnotes citing the location of each revenue source within Texas law should make the manual useful to city attorneys, as well.

Because debt must ultimately be repaid by a city, it isn't a source of revenue in the conventional sense. Nevertheless, this manual covers the basics related to various sources of debt funding or financing.

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ALCOHOLIC BEVERAGE TAX

May cities tax alcoholic beverages?

Not directly. Cities must have statutory authority to levy taxes, and no such authority is provided under state law for direct taxation of alcoholic beverages (other than general application of sales taxes). Further, alcoholic beverages are highly regulated under the Texas Alcoholic Beverage Code. Any effort by a city to rely on general health and safety authority, or home rule charter authority, to directly tax alcohol would likely be preempted by state law.

Nevertheless, cities receive a share of one of the state's taxes on alcohol, namely the mixed beverage gross receipts tax and the mixed beverage sales tax. Prior to the 2013 legislative session cities received a percentage of the statewide 14 percent tax on mixed beverage gross receipts. Legislation passed in 2013 lowered the total mixed beverage gross receipts tax rate to 6.7 percent. The same legislation established a mixed beverage sales tax at a rate of 8.25 percent, of which cities get the same percentage as the gross receipts tax on mixed beverages. The Texas Tax Code instructs the comptroller to quarterly issue a warrant drawn on general revenue to each incorporated city in which mixed beverage taxes are levied by the state. The warrant shall be in an amount not less than 10.7143 percent of the total amount of revenue from the mixed gross receipts tax and mixed beverage sales tax within the incorporated municipality.[1]

What are mixed beverages, and how are they taxed by the state (and thus a portion passed on to cities)?

The Alcoholic Beverage Code defines "mixed beverages" as follows:

> "Mixed beverage" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit, the holder of certain nonprofit entity temporary event permits, the holder of a private club registration permit, or the holder of certain retailer late hours certificates.[2]

The key phrase in the definition above is "for consumption on the premises where served or sold…" Thus, the two mixed beverage taxes tend to apply only to alcoholic drinks served at bars and restaurants, and not to alcohol sold at stores.

[1] TEX. TAX CODE § 183.051(b).
[2] TEX. ALCO. BEV. CODE § 1.04.

Such mixed beverages (as well as ice and set-ups) are taxed by the state at a rate of 6.7 percent of gross receipts by the holder of the alcohol permit.[3] The city receives "no less" than a 10.7143 percent share of the 6.7 percent state tax.[4] That works out to roughly .72 percent of the total price.

In addition, a tax rate of 8.25 percent is imposed on each mixed beverage sold, prepared, or served by a permittee, including ice and set-ups.[5] Instead of the holder of the permit paying the tax, like with the mixed beverage gross receipts tax, the customer pays the mixed beverage sales tax. Also like with the mixed beverage gross receipts tax, the city receives no less than a 10.7143 percent share of the 8.25 percent tax.[6] That works out to roughly .88 percent of the total price.

Counties receive a similar portion as cities, and the remainder of the revenue from the two mixed beverage taxes goes to the state's general fund.

Does a city need to do anything to receive its share of the state's alcoholic beverage taxes?

No, the city's share is sent automatically by the comptroller. No ordinance or other action is required of the city.

Like sales taxes, there always exists the potential for misallocation of the city share of taxes due to improper records stemming from permit errors or city boundary confusion. Cities that believe they may not be receiving their proper share of the mixed beverage taxes should contact the mixed beverage division at the comptroller's office at 1-800-252-5555.

How much revenue does the city's share of the state alcoholic beverage tax generate for Texas cities?

As mentioned above, cities receive a 10.7143 percent share of the mixed beverage gross receipts tax, in addition to a 10.7143 percent share of the new 8.25 percent mixed beverage sales tax. In 2022, that amounted to $140.2 million in the aggregate for cities.

[3] TEX. TAX CODE § 183.021.
[4] Id. § 183.051(b).
[5] Id. § 183.041.
[6] Id. § 183.051(b).

ANTICIPATION NOTES

What are anticipation notes?

An anticipation note is a debt instrument that a city may sell to finance the construction of public works; the purchase of supplies, land, and rights-of-way for public works[7]; to pay professional services; to pay operating expenses; or to pay off cash flow deficits.[8] A city may not use proceeds of an anticipation note to repay interfund or other borrowing that occurred earlier than 24 months before the date of the ordinance or order authorizing the issuance of the note.[9]

What revenue sources may a city pledge to pay anticipation notes?

Anticipation notes can be paid from and secured by taxes, revenues (as from a utility), a combination of taxes and revenues, or the proceeds of bonds to be issued by the city.[10]

By what method may the city council issue anticipation notes?

The city council must adopt an ordinance to authorize the issuance of anticipation notes.[11]

Are anticipation notes subject to attorney general approval?

Yes. All public securities, unless specifically excepted, must receive attorney general approval.[12]

What's the advantage of anticipation notes over bonds?

Unlike bonds, nothing in Chapter 1431 of the Texas Government Code, which authorizes anticipation notes, requires an election of the citizens to issue anticipation notes.

What's a disadvantage of anticipation notes relative to bonds?

Anticipation notes used to pay for public works or professional services must mature before the seventh anniversary after the notes are approved by the attorney general.[13] Anticipation notes used

[7] "Public work" is defined in TEX. GOVT' CODE § 271.043 (7-a)
[8] TEX. GOV'T CODE § 1431.004(a).
[9] Id. § 1431.005.
[10] Id. § 1431.007.
[11] Id. § 1431.002(b).
[12] Id. § 1202.003.
[13] Id. § 1431.009(a).

to pay operating expenses or to fund a city's cumulative cash flow deficit must mature before the first anniversary after the notes are approved by the attorney general.[14] Bonds, on the other hand, are permitted to take decades to mature in many cases.

Also, the relative informality and lack of some safeguards that anticipation notes possess mean that a city will likely pay a higher interest rate for anticipation notes than it would for traditional bonds.

How does a city sell its anticipation notes, thus raising the needed funds?

Anticipation notes are sold by the city council at a public or private sale for cash.[15]

Can anticipation notes be used for emergency financing?

A city located within 70 miles of the Gulf of Mexico or of a bay or inlet of the gulf may authorize the issuance of an anticipation note or other obligation in the event of widespread or severe damage, injury, or loss of life or property in a city resulting from a hurricane or tropical storm.[16] Following the emergency authorization of an anticipation note or other obligation, the city must submit to the attorney general for expedited review a transcript of proceedings related to the debt issuance.[17] Anticipation notes issued under these emergency provision must mature before the 10th anniversary of the date the attorney general approved the note or other obligation.

ASSET FORFEITURE FUNDS

What is asset forfeiture?

Chapter 59 of the Code of Criminal Procedure allows for police seizure and forfeiture of property used in the commission of certain crimes as well as proceeds gained from said criminal activity. After seizure, the district attorney may, by agreement, distribute property and funds to local law enforcement agencies to be used for authorized purposes.[18] State statute provides, in pertinent part:

> If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited…according to the terms of the agreement into one or more of the following funds…

[14] Id. § 1431.009(c).
[15] Id. § 1431.010.
[16] Id. § 1431.015.
[17] Id. § 1431.017.
[18] TEX. CRIM. PROC. CODE §§ 59.01and 59.06.

> (2) **a special fund in the municipal treasury** if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes[.][19]

How can a city spend asset forfeiture funds?

"Law enforcement purposes" are defined as "an activity of a law enforcement agency that relates to the criminal and civil enforcement of the laws of this state" and specifically include:

(1) equipment, including vehicles, computers, firearms, protective body armor, furniture, software, uniforms, and maintenance equipment;
(2) supplies, including office supplies, mobile phone and data account fees for employees, and Internet services;
(3) investigative and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;
(4) conferences and training expenses, including fees and materials;
(5) investigative costs, including payments to informants and lab expenses;
(6) crime prevention and treatment programs;
(7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;
(8) witness-related costs, including travel and security; and
(9) audit costs and fees, including audit preparation and professional fees.[20]

How can a city NOT spend asset forfeiture funds?

State law precludes a police department from using forfeited proceeds or property to:

(1) contribute to a political campaign;
(2) pay expenses related to the training or education of any member of the judiciary;
(3) pay travel expenses related to attendance at training seminars if the expenses violate any restrictions established by the city council;
(4) purchase alcoholic beverages; or
(5) increase a salary, expense, or allowance for an employee of a police department unless the city council first approves the increase.[21]

Additionally, a police department is prohibited from using forfeited proceeds or property to make a donation to another entity, unless the entity assists in investigating criminal offense or instances of child abuse; provides mental health, drug, or rehabilitation services or services for victims or witnesses of criminal offenses or child abuse; or provides training or education relating to these types of duties or services.[22]

Who decides how asset forfeiture money is spent?

[19] Id. § 59.06(c) (emphasis added).
[20] Id. § 59.06(d-3).
[21] Id. § 59.06(d-1).
[22] Id. §§ 59.06(d-1)(2) and (d-2).

The police chief has sole decision-making authority on how asset forfeiture money is spent:

> Proceeds awarded under this chapter to a law enforcement agency…may be spent **by the agency**…after a budget for the expenditure has been submitted to the…governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures but may not list details that would endanger the security of an investigation or prosecution.[23]

Where must asset forfeiture money be kept?

State law plainly provides that the forfeited funds are held in the municipal treasury.[24] It would be improper for the police chief to hold these funds in a separate institution from the city depository. To do so would violate the plain language of the statute and threaten the protections, such as collateralization of public funds, that are required of funds in the municipal depository.

A city may transfer up to 10 percent of the gross amount credited to the city's asset forfeiture fund to a separate special fund established in the city's treasury to be used to provide scholarships to children of peace officers who were employed by the city police department (or another law enforcement agency with overlapping jurisdiction) that were killed in the line of duty.[25] The city police department shall administer this separate special fund.[26]

If the council cannot spend the money, can it at least know how the money is spent?

Yes. The city council is entitled to receive a budget for how the funds will be spent, but generally is not authorized to approve or disapprove of the actual expenditures.[27] The one instance in which the statute requires the city council to approve the use of asset forfeiture funds is when the police chief wishes to spend the funds to increase a salary, expense, or allowance for an employee of the police department.[28]

May the city conduct an audit of the asset forfeiture funds?

Yes. Not only is the city council permitted to audit the police department asset forfeiture funds and expenditures, but it is required to do so annually. Expenditures of asset forfeiture proceeds are

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[23] Id. § 59.06(d) (emphasis added).
[24] Id. § 59.06(c)(2); *See also* Op. Tex. Att'y Gen. No. DM-162 (1992) (concluding that county forfeiture funds, which are procedurally similar to city funds, "will be deposited with the county treasurer for placement in the county depository in the manner in which county funds are generally handled."); Op. Tex. Att'y Gen. No. DM-247 (1993) (separate depository for county funds not proper).
[25] TEX. CRIM. PROC. CODE § 59.06(r).
[26] Id. § 59.06(r).
[27] Id. § 59.06(d); *See also* Tex. Att'y Gen. Op. No. DM-72 (1991) (law enforcement agency to which funds are distributed has authority to determine purposes to which forfeiture funds are applied), Tex. Att'y Gen. Op. No. DM-246 (1993) (the commissioners court has a ministerial duty to initiate the competitive bidding process upon receipt of a request from the prosecutor or law enforcement agency and may not refuse all bids received for the purpose of preventing an expenditure out of the special forfeiture fund).
[28] TEX. CRIM. PROC. CODE § 59.06(d-1)(7).

subject to audit provisions established in the Code of Criminal Procedure.[29] Those audit provisions provide as follows:

> All law enforcement agencies….who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditures of all the proceeds and property in an audit, which is to be *performed annually by the commissioners court or governing body of the municipality*, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. The audit must be completed on a form provided by the attorney general and must include a detailed report and explanation of all expenditures, including salaries and overtime pay, officer training, investigative equipment and supplies, and other items. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to the attorney general not later than the 30th day after the date on which the annual period that is the subject of the audit ends.[30]

Must the police chief be given check-writing privileges over asset forfeiture funds?

Yes. State statute provides procedures for paying funds out of city depositories. Absent a local procedure to the contrary, checks are signed by the "designated officer" of the city, typically the treasurer, after receipt of a "warrant" signed by the mayor and attested to by the city secretary.[31] Most cities, however, adopt alternate procedures.

With asset forfeiture funds, the answer is different. The attorney general has concluded that a sheriff has sole check-writing authority, subject only to the statutory requirement that the agency submit a budget for that category of expenditure.[32] Because of the similarities between city and county forfeiture law and check-writing procedures, it is likely that this opinion is applicable to city asset forfeiture funds as well. As a result, the police chief may likely be the sole signatory on checks drawn from the forfeiture fund.

BANK LOANS

May a city borrow money from a bank?

Yes, but if the loan is unsecured by taxes, it must be repaid within the current budget year. The reason for this qualification is that the Texas Constitution prohibits cities from incurring debt

[29] Id. § 59.06(d).
[30] Id. § 59.06(g).
[31] TEX. LOC. GOV'T CODE § 105.074
[32] Op. Tex. Att'y Gen. No. DM-247 (1993).

without simultaneously providing a tax to repay the debt and creating an interest and sinking fund[33] of two percent per year.[34]

Could a city take out a long-term bank loan, provided it pledges a tax and creates a sinking fund to repay the loan?

This has never been directly addressed by the courts with respect to cities. In 1999, the attorney general addressed the question of whether a county could borrow money by purporting to pledge its taxes to payment of interest and the establishment of a sinking fund, while avoiding the statutorily-authorized mechanisms of bonds, certificates of obligation, or other debt obligations.[35] The opinion concluded that the county could not because it lacked statutory authority to levy taxes to secure a loan in the same way that it has authority to levy taxes to secure bonds, anticipation notes, and certificates of obligation. The authority to levy and pledge taxes for interest and sinking fund purposes is not implied by the Article 11, Sections 5 and 7 of the Texas Constitution, but must be found elsewhere in the statutes.[36] According to the attorney general, simply pledging future tax revenue to pay a long-term loan would circumvent the safeguards, such as attorney general approval, that are required of bonds and other debt instruments.

While the attorney general's reasoning would seem applicable to cities, the situation is clouded by a section of the Local Government Code that authorizes general law cities to "borrow money based on the credit of the municipality" for certain purposes such as streets, hospitals, and other facilities.[37] An argument could be made that this section constitutes statutory authority for cities to obtain bank loans, though it is unclear how the statute accounts for the limitations on debt in the Texas Constitution because the statute does not clearly authorize a city to levy a tax to pay down the debt.

It also could be suggested that the loan agreement with the bank contains a clause that the city's obligation to pay back the bank will be satisfied out of current revenues each year, similar to a clause authorized by Local Government Code Section 271.903 for the acquisition of real or personal property. As a practical matter, however, banks are unlikely to sign an agreement that would allow the city council to stop paying back the loan in a future year.

The safest interpretation of the relevant law is that a city can likely only take out a bank loan if the loan is repaid within the current budget year. A city wishing to take out a long-term bank loan should do so only in reliance upon an opinion by its city attorney or bond counsel.

[33] A sinking fund is a fund containing money set aside or saved to pay off a debt.
[34] TEX. CONST. art. 11, §§ 5 and 7.
[35] Op. Tex. Att'y Gen. No. JC-0139 (1999).
[36] *Mitchell County v. City Nat. Bank*, 43 S.W. 880 (1898).
[37] TEX. LOC. GOV'T CODE § 101.005(c).

BINGO PRIZE FEES

What are bingo prize fees?

Cities were once permitted to levy a gross receipts tax on charitable bingo operations within the city. Though that authority has long since been cancelled, cities that had a bingo tax in place as of January 1, 1993, were permitted to a 50-percent share of the five-percent prize fee that the licensed bingo organization must collect and remit to the state. If both a city and county were entitled to a share of the prize fee, each received 25 percent of the fee.

Legislation passed in 2019 and updated in 2023 reconfigures how cities and counties receive bingo prize fee revenue.[38] An authorized organization that holds a license to conduct bingo is required to collect from a person who wins a cash bingo prize of more than $5, a five-percent fee on the amount of the prize.[39] The organization then must remit 50 percent of the fee revenue to the Texas Lottery Commission, and the other 50 percent in equal shares to the applicable city and county in which the bingo game is conducted, if: (1) the city or county was entitled to receive a portion of a bingo prize fee as of January 1, 2019; and (2) the governing body of the city or county voted before November 1, 2019 to impose the new prize fee.[40] In other words, only cities that were previously authorized to collect a prize fee under the old law because they had a bingo tax in place as of January 1, 1993 can collect the new prize fee, and even then only if the city council took action before November 1, 2019 to essentially reauthorize the prize fee. A city council that takes action to impose a prize fee may at any time vote to discontinue the imposition of the fee.[41]

Cities with questions about their entitlement to bingo prize fees should call the Charitable Bingo Operations Division of the Lottery Commission at 1-800-246-4677.

BONDS

What are bonds?

Bonds are certificates of debt on which the city promises to pay the bondholders a specified amount of interest for a specified length of time, and to repay the loan on the expiration date. Texas cities rely on bonds to borrow money to build large-scale capital improvements.

[38] TEX. OCC. CODE §§ 2001.502(a)-(d), 2001.504(a) (as added by H.B. 914 of the 86th Leg. R.S. (Effective Sept. 1, 2019); Id. § 2001.502(b) and (c) (as amended by S.B. 643 of the 88th Leg. R. S. Effective Sept. 1, 2023).
[39] Id. § 2001.502(a).
[40] Id. § 2001.502(b).
[41] Id. § 2001.502(c).

What are the different types of bonds that cities can issue?

There are three main types of bonds issued by cities: general obligation bonds, revenue bonds, and refunding bonds. General obligation bonds are secured by a pledge of city property taxes, essentially obligating a city to levy a property tax each year sufficient to pay off the bond. A revenue bond is secured by a pledge of revenue from an income-producing facility. Revenue bonds are usually designated with the name of the system that pledged the revenues (for example, Waterworks System Revenue Bonds, Waterworks and Sewer System Revenue Bonds, and so on). Finally, refunding bonds are bonds that replace or pay off outstanding bonds that the holder surrenders in exchange for the new security.

Where do Texas cities get authority to issue property tax (general obligation) bonds?

Cities derive their authority to issue bonds from Article 11, Sections 5 and 7 of the Texas Constitution, which read as follows:

> **Section 5 - CITIES OF MORE THAN 5,000 POPULATION; ADOPTION OR AMENDMENT OF CHARTERS; TAXES; DEBT RESTRICTIONS**
>
> (a) Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters. If the number of inhabitants of cities that have adopted or amended their charters under this section is reduced to five thousand (5000) or fewer, the cities still may amend their charters by a majority vote of the qualified voters of said city at an election held for that purpose. The adoption or amendment of charters is subject to such limitations as may be prescribed by the Legislature, and no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State. Said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent. of the taxable property of such city, **and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent. thereon,** except as provided by Subsection (b). Furthermore, no city charter shall be altered, amended or repealed oftener than every two years.
>
> (b) To increase efficiency and effectiveness to the greatest extent possible, the legislature may by general law authorize cities to enter into interlocal contracts with other cities or counties without meeting the assessment and sinking fund requirements under Subsection (a).

Section 7 - COUNTIES AND CITIES ON GULF OF MEXICO; TAX FOR SEA WALLS, BREAKWATERS, AND SANITATION; BONDS; CONDEMNATION OF RIGHT OF WAY

> (a) All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized upon a vote of the majority of the qualified voters voting thereon at an election called for such purpose to levy and collect such tax for construction of sea walls, breakwaters, or sanitary purposes, as may now or may hereafter be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. **But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two percent (2%) as a sinking fund,** except as provided by Subsection (b); and the condemnation of the right of way for the erection of such works shall be fully provided for.
>
> (b) To increase efficiency and effectiveness to the greatest extent possible, the legislature may by general law authorize cities or counties to enter into interlocal contracts with other cities or counties without meeting the tax and sinking fund requirements under Subsection (a).

Section 5 only applies to home rule cities, while Section 7 applies to all cities, including general law cities.

While the above constitutional provisions do not explicitly say that cities may issue bonded debt, they serve that purpose in a round-about way by saying that debt is illegal without a particularized pledge of taxes and an interest and sinking fund.[42]

In addition to the Texas Constitution's provisions, there exist numerous state statutes authorizing the issuance of tax bonds. One of the most general and widely applicable is in Chapter 1331 of the Texas Government Code:

> § 1331.001. AUTHORITY OF MUNICIPALITY TO ISSUE BONDS. A municipality may issue bonds payable from ad valorem taxes in the amount it considers expedient to:
>
> (1) construct or purchase permanent improvements inside the municipal boundaries, including public buildings, waterworks, or sewers;
>
> (2) construct or improve the streets and bridges of the municipality; or

[42] *See McNeill v. City of Waco*, 33 S.W. 322 (1895); *Basset v. City of El Paso*, 30 S.W. 893 (1895).

(3) construct or purchase building sites or buildings for the public schools and other institutions of learning inside the municipality, if the municipality has assumed exclusive control of those schools and institutions.

Numerous other state statutes speak to city authority to issue bonds.

Must voters approve bonds?

All general obligation bonds—that is, bonds paid from property taxes—must first be approved by the qualified voters of the city at an election.[43]

Revenue bonds that are not payable from any taxes need not be submitted to the voters for approval under state law.[44] Some home rule charters do require an election, however.

Following a required election, if any, does a city need approval from anyone to issue bonds?

Yes. All proposed bonds must be submitted to, and approved by, the Texas attorney general.[45]

Does the attorney general charge a city for review of a bond issue?

Yes. A city must pay a statutorily authorized fee equal to the lesser of one-tenth of the principal amount of the bond issue or $9,500, but in no event less than $750.[46]

Other than the fact that it's legally required, are there any advantages to having attorney general approval of bonds?

According to state statute, once bonds are approved by the attorney general they are "valid and incontestable in a court or other forum and are binding obligations for all purposes according to their terms".[47] In other words, the legal validity of the bond cannot easily be challenged by third parties once the attorney general's office has given its approval.

Are revenue bonds a constitutional debt requiring an interest and sinking fund?

No, revenue bonds are not considered debts under the Texas Constitution.[48]

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[43] TEX. GOV'T CODE §1251.001.
[44] *Atkinson v. City of Dallas*, 353 S.W.2d 275 (Tex.Civ.App.--Dallas 1961, writ ref'd n.r.e.).
[45] TEX. GOV'T CODE §1202.003.
[46] Id. §1202.004.
[47] Id. §1202.006.
[48] *Atkinson v. City of Dallas*, 353 S.W.2d 275 (Tex.Civ.App.--Dallas 1961, writ ref'd n.r.e.).

What is the procedure for issuing bonds?

The issuance of tax bonds is a fairly involved process, best accomplished by professionals such as bond counsel and special financial advisors. A city should consult with its city attorney about locating proper bond counsel for a particular project.

CEMETERY TAX

Are there any revenue sources available to fund operations of cemeteries by the city?

Yes, a little-known provision in the Texas statutes permits a city that serves as a trustee for a cemetery, inside or outside of city limits, to levy up to a five-cent (per $100) property tax within the city to fund the cemetery operations.[49]

How is a cemetery tax levied?

The state statute is silent on the procedures for levying a cemetery tax. Because a city could simply increase its general revenue property tax by any amount to pay for cemetery costs, a court would likely find that the cemetery property tax was intended by the legislature to be a stand-alone property tax, levied separately (though perhaps at the same time) from the general revenue property tax. Likewise, the cemetery property tax would presumably operate outside the city's usual no-new-revenue and voter-approval property tax rate calculations; otherwise, it would have no independent significance. Nothing in the statute would prohibit the appraisal district and tax collector from administering the tax, however.

A city desiring to levy a cemetery property tax should consult with its city attorney about drafting a proper ordinance.

CERTIFICATES OF OBLIGATION

What is a certificate of obligation?

[49] TEX. HEALTH & SAFETY CODE §§ 713.002 and 713.006.

A certificate of obligation (CO) is a debt instrument that can be issued by a city to: (1) pay for the construction of a public work;[50] (2) purchase materials, supplies, equipment, machinery, buildings, land, and right-of-way for authorized needs and purposes; and (3) pay contractual obligations for professional services.[51] COs function similarly to bonds, but with fewer procedural requirements.

What can a city pledge to pay off COs?

Like a bond, a CO can be paid through taxes, revenues (as from a utility), or a combination of the two.[52]

What types of cities may issue COs?

Any Texas city, except for a Type B general law city or a Type C general law city with a population of 201 to 500 inhabitants, may issue COs.[53]

What is the main difference between COs and general obligation (tax) bonds?

Unlike general obligation bonds, COs don't require up-front voter approval. Only if the city receives a petition protesting the issuance of the CO that is signed by five percent of the city's qualified voters must an election be held.[54]

A petition triggering a CO election must be received by the city prior to the date tentatively set for the order or ordinance that authorizes the issuance of the CO (at least 45 days must pass after the first publication of notice of intent to issue COs and adoption of the order or ordinance).[55] If a petition is received, an election must be held, and is to be conducted in the same manner as a bond election.

If COs don't normally require an election, why issue bonds?

Because of their perceived safety and formality, it is commonly thought that bonds afford the city a lower interest rate, yet this is seldom true in practice. A legal pledge of property taxes is technically just as "safe" for a CO as it is for a bond issue, so interest rates are roughly the same. Bonds continue to be popular simply because certain projects lend themselves to an election to gauge public support. Any general obligation debt instrument triggers a higher property tax rate to pay the debt; thus, it provides some political "cover" to have voter approval in the first place.

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[50] TEX. LOC. GOV'T CODE § 271.043 (7-a).
[51] Id. § 271.045.
[52] Id. § 271.049.
[53] Id. § 271.044; *see also* TEX. LOC. GOV'T CODE § 51.051(b).
[54] Id. § 271.049(c).
[55] The petition must contain all the usual information required of petitions by the Texas Election Code. *Baugh v. Williams*, 762 S.W.2d 627 (Tex. App.—Tyler 1988).

If city voters reject a bond issuance at an election, can a city simply finance the same project using a CO?

No. Legislation passed in 2015 provides that a city generally may not authorize a CO to pay a contractual obligation to be incurred if a bond proposition to authorize the issuance of bonds for the same purpose was submitted to the voters during the preceding three years and failed to be approved.[56] Exceptions to this general rule include situations where a city must act promptly in response to a public calamity, when it is necessary to preserve or protect the public health, in a case of unforeseen damage to public equipment or other property, and in order to comply with a state or federal law, rule, or regulation if the city has been officially notified of noncompliance.[57]

How do the citizens find out about the proposed issuance of COs, thus giving them an opportunity to petition for an election?

A city must publish notices in a newspaper of general circulation in the area that the city intends to issue COs. The notice must be published once a week for two consecutive weeks, with the date of the first publication occurring before the 45th day before the date tentatively set for the passage of the ordinance authorizing the issuance of the COs.[58] If the city maintains a website, the notice must be continuously posted on the website for at least 45 days before the date set for the passage of the authorizing ordinance.[59]

The notice itself must include: (1) the time and place set for the passage of the ordinance authorizing the issuance of the certificates; (2) the purpose of the certificates; (3) the manner in which the certificates will be paid for (taxes, revenues, or both); and (4) various types of information relating to the principal and interest, both in relation to the certificates to be authorized and reflecting the total amount of outstanding debt.[60]

Must COs receive attorney general approval?

COs issued directly to a contractor need not receive attorney general approval.[61] All other COs must receive attorney general approval.[62]

May the charter of a home rule city prevent the issuance of COs?

No. COs are an available debt instrument even if a home rule charter provision would seem to preclude them.[63]

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[56] TEX. LOC. GOV'T CODE § 271.047(d).
[57] Id. § 271.047(d).
[58] Id. § 271.049(a).
[59] Id.
[60] Id. § 271.049(b)(4).
[61] TEX. GOV'T CODE §1202.007(a)(3).
[62] Id. § 1202.003(a).
[63] TEX. LOC. GOV'T CODE § 271.044(b).

May the proceeds from the sale of COs be used to pay city employee salaries?

It depends. If new city employees are hired specifically to work on the project, their salaries can be paid from the proceeds of the sale of COs. If pre-existing city employees are used to work on a project for which a CO is issued, those employees may have their salaries paid only if the city incurred equivalent or greater costs to replace the normal work that would otherwise have been performed by the employee. In other words, pre-existing employees who work on a project but are not replaced by other employees cannot have their salaries paid out of the proceeds of COs.[64]

CHILD SAFETY FINES

What are child safety fines?

Cities under 1.3 million population may adopt an optional municipal court fine on parking violations, if the city has a parking ordinance that provides penalties for violations.[65] Proceeds of the fine are used for child safety. The optional court fine can be any amount up to $5 and is paid on conviction of a parking violation, just as with other court costs.[66]

Cities with populations greater than 1.3 million that adopt a municipal court fine on parking violations must levy the fine in an amount between $2 and $5.[67]

How is the child safety fine adopted?

A city council adopts the child safety fine by "order."[68] An order is similar to a resolution.

What can the proceeds of the fine be spent on?

> **Cities under 1.3 million population:** If the city operates a school crossing guard program, the proceeds of the fine must be spent on that program. If the city does not operate a school crossing guard program, the city may either deposit the additional money in an interest-bearing account or expend it for programs designed to enhance child safety, health, or nutrition, including child abuse prevention and intervention, youth diversion,[69] and drug and alcohol abuse prevention.[70] A city under 1.3 million population is also authorized to spend the additional money on programs designed to enhance public safety and security.[71]

[64] Id. § 271.050(b).
[65] TEX. CRIM. PROC. CODE § 102.014(b) (as amended by H.B. 4559 of the 88th Leg. R.S. Effective Sept. 1, 2023).
[66] Id.
[67] Id. § 102.014(a) (as amended by H.B. 4559 of the 88th Leg. R.S. Effective Sept. 1, 2023).
[68] Id. § 102.014(b).
[69] Id. § 102.014(g) (as added by H.B. 3186 of the 88th Leg. R.S. Effective Jan. 1, 2024).
[70] Id.
[71] Id.

Cities over 1.3 million population: The city must deposit the proceeds of the fine into the required municipal child safety trust fund created under Chapter 106 of the Local Government Code.[72] Money in that fund is to be spent on school crossing guard programs, and any remaining funds may be used for other child safety and health initiatives, including child abuse intervention and prevention and drug and alcohol use prevention.[73]

In addition to the optional parking violation fine, are there other fines that must be spent on child safety?

Yes, school crossing zone violations and violations for improperly passing a stopped school bus trigger an automatic $25 fine that must be spent in the same manner as the optional parking violation court cost.[74]

COIN-OPERATED MACHINE TAX

What is a coin-operated machine tax?

A city is authorized to impose an "occupation tax" on coin-operated machines used within the city.[75]

How are coin-operated machines defined for purposes of the tax?

A coin-operated machine "means any kind of machine or device operated by or with a coin or other United States currency, metal slug, token, electronic card, or check, including a music or skill or pleasure coin-operated machine."[76]

How much may the city levy in coin-operated machine taxes?

The city tax may be in any amount not to exceed one-fourth of the state's own $60 coin-operated machine tax. Thus, the city can levy up to $15 per machine per year in taxes.[77]

How does a city adopt a coin-operated machine tax?

The statute does not specify a procedure for adopting the tax. The city should consider adopting the tax by ordinance and adopting reasonable enforcement procedures.

[72] TEX. CRIM. PROC. CODE § 102.014(f).
[73] TEX. LOC. GOV'T CODE § 106.003.
[74] TEX. CRIM. PROC. CODE § 102.014(c).
[75] TEX. OCC. CODE § 2153.451(a).
[76] Id. § 2153.002(1).
[77] Id. §§ 2153.451(b) and 2153.401(b).

CREDIT CARD REIMBURSEMENT FEES

If a city accepts payment for services or fines by credit card, may the city charge a fee to offset the transactional costs of making credit card payment available?

Yes. The city council may authorize a municipal official who collects fees, fines, court costs, or other charges to collect a reimbursement fee for processing the payment by credit card.[78]

How is a credit card reimbursement fee adopted?

The amount of the fee is set by city council.[79] The council should adopt an ordinance or resolution setting the fee.

How much of a credit card reimbursement fee can be charged?

The reimbursement fee adopted by the city council must be in an amount that is reasonably related to the expense incurred by the municipal official in processing the payment by credit card. The fee cannot exceed five percent of the amount of the fee, fine, court cost, or other charge being paid by credit card.[80] In 2019, the attorney general opined that vendors contracting with a governmental entity may also, in certain circumstances, collect credit card reimbursement fees on behalf of the governmental entity.[81]

DONATIONS

May a city accept a donation of property, including money, from an individual or other private entity?

Most attorneys would agree that a general law city must identify an affirmative grant of express or implied authority in order to accept a donation. City attorneys disagree, however, on whether state law gives cities broad express authority to accept gifts or donations. For implied authority, some city attorneys cite a state statute that provides that a city "may take, hold, purchase, lease, grant, or convey property located in or outside the municipality" as the general authority needed for a general law city to accept a donation.[82] Others point to more specific statutes authorizing the acceptance of donations by entities other than cities to demonstrate that general law cities may lack broad authority to accept donations. For instance, a county commissioners court has the statutory authority to "accept a gift, grant, donation, bequest, or devise of money or other property

[78] TEX. LOC. GOV'T CODE § 132.002(b).
[79] Id. § 132.002(b).
[80] Id.
[81] Op. Tex. Att'y Gen. No. KP-0257 (2019).
[82] TEX. LOC. GOV'T CODE § 51.015(a).

on behalf of the county for the purpose of performing a function conferred by law on the county or a county officer."[83]

Cities are, without question, expressly authorized to receive donations in certain limited circumstances. For instance, a city may accept a gift of land, money, or personal property to use in support of a variety of public purposes.[84] Cities may also acquire by gift any object or collection of historic significance to the city.[85] In addition, a city with a population of one million or more may solicit grants and donations for the development of an arts and entertainment district.[86] The attorney general has issued an opinion indicating that if the legislature allows an entity to receive donations in certain limited instances only, then it did not intend to grant such authority generally.[87] This line of reasoning, combined with the concern over whether a broad grant of authority exists, leads some city attorneys to believe that a general law city may have limited authority to accept a gift or donation.

A home rule city has the general power to hold property that it receives by gift, deed, devise, or other manner.[88] But because a home rule city need not look to acts of the legislature for specific authority, but instead can do what is not specifically prohibited by state law[89], a home rule city generally possesses the authority to accept gifts and donations. A home rule city that accepts donations should rely on language contained in the city charter that authorizes it to do so.[90]

Cities should consult with their city attorneys and tax advisors prior to considering accepting a gift or a donation.

If a citizen is considering donating property to a city, will the donation be tax-deductible for the citizen?

Maybe. A city is a "qualified entity" to which tax-deductible charitable donations may be made.[91] However, a donation is only deductible if the gift is made exclusively for public purposes. Moreover, the full value of the deduction may not be deductible. Donors should consult with their own tax professionals prior to making donations.

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[83] Id. § 81.032.
[84] Id. §§ 273.001 and 332.006.
[85] Id. § 331.002.
[86] Id. § 309.001.
[87] Op. Tex. Att'y Gen. No. GA-0562 (2007); *see also State v. Mauritz-Wells Co.*, 175 S.W.2d 238, 241 (Tex. 1943).
[88] TEX. LOC. GOV'T CODE § 51.0076(a).
[89] *Forwood v. City of Taylor*, 214 S.W.2d 282 (1948).
[90] *See, e.g., Whitley v. City of San Angelo*, 292 S.W.2d 857, 861 (Tex. Civ. App.—Austin 1956, no writ) ("Sec. 9 of the Charter of the City provides that it is authorized to acquire any character of property by gift.").
[91] 26 U.S.C. § 170(c); Dep't of the Treasury Internal Revenue Service, Charitable Contributions: Publication 526 at 3 (2020), *available at* http://www.irs.gov/publications/p526.

DRAINAGE FEES

What are drainage fees?

Cities may charge a fee to cover the cost of providing the infrastructure and facilities that permit the safe drainage of storm water, prevention of surface water stagnation, and prevention of pollution arising from nonpoint runoff. Drainage "utilities" are obviously different than most other city utilities, in that it's more difficult to directly identify and bill individual customers based on their benefit from such infrastructure. Nevertheless, state law recognizes the importance of such utilities and permits a drainage utility to charge an accompanying fee.[92]

When and how may a city charge a drainage fee?

Before a city may charge a drainage fee, it must comply with Subchapter C of Chapter 552 of the Texas Local Government Code, known as the "Municipal Drainage Utility Systems Act" (the Act). The Act contains the procedures and formalities a city must follow to create a drainage utility for which a fee is permitted.

Cities that do not attempt to charge a fee for drainage need not comply with the requirements of the Act. Those cities may simply build drainage infrastructure using general fund money.

What are the procedures for establishing a drainage utility, thus permitting a drainage fee?

A city must do the following to establish a drainage utility:

(1) **Findings**

The city council makes findings (ideally by resolution) that:

a. The city intends to establish a schedule of drainage charges against all real property in the proposed service area of the utility;[93]

b. The city will provide drainage for all real property in the proposed service area on payment of drainage charges, except for exempt property;[94] and

c. The city will offer drainage service on nondiscriminatory, reasonable, and equitable terms.[95]

[92] TEX. LOC. GOV'T CODE §§ 552.041 – 552.054.
[93] Id. § 552.045(b)(1).
[94] Id. § 552.045(b)(2).
[95] Id. § 552.045(b)(3).

(2) **Public Hearing on Drainage Ordinance**

The city must hold a public hearing to take public testimony on the proposed drainage system ordinance.[96] The city must publish notice of the hearing in the newspaper three times, the first time being on or before the 30th day before the hearing.[97]

(3) **Adopt Drainage Ordinance**

After the conclusion of the public hearing, the city council adopts an ordinance adopting Subchapter C of Chapter 552 of the Texas Local Government Code and declares the drainage of the city to be a public utility.[98]

(4) **Public Hearing on a Schedule of Charges**

After adoption of the ordinance above, the city should levy a schedule of drainage charges, consistent with the charge methodology found in the Act. Prior to the levy, the city must hold a hearing on the schedule of charges, and the city must publish notice of the hearing in the newspaper three times, the first time being on or before the 30th day before the hearing.[99] The published notices must contain the time and place of the hearing and contain the proposed schedule of charges.[100]

(9) **Adopt Drainage Charge Schedule**

After the public hearing, the city may adopt the schedule of drainage charges.

(10) **Adopt Other Rules**

Following creation of the drainage utility, the city council can adopt additional rules governing the drainage utility as the council considers necessary.[101]

How is a drainage fee calculated?

The city council may establish a fee structure that charges individual lots or tracts of benefited property for drainage service on any basis other than the value of the property, but the basis used must directly relate to drainage and the terms of the levy.[102] A uniform drainage charge imposed solely for reason of administrative convenience would likely be improper, so a city should establish a basis for the fee, such as impact of the lot on the system, benefits to the lot, and other criteria.[103]

[96] Id. § 552.045(c).
[97] Id.
[98] Id. § 552.045(a).
[99] Id. § 552.045(d).
[100] Id.
[101] Id. § 552.045(e).
[102] Id. § 552.047.
[103] Op. Tex. Att'y Gen. No. LO 97-095 (1975).

How do drainage fees relate to impact fees?

Impact fees are up-front fees charged to developers for the burden their new development will place on city infrastructure. Drainage fees are ongoing user fees charged to the owner of land for their use of the drainage infrastructure. Collection of drainage fees does not preclude the imposition of drainage-related impact fees.[104]

What properties are exempt from drainage fees?

Land owned by the state, a county, a municipality, a school district, or an open-enrollment charter school may be exempted from drainage charges.[105] Also exempt is property with proper construction and maintenance of a wholly sufficient and privately owned drainage system; property held and maintained in its natural state; and undeveloped subdivided lots.[106] Also, state agencies and public institutions of higher education are exempted from drainage fees.[107]

A city may, but is not required to, exempt property owned by a tax-exempt religious organization from all or a portion of drainage fee charges as the city council considers appropriate.[108] Additionally, a city may exempt property used for cemetery purposes from drainage fee charges if the cemetery is closed to new internments and does not accept new burials.[109]

What can the city do if a person doesn't pay drainage fees?

If a user of the drainage utility does not pay drainage fees, the city can: (1) bring a civil lawsuit; (2) discontinue any other city utility service[110]; or (3) prohibit usage of the drainage facility by the owner of the tract or lot (assuming this is possible).[111]

What may drainage fees be spent on?

Drainage fees may only be spent to offset costs of providing drainage service and, only if specifically provided for in the ordinance, to fund future drainage system construction by the city.[112]

How must drainage fee proceeds be handled within the city's fund structure?

Drainage fees must initially be segregated and accounted for separately within the city's accounting structure. Thereafter, proceeds of fees to cover current costs of service may be

[104] TEX. LOC. GOV'T CODE § 552.054(3).
[105] Id. § 552.053(b); *see also* Tex. Att'y Gen. Op. No. GA-1080 (2014).
[106] Id. § 552.053(c).
[107] Id. § 580.003.
[108] Id. § 552.053(d).
[109] Id. § 552.053(d-1).
[110] Id. § 552.050.
[111] Id. § 552.047(d).
[112] Id. § 552.044(4).

transferred to the city's general fund, while other proceeds, including those used to pay for future construction, must remain segregated. [113]

GRANTS

May a city be the recipient of grant money?

Yes. Many Texas cities rely on grant money, typically from the federal government, to build infrastructure and operate other programs.

Is grant money treated the same as other revenue for budgeting purposes, and relating to constitutional limits on expenditures that benefit private entities?

Yes, grant revenue is no different from other sources of revenue when it comes to budgeting and expenditures. Cities must strictly budget for the expenditure of all funds, with no exceptions made for grant money.[114] Similarly, all expenditures of grant money must serve a municipal purpose under Article 3, Section 52 of the Texas Constitution, or otherwise meet an exception to that constitutional provision, such as for economic development. Finally, the grantor of money can establish contractual conditions related to receipt and expenditure of grant money that a city must follow.

What are park grants?

State park grants are one of the few areas of state revenue that flows directly to cities. The Texas Constitution and state statute provide that a portion of the state sales tax on sporting goods sold within city limits must be set aside for making grants to cities for use in improving local parks.[115]

How do cities apply for park grants?

Information about how to apply for park grants is available at the following link to the Parks and Wildlife Department website: https://tpwd.texas.gov/business/grants/recreation-grants. Cities may download an application form from that website.

HOTEL OCCUPANCY TAXES

[113] Id. § 552.049.
[114] TEX. LOC. GOV'T CODE § 102.009(b).
[115] TEX. CONST. art. 8, § 7-d; TEX. PARKS & WILD. CODE § 24.002.

What are hotel occupancy taxes?

Hotel Occupancy Taxes (HOT taxes) are taxes levied on a person who pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs $2 or more each day, and is ordinarily used for sleeping.[116]

How much hotel occupancy taxes may a city levy?

Generally speaking, a city may levy a HOT tax in any amount up to, and including, seven percent of the price paid for the room.[117] Select cities are authorized to levy up to eight-and-a-half or nine percent of the price of the room, so long as a portion of the revenue generated by the increased rate goes toward certain specified projects.[118] The price of the room does not include food and drink.[119]

What is the definition of a hotel for purposes of hotel occupancy taxes?

A hotel is defined as, "a building in which members of the public obtain sleeping accommodations in return for money." It includes motels, lodging houses, inns, rooming houses, bed-and-breakfasts, and short-term rentals.[120] It does not include, dormitories, hospitals, and nursing homes.[121]

Is the hotel occupancy tax limited to hotels within the city limits?

Ordinarily yes, except that a city with a population under 35,000 may extend the application of its hotel occupancy tax by ordinance to the extraterritorial jurisdiction (ETJ) of the city.[122] However, a city under 35,000 population may not apply its hotel occupancy tax in the ETJ if, as a result of the adoption of the city tax, the combined rate of state, county, and city hotel taxes would exceed fifteen percent at hotels in the ETJ.[123] Provided the combined tax does not exceed fifteen percent at the time the city levies its tax, the city's tax is unaffected by future taxes levied by counties or other entities that might have the effect of imposing a combined rate in excess of fifteen percent.[124]

A city may extend its hotel occupancy tax to the ETJ by a provision in its hotel occupancy tax ordinance specifying that the tax extends to the ETJ.

How does a city levy a hotel occupancy tax?

[116] TEX. TAX CODE § 351.002(a).
[117] Id. § 351.003.
[118] Id. §§ 351.003, 351.1055, 351.1065, and 351.107.
[119] Id. § 351.002(b).
[120] Id. § 156.001.
[121] Id. § 156.001.
[122] Id. § 351.0025(a).
[123] Id. § 351.0025(b).
[124] Op. Tex. Att'y Gen. No. GA-408 (2006).

A hotel occupancy tax must be levied by ordinance.[125] No election or other approval of the citizens is required.

Can a city change the rate of an already-established hotel occupancy tax, and if so, how?

Yes, a city can change the rate to any amount up to, and including, seven percent (with the exception of the few cities that can adopt a higher rate). A city would amend the portion of its hotel occupancy tax ordinance relating to rate in order to change the rate. If a city increases the rate of its hotel occupancy tax, the increased rate does not apply to the tax imposed on the use or possession, or the right to the use or possession, of a room under a contract that was executed before the date the increased rate takes effect and that provides for the payment of the tax at the rate in effect when the contract was executed, unless the contract is subject to change or modification by reason of the tax rate increase.[126]

How may hotel occupancy tax revenues be spent by a city?

Hotel occupancy tax revenue is "dedicated revenue," and may only be spent on certain, statutorily defined purposes. Generally speaking, all expenditures of city hotel tax revenue must promote tourism within the city. This general rule can be further broken down into the following two-part test:

(a) Does the expenditure promote tourism and the convention and hotel industry? (The question is often asked in the following way: Does the expenditure put "heads in beds?"); and

(b) Does the expenditure fall into one of nine statutory categories:

(1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities and visitor information centers;
(2) expenses associated with registration of convention delegates;
(3) advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity;
(4) promotion of the arts;
(5) historical preservation projects;
(6) sporting events that promote tourism in certain cities, including cities located in counties of less than one million population;
(7) enhancing or upgrading existing sports facilities or sports fields (only in certain cities);
(8) transportation systems that transport tourists from hotels to the commercial center of the city, a convention center, other hotels, or tourist attractions, provided the system doesn't serve the general public; or

[125] TEX. TAX CODE § 351.002(a).
[126] Id. § 351.007(a).

(9) signage directing the public to sights and attractions that are visited frequently by hotel guests in the city.[127]

If the answer to parts (a) and (b) above are "yes," HOT revenue can be used for the expenditures listed above.

Additionally, the Tax Code has some fairly specific provisions relating to how expenditures within the nine statutory categories should be allocated depending on the population of the city. Funding of the arts is generally limited to no more than fifteen percent of total tax revenue, and a certain portion must be spent on promoting the city and/or on convention facilities, again depending on the size of the city.[128]

Can a city fund a fireworks show (or similar events) using hotel occupancy taxes?

All HOT fund expenditures must pass the "two-part test" above.

Part 1: Does a fireworks show put heads in beds? The likely answer is no.

Part 2: Additionally, even if fireworks show attracted overnight tourists to the city, fireworks expenditures do not fit neatly into one of the nine statutory categories. Some may argue that such shows "advertise" the city, but this is likely not what that category means. "Advertising that attracts tourists to the city" literally means some sort of print or other media that explicitly promotes the city. Thus, direct funding of a fireworks show and the like is usually not a proper hotel tax expenditure.

May a city delegate the expenditure of hotel taxes to another entity?

Yes. A city may delegate expenditures of hotel taxes to another entity such as a chamber of commerce or convention and visitor bureau so long as the chamber or other entity spends the money on projects that otherwise meet the two-part test mentioned above. There must be a written contract laying out the duties of the entity, and the entity must keep the hotel taxes in an account separate from the general operating fund.[129]

What is the relationship between city and state hotel occupancy taxes?

The state collects its own hotel occupancy tax at the rate of six percent.[130] The state plays no part in collecting or enforcing the city's hotel occupancy tax, however. A city is responsible for its own levy, collection, and enforcement.

What can a city do if a hotel is delinquent or refuses to pay hotel occupancy taxes?

[127] Id. § 351.101.
[128] Id. § 351.103.
[129] Id. § 351.101(c).
[130] Id. § 156.052.

The following remedies are available against hotels that fail to collect the tax or are delinquent in collecting the tax: civil lawsuit, injunction against operation of the hotel until taxes are paid, a fifteen-percent civil penalty against the hotel when suit is necessary (if the tax has been delinquent for one complete municipal fiscal quarter), reasonable attorney's fees, misdemeanor prosecution against the hotel (assuming the city's ordinance provides for an offense), and audit powers.[131] If an audit conducted by the city shows a concurrent delinquency is state hotel occupancy taxes, the city must notify the comptroller of the delinquency, and if the state proceeds with collection and enforcement efforts, the comptroller must distribute an amount to the city to defray the costs of the audit.[132]

Are cities required to annually report hotel occupancy tax information?

Yes. Cities are required to annually report hotel occupancy tax information to the comptroller .[133] Not later than March 1 of each year, a city that imposes a hotel occupancy tax must submit to the comptroller: (1) the rate of the city's hotel occupancy tax and, if applicable, the rate of the city's hotel occupancy tax supporting a venue project; (2) the amount of revenue collected during the city's preceding fiscal year from the city's hotel occupancy tax and, if applicable, the city's hotel occupancy tax supporting a venue project; (3) the amount and percentage of hotel occupancy tax revenue allocated by the city for certain categories of expenditure during the city's preceding fiscal year; and (4) the amount of revenue collected in any preceding fiscal year that has not yet been spent and the amount of that revenue remaining in the city's possession.[134] Cities must comply with the annual reporting requirements by either submitting the report to the comptroller on a form prescribed by the comptroller, or alternatively providing the comptroller a direct link to, or a clear statement describing the location of, the information required to be reported that is posted on the city's website.[135] A city is permitted to use a portion of the hotel occupancy tax revenue to offset the costs of the required reporting in the amount of $1000 for a city with a population under 10,000 and $2,500 if the city has a population 10,000 or more.[136] The reporting form and historical data can be found at: https://comptroller.texas.gov/transparency/local/hotel-receipts.

IMPACT FEES

Cities may impose impact fees pursuant to Chapter 395 of the Local Government Code. Within the code, what qualifies as an "impact fee" is defined and specific guidelines are set forth in regard to utilizing the fees.

What are impact fees?

[131] Id. § 351.004.
[132] Id. § 351.008.
[133] Id. § 351.009.
[134] Id. § 351.009(a) (as amended by H.B. 3727 of the 88th Leg. R.S. Effective June 12, 2023).
[135] Id. § 351.009(b).
[136] Id. § 351.009(b) (as added by H.B. 3727 of the 88th Leg. R.S. Effective June 12, 2023).

Impact fees are defined as "a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition."[137]

Put simply, impact fees are a mechanism by which cities charge property developers for some of the cost that new development places on the infrastructure and resources of a city.

How can cities spend impact fee revenue?

To determine if an expenditure of impact fees is proper, two separate tests must be satisfied: (1) the expenditure must be for a *proper impact fee facility*; and (2) even if it is a proper impact fee facility, the expenditure must be a *permissive cost* that may be funded relative to that facility.

(1) **Proper impact fee facilities** include: (1) water supply, treatment, and distribution facilities; (2) wastewater collection and treatment facilities; (3) storm water, drainage, and flood control facilities; and (4) roadway facilities.[138]

(2) **Permissive costs** relative to a proper facility include: (1) facility expansion; (2) facility construction contract price; (3) surveying and engineering fees; (4) land acquisition costs, including land purchases, court awards and costs, attorney's fees, and expert witness fees; (5) fees to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan, provided the person is not an employee of the city; and (6) interest charges and other finance costs related to improvements or expansions identified in the capital improvements plan (but only if used for payment of principal and interest on bonds, notes, or other obligations).[139]

What items may not be paid for by an impact fee?

The Local Government Code also states that certain items may not be paid for by impact fees: (1) construction, acquisition, or expansion of public facilities or assets *not identified* in the capital improvements plan; (2) repair, operation, or maintenance of existing or new capital improvements or facility expansions; (3) upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development; (4) administrative and operating costs of the city; and (5) principal payments of interest or other finance charges on bonds or other indebtedness unless otherwise authorized in the impact fee statute.[140]

What is the procedure for adopting an impact fee?

Adoption of an impact fee requires compliance with several detailed steps, and strict compliance with each step is strongly recommended, lest the city open itself up to potential litigation. If your

[137] TEX. LOC. GOV'T CODE § 395.001(4).
[138] Id. § 395.001(1).
[139] Id. § 395.012.
[140] Id. § 395.013.

city wishes to adopt impact fees or update its impact fees, involve your professionals early, including your local attorney. The following is a summary of the procedural steps:

(1) **Appoint Capital Improvements Advisory Committee.** The city council must appoint an advisory committee to assist with the impact fee process. The statute requires that the committee be appointed sometime before the ordinance setting the public hearing on the CIP and land use assumptions (step four, below).[141]

The advisory committee must be made up of at least five members. At least 40 percent of the members of the advisory committee must be representatives of the real estate, development, or building community, and not employees or officials of the city.[142]

The advisory committee's purpose is to: (1) advise and assist the city in adopting the land use assumptions; (2) review the CIP and file written comments at least six business days before the city's hearing on the proposed impact fees; (3) monitor and evaluate implementation of the CIP; (4) file semiannual reports with respect to the progress of the CIP and report to the city any perceived inequities in implementing the plan or imposing the impact fee; and (5) advise the city of the need to update or revise the land use assumptions, CIP, or impact fee.[143]

(2) **Draft Capital Improvements Plan and Land Use Assumptions**. The city must prepare a draft of its "land use assumptions."[144] Land use assumptions are essentially documentation containing projections of changes in land uses, densities, intensities, and population in the designated service area (defined as the area served by the facilities funded by the impact fee) over at least a 10-year period.[145] Based on the projections contained in the land use assumptions, the city also prepares a draft of a capital improvements plan (CIP), detailing the capital improvements that will need to be made over the term of the plan to meet existing and projected future needs. The CIP must be developed by qualified professionals using generally accepted engineering and planning practices.[146] The land use assumptions and CIP are detailed documents that form the basis for calculating permissible impact fees.

(3) **Set Hearing on CIP and Land Use Assumptions.** The council must adopt an order, resolution, or ordinance establishing a public hearing date to consider the CIP and land use assumptions.[147] Proper notice of the hearing must be given at least 31 days in advance of the hearing.[148]

[141] Id. § 395.058(a).
[142] Id. § 395.058(b).
[143] Id. § 395.058(c) and 395.050.
[144] Id. § 395.042.
[145] Id. § 395.001(5).
[146] Id. § 395.0411.
[147] Id. § 395.042.
[148] Id. § 395.044.

(4) **Hold Public Hearing on CIP and Land Use Assumptions.** At the hearing, the council should allow all who desire to speak for or against the CIP or land use assumptions, or any other topic related to the upcoming impact fees, to present their views to the council.

(5) **Vote to Adopt an Ordinance Approving the CIP and Land Use Assumptions.** After the conclusion of the hearing, the council should "determine whether to adopt or reject an ordinance, order, or resolution approving the land use assumptions and capital improvements plan."[149]

Whether this "determination" step must be a distinct requirement from simply adopting the CIP and land use assumptions is debatable. Regardless, within 30 days after the hearing, the city council must adopt an ordinance, order, or resolution approving the CIP and land use assumptions.[150]

(6) **Set Hearing on Impact Fees.** After adoption of the ordinance approving the CIP and land use assumptions, and preferably at the same meeting that the ordinance was adopted, the city council must adopt an order or resolution setting a public hearing to discuss the imposition of the impact fee.[151] Proper notice of the hearing must be given at least 31 days in advance of the hearing.[152]

(7) **Advisory Committee Comments.** At least six business days before the hearing on the impact fees, the advisory committee must file written comments concerning the proposed impact fees.[153]

(8) **Hold Public Hearing on Impact Fees.** At the hearing, the council should allow all who desire to speak for or against the impact fees, or any other topic related to the upcoming impact fees, to present their views to the council.

(9) **Approve Impact Fees.** Within 30 days after the hearing on impact fees, the city council must approve or disapprove the impact fees by order, ordinance, or resolution.[154]

(10) **Five-Year Review.** A city imposing impact fees must hold hearings and update the CIP and land use assumptions at least every five years.[155] Chapter 395 of the Local Government Code contains detailed procedures for hearings, review, and amendment of the CIP.[156]

Where may impact fees be assessed?

[149] Id. § 395.045(a).
[150] Id. § 395.045(b).
[151] Id. § 395.047.
[152] Id. § 395.049.
[153] Id. § 395.050.
[154] Id. § 395.051.
[155] Id. § 395.052.
[156] Id. §§ 395.053-395.0575.

Any type of impact fee authorized by Chapter 395 may be imposed within the corporate limits of a city.[157] Impact fees may also be imposed in the extraterritorial jurisdiction (ETJ), except that impact fees may not be imposed in the ETJ for roadway facilities.[158] In areas outside both the corporate boundaries and ETJ, the city may only impose impact fees by contract (but not for roadway facility fees).[159]

How much in impact fees may a city charge?

The amount of an impact fee is an amount that may not exceed the cost of capital improvements and facility expansions required by the new development (as calculated by a professional engineer), minus a credit in an amount equal to either: (1) the new property taxes and utility revenue generated by the development; or (2) 50 percent of total costs of the capital improvements, with that figure being divided by the total number of projected service units attributable to the new development.[160] It is up to the city to determine which of the two credits above will be subtracted from the costs when calculating the impact fee.

When may an impact fee be collected from a developer?

Generally, impact fees are assessed on development at the time the final plat of the property is recorded.[161] Impact fees are generally collected when a building permit is issued.[162] The statute has different assessment and collection timing based on when the impact fees were adopted, so please consult the language of the law before taking final action.

When is it too late to levy an impact fee on new development?

If an impact fee ordinance is adopted after the land being developed is platted, fees cannot be assessed on any service unit that receives its building permit within one year after adoption of the impact fee.[163]

May impact fees be pledged to repay debt service on a bond, note, or other obligation?

Yes, impact fees may be pledged to pay bonds and other notes, provided the improvement being paid for is identified in the CIP.[164] Further, at the time of the pledge the city council must certify in a written order, ordinance, or resolution that none of the impact fee will be used on an improvement not in the CIP.[165]

[157] Id. § 395.011(b).
[158] Id.
[159] Id. § 395.011(c).
[160] Id. § 395.015.
[161] Id. § 395.016.
[162] Id.
[163] Id. § 395.016(c).
[164] Id. § 395.012(d)(1).
[165] Id. § 395.012(d)(2).

What fees and other development tools are not considered impact fees (and thus not subject to the procedures or restrictions under Chapter 395 of the Local Government Code)?

The following are not considered impact fees, and thus are not subject to the detailed procedures and formulas set forth in Chapter 395: (1) dedication of land for public parks; (2) payment in lieu of the dedication of parks; (3) dedication of rights-of-way or easements of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development; (4) construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development; (5) lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; and (6) other pro rata fees (see *Pro Rata Fees* elsewhere in this manual) for reimbursement of water or sewer mains or lines extended by the political subdivision.[166]

INTERLOCAL AGREEMENTS

What are interlocal agreements?

Contracts between a city and other units of local government or the state for goods or services are known as interlocal agreements and are governed by Chapter 791 of the Texas Government Code.

[166] Id. § 395.001(4).

In what sense can an interlocal agreement be considered a revenue source?

Cities with excess capacity in a service department can benefit by selling that excess capacity to neighboring units of government. For example, suppose that a small but growing city forms its first professional fire department. Such a city may find that demand may not be present within the city for some years to fully utilize the services of the new fire department. Such a city can "sell" its firefighting services to a neighboring city that doesn't have a fire department through an interlocal agreement. Both cities benefit from such an arrangement, and waste of services and taxes is kept to a minimum.

What types of services may be subject to an interlocal agreement?

Cities may enter interlocal contracts to provide governmental functions or services that each party to the contract is authorized to perform individually.[167] Governmental functions are defined in the act to include the following: police protection and detention services; fire protection; streets, roads, and drainage; public health and welfare; parks and recreation; library and museum services; records center services; waste disposal; planning; engineering; administrative functions; public funds investment; comprehensive health care and hospital services; or other governmental functions in which the contracting parties are mutually interested.[168]

Are there any restrictions on what services a city may contract away or for through an interlocal agreement?

First, a city should look to the laundry list above to determine if a service is subject to an interlocal agreement. Despite the broad catch-all at the end of the list—"other governmental functions in which the contracting parties are mutually interested"—cities should not assume that all functions not listed are proper. A city should consult with its attorney prior to entering into any interlocal agreement that doesn't fit squarely into one of the authorized categories above.

Further, state law requires that an interlocal contract must be for functions or services that each party to the contract is authorized to perform individually.[169] For example, cities may engage in zoning, but counties generally cannot. Therefore, a city could not offer zoning services to a county under an interlocal agreement, because a county isn't authorized to perform that function itself.

On the other hand, both cities and counties have authority to engage in law enforcement. Therefore, a city could contract with a county for the city to provide police services to the county.

What specific provisions must an interlocal contract contain?

All interlocal agreements must state the following:

(1) the purpose, terms, rights, and duties of the contracting parties; and

[167] TEX. GOV'T CODE § 791.011(c).
[168] Id. § 791.003(3).
[169] Id. § 791.011(c)(2).

(2) that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.[170]

How much may a city charge (or pay) under an interlocal agreement?

The amount payable under an interlocal contract must fairly compensate the performing party for the services or functions performed under the contract.[171]

Does payment by the city pursuant to a multi-year interlocal agreement constitute a debt for which the city must create an interest and sinking fund?

No. The Texas Constitution allows cities and counties to enter into contracts for longer than one year without the contract automatically constituting a debt for which an interest and sinking fund must be created.[172] This gives local governments greater flexibility to utilize interlocal agreements to consolidate more projects and services.

INTERNET PAYMENT AND ACCESS FEES

What are Internet payment and access fees?

A city may charge a fee for providing any of the following services over the Internet: (1) access to municipal information; (2) collection of payments for taxes, fines, fees, court costs, or other charges; or (3) other city services authorized by law.[173] However, a city may not charge a fee to accept a communication related to property tax delivered electronically to the city.[174]

How much of a fee may a city charge for Internet payment, services, or access to information?

A fee must be "reasonable."[175] Further, fees for access to information or for services other than payment of fines, taxes, and other fees, may only be designed to recover the costs directly and reasonably incurred in providing the access or service, and only following a finding by the city council that the provision of information or service through the Internet would not be feasible without the imposition of the fee.[176]

[170] Id. § 791.011(d).
[171] Id. § 791.011(e).
[172] TEX. CONST. art. 11, §§ 5(b) and 7(b).
[173] TEX. LOC. GOV'T CODE § 132.007.
[174] TEX. TAX CODE § 1.085(a-4) (as added by H.B. 1228 of the 88th Leg. R.S. Effective Jan. 1, 2024).
[175] TEX. LOC. GOV'T CODE § 132.007(b).
[176] Id. § 132.007(c).

INVESTMENTS

May a city invest its public funds, in order to make money with its money?

Yes, a city may invest its public funds, but only if the city complies with Chapter 2256 of the Texas Government Code, the Public Funds Investment Act (PFIA).

What does the PFIA require of a city before a city may invest its public funds?

Before a city may invest its public funds, the PFIA generally requires the following:

(1) The city must adopt a written investment policy;
(2) The city may only invest its funds in investments authorized under its written investment policy;
(3) Authorized investments must come from the list of proper investments under the PFIA; and
(4) An official from the city must complete training regarding the requirements of the PFIA.

What is the investment policy requirement?

The governing body of a city shall adopt by ordinance or resolution, a written investment policy regarding the investment of its funds and funds under its control.[177] Therefore, regardless of a city's population, it must have a written investment policy if it has any cash or bank investments. A formal policy protects not only the cash assets of the city, but also the elected and finance management officials.

An investment policy must contain a statement emphasizing safety and liquidity.[178] If the policy applies to the financial assets of all funds or fund types, that fact should be clearly stated. A distinction should be made between shorter-term cash management and the management of longer-term investments.

The policy must also include a list of authorized investments and the permitted maximum maturity of any individual investment, as well as the maximum weighted average maturity (WAM) of funds.[179] The policy must also include (among other things) the method used by the investing entity to monitor the market price of investments acquired, as well as procedures to monitor rating changes in investments acquired with public funds and the liquidation of such investments.[180]

As part of the policy, the city must adopt separate written investment strategies for each of the funds under its control. While the yield associated with an investment is important for revenue generation, it is actually the lowest priority a city should consider when drafting an investment

[177] TEX. GOV'T CODE §2256.005(a).
[178] Id. § 2256.005(b)(2).
[179] Id. § 2256.005(b)(4)(a) & (c).
[180] Id. § 2256.005(b)(4)(d) & (f).

strategy. [181] The first priority for consideration is the suitability of the investment to the overall cash flow and financial requirements of the entity followed by safety of the principal and liquidity.[182] Public officials have a fiduciary responsibility to manage and maintain taxpayer funds, and the PFIA requires governing bodies of local governments to invest public funds with the same prudence, discretion, and intelligence one would use to manage their personal affairs.[183]

The PFIA requires that the governing body of an investing entity review its investment policy at least once a year.[184] Moreover, the governing body must take formal action stating that the policy and strategy have been reviewed and record any changes to either the policy or investment strategy. Changed policies should be sent to all brokers, pools, and advisors. The investing entity must also designate by ordinance or resolution the employee or investment officer(s) who will be responsible for the investment of its funds.[185] The policy also should refer to training seminars conducted by independent sources, such as the Texas Municipal League.

What is the training requirement under the PFIA?

The treasurer, the chief financial officer (if the treasurer is not the chief financial officer), and the investment officer of a local government must attend at least one, ten-hour, training session in investment laws within twelve months after taking office.[186] The PFIA is written in a way that requires all cities to appoint someone to one of these positions to receive the training. On a continuing basis, the investment training sessions must be attended at least once every two-year period for at least eight hours of instruction. The two-year period begins on the first day of the city's fiscal year and consists of the two consecutive years after that date.[187]

The entity that provides training must report to the comptroller a list of the governmental entities that received training. Further, auditors and credit rating agencies are increasingly paying attention to whether a city is up-to-date on its required training. The Texas Municipal League offers training, as do other entities. City officials may check for upcoming PFIA workshops on the TML website at tmlpfia.org.

According to the PFIA, what are the legal investment tools that a city may include in its investment policy?

The PFIA limits the types of investments that a city may authorize under its investment policy. Essentially, an investment must be legal under the PFIA, and included in the city's investment policy, before a city may use that investment.

Following are the legal investments under the PFIA:

[181] Id.§2256.005(d).
[182] Id.
[183] Id. §2256.006
[184] Id. §2256.005(e).
[185] Id. §2256.005(f).
[186] Id. §2256.008.
[187] Id. §2256.008(a-1).

(1) **Governmental Obligations.** United States (including the Federal Home Loan Banks) and State of Texas obligations, such as bonds, are legal investments. So are obligations of local governments, provided the obligations are "A" rated. Certain interest-backed banking deposits are permitted as well. Mortgage-backed obligations are not legal, however.[188]

(2) **Certificates of Deposit (CDs).** CDs are a legal investment provided they are issued by a bank or authorized broker with its main office or a branch office in Texas.[189] CDs must be collateralized (secured) for amounts greater than FDIC insurance ($250,000).

(3) **Repurchase Agreements.** Certain fully-collateralized repurchase agreements are legal investments.[190]

(4) **Securities Lending Programs.**[191]

(5) **Banker's Acceptances.**[192]

(6) **Commercial Paper.** Commercial paper is a legal investment if it has a maturity date of 365 days or less and is rated at least "A-1" or "P-1" by at least two credit rating agencies.[193]

(7) **Certain Mutual Funds.**[194] (See below for details about legal mutual funds).

(8) **Guaranteed Investment Contracts.** Guaranteed investment contracts are legal investments if they have a defined termination date, are fully secured, and are pledged to the city.[195]

(9) **Investment Pools.** Investment pools are legal investment vehicles if: (a) the city council passes an ordinance or resolution authorizing investment pools; (b) the investment officer of the city receives a detailed prospectus from the pool; (c) the pool makes detailed periodic reports to the city; and (d) the pool is continuously rated "AAA" or "AAA-m".[196] An investment pool may invest its funds in money market mutual funds to the extent permitted by state law and the investment policies and objectives adopted by the pool.[197]

(10) **Municipal Utility.** A city that owns an electric utility may enter into a hedging contract and related security and insurance agreements in relation to fuel oil, natural gas, coal, nuclear fuel, and electric energy to protect against loss due to price fluctuations.[198]

(11) **Municipal Funds from Management and Development of Mineral Rights.** A city may invest excess funds derived from contracts or leases made on city-owned mineral rights in any investment authorized to be made by a trustee under the Texas Trust Code.

(12) **Decommissioning Trust.** A city that owns an electric utility may invest funds held in a nuclear generation facility decommissioning trust in any investment authorized by the Texas Trust Code.

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[188] Id. §2256.009.
[189] Id. §2256.010.
[190] Id. §2256.011.
[191] Id. §2256.0115.
[192] Id. §2256.012.
[193] Id. §2256.013.
[194] Id. §2256.014.
[195] Id. §2256.015.
[196] Id. §2256.016.
[197] Id.
[198] Id. §2256.0201.

(13) **Hedging Transaction.** A city with a principal amount of at least $250 million in outstanding long-term indebtedness or long-term indebtedness proposed to be issued that is rated in one of the four highest rating categories by a nationally recognized rating agency for municipal securities may invest in a hedging transaction, including a hedging contract.[199] Before investing in a hedging transaction, the governing body of an eligible entity must first establish the entity's policy regarding hedging transactions.[200]

May a city invest in corporate stocks?

No. Stock in private corporations is not included among the authorized investments under the PFIA.

Which mutual funds may a city invest in?

It depends. Essentially, whether a city can invest in a mutual fund, and how much, depends on the type of mutual fund in question. An outline of the law for each type of permissible mutual fund follows, but it is recommended that the investment officer read the statute in question before making the investment[201]:

(1) A city may invest in no-load money market mutual funds only if all of the following are true:

(a) the fund is registered and regulated by the Securities and Exchange Commission (SEC);
(b) the fund provides a certain type of prospectus;
(c) the fund complies with SEC rules related to money market mutual funds; and
(d) the city's investments do not exceed ten percent of the value of the fund.

(2) A city may invest in other no-load mutual funds (that is, non-money market) only if all of the following are true:

(a) the fund is registered with the SEC;
(b) the fund has an average weighted maturity of less than two years;
(c) the fund either: (i) has a duration of one year or more and invests exclusively in obligations already approved elsewhere in the Public Funds Investment Act (thus excluding most stock funds); or (ii) has a duration of less than one year and the investment portfolio is limited to investment grade securities, excluding asset-backed securities;
(d) the city invests no more than 15 percent of its eligible funds in the mutual fund (i.e., excluding the city's bond and debt funds);

[199] Id. §2256.0206(a).
[200] Id. §2256.0206(c)
[201] Id. § 2256.014.

(e) the city does not invest its bond or debt service funds in this type of fund; and
(f) the city's investments do not exceed ten percent of the value of the fund.

Of course, the PFIA does not permit investment of any city funds until the city adopts a written investment policy that authorizes each type of investment in question. A written investment policy that does not authorize mutual funds would thus exclude their use, despite state law.

Once the city has complied with the training and written investment policy requirements, can the city then invest in any certificates of deposit?

No. Eligible investment CDs must be issued by a Texas bank or a national bank domiciled in Texas, or a state or federal credit union domiciled in Texas. Further, the CD must be guaranteed or insured by the FDIC or National Credit Union Share Insurance Fund, and must be secured by collateral, just as ordinary municipal deposits, for amounts greater than $250,000.[202]

What is the consequence of failure to comply with the PFIA training requirements?

Though the PFIA contains no penalty provision, auditors and credit rating agencies are increasingly knowledgeable about its requirements. Failure to obtain the necessary training could result in negative marks on the city's audit, or a downgrade in a city's credit rating, which could affect municipal borrowing.

LOCAL CONSOLIDATED COURT FEE

What is the local consolidated court fee?

Legislation passed in 2019 consolidated a handful of local option municipal court fees into one local consolidated court fee. The local consolidated court fee is a $14 fee assessed on a person convicted of a non-jailable misdemeanor.[203] Every city is required to assign a portion of the local consolidated court fee revenue to building security, court technology, and juvenile case managers through the local youth diversion fund regardless of whether the city formally adopted the fee. The city is responsible for collecting the fee and establishing four different accounts to which the fee revenue is assigned.

The fee revenue must be apportioned as follows:

(1) 35.7143 percent ($5.00 of each fee) to the Local Youth Diversion Fund;
(2) 35 percent ($4.90) to the Municipal Court Building Security Fund
(3) 28.5714 percent ($4.00) to the Municipal Court Technology Fund; and

[202] Id. § 2256.010.
[203] TEX. LOC. GOV'T CODE § 134.103(a).

(4) .7143 percent ($.10) to the Municipal Jury Fund.[204]

The fee is applied only to people "convicted" of offenses. How is that term interpreted?

The Code of Criminal Procedure defines "conviction" quite broadly with respect to triggering the local consolidated court fee. A person is considered to have been convicted in a case, for purposes of collecting the local consolidated court fee, if: (1) a judgment, a sentence, or both a judgment and a sentence are imposed on the person; (2) the person receives community supervision, deferred adjudication, or deferred disposition; or (3) the court defers final disposition of the case or imposition of the judgment and sentence.[205] Thus, most routine dispositions of criminal cases in municipal court, short of acquittal or dismissal, trigger the local consolidated court fee.

How is the local consolidated court fee collected?

The municipal court clerk is required to collect the local consolidated court fee and remit the revenue to the city treasurer, who then must deposit the funds in the municipal treasury.[206]

What may money in the local youth diversion fund be spent on?

A city that employs or contracts with a juvenile case manager may use money in the local youth diversion fund to finance the salary, benefits, training, travel expenses, office supplies, and other necessary expenses related to the position of a juvenile case manager.[207] If there is money left in the fund after those costs are paid, a juvenile case manager is authorized—subject to the direction of the city council and on approval by the municipal court—to direct the remaining money to be used to implement programs directly related to the duties of the juvenile case manager, including juvenile alcohol and substance abuse programs, educational and leadership programs, and any other projects designed to prevent or reduce the number of juvenile referrals to the court.[208]

What if the city does not employ a juvenile case manager?

A city that does not employ or contract with a juvenile case manager may, in consultation with the court, direct money in the local youth diversion fund to be used for the support of a local mental health authority, juvenile alcohol and substance abuse programs, educational and leadership programs, teen court programs, and any other project designed to prevent or reduce the number of juvenile referrals to the court.[209]

What may money in the municipal court building security fund be spent on?

[204] Id. § 134.103(b).
[205] Id. § 134.002(b).
[206] Id. §§ 134.002(a)(2) and 134.0051.
[207] Id. § 134.156(a).
[208] Id.
[209] Id. § 134.156(a-1) (as added by H.B. 3186 of the 88th Leg. R.S. Effective Jan. 1, 2024).

The revenue in the municipal court building security fund may only be spent to finance security personnel, services, and items related to buildings that house the operations of municipal courts, including:

(1) X-ray machines and conveying systems;
(2) Handheld metal detectors;
(3) Walkthrough metal detectors;
(4) Identification cards and systems;
(5) Electronic locking and surveillance equipment;
(6) Video teleconferencing systems;
(7) Bailiffs of contract security personnel during times when they are providing appropriate security services;
(8) Signage;
(9) Confiscated weapon inventory and tracking systems;
(10) Locks, chains, alarms, or similar security devices;
(11) Bullet-proof glass;
(12) Continuing education on security issues for court and security personnel; and
(13) Warrant officers and related equipment.[210]

What may money in the municipal court technology fund be spent on?

The fees in the municipal court technology fund may only be spent to purchase or maintain technological enhancements for a municipal court's operations, including: (1) computer systems; (2) computer networks; (3) computer hardware; (4) computer software; (5) imaging systems; (6) electronic kiosks; (7) electronic ticket writers; and (8) docket management systems.[211]

What may money in the municipal jury fund be spent on?

Revenue allocated to the municipal jury fund may be used by a city only to fund juror reimbursements and otherwise finance jury services.[212]

MUNICIPAL COURT FINES

What are municipal court fines?

Fines are the monetary punishment meted out by municipal courts. Not all cities operate municipal courts; to levy fines, cities must first operate a court.

[210] TEX. CRIM. PROC. CODE § 102.017(c).
[211] Id. § 102.0172(b).
[212] TEX. LOC. GOV'T CODE § 134.154.

How much of a municipal court fine may be levied?

Municipal courts hear Class C criminal prosecutions, which mean cases punishable by fine only. Some Class C offenses are created by state statute, in which case the statute would set the maximum fine. Traffic tickets, for example, are typically punishable by a maximum fine of $200.[213]

Cities can also create Class C offenses for violations of their own ordinances. With one exception, the maximum amount for fines created by ordinance is $500 for ordinary offenses, and $2000 for offenses relating to fire safety, zoning, or public health and sanitation.[214] In 2015, legislation passed authorizing a city to impose a fine of up to $4,000 for the violation of a rule, ordinance, or police regulation that governs the dumping of refuse.[215]

What may a city spend municipal court fine revenue on?

Fine revenue for offenses other than traffic violations is general revenue of the city and thus may be spent on any lawful purpose.

Fine revenue for state law traffic violations must be used to construct and maintain roads, bridges, and culverts in the city, and to enforce laws regulating the use of highways by motor vehicles.[216]

What role does the city council have in setting fine amounts?

Cities that create ordinances with fines attached may set the maximum amount of the fine in the ordinance, up to the limits allowed by state law. Beyond creating the ordinance, however, the amount of fines in individual cases is entirely up to the municipal court judge and/or jury, keeping in mind the federal and state protections against "excessive fines."[217]

See Chapter: *Traffic Fine Revenue*

MUNICIPAL DEVELOPMENT CORPORATION SALES TAX

What is a municipal development corporation?

[213] TEX. TRANSP. CODE § 542.401.
[214] TEX. LOC. GOV'T CODE § 54.001(b).
[215] Id.
[216] TEX. TRANSP. CODE § 542.402(a).
[217] See TEX. CONST. art. I, § 13; U.S. CONST. amend. VIII; Op. Tex. Att'y Gen. KP-0267 (2019).

A municipal development corporation (not to be confused with a Type A or Type B *economic* development corporation) is a little-used city economic development tool that focuses on workforce training and development. The legislation authorizing municipal development corporations (MDCs) was passed in 2001 and is titled the "Better Jobs Act." MDCs are ideal for long-term job training and early childhood development programs within cities. The statute authorizing MDCs is located in Chapter 379A of the Local Government Code.

How are MDCs funded?

A city may call an election to levy a sales tax to fund an MDC's programs.[218] The sales tax may be levied at the rate of one-eighth, one-fourth, three-eighths, or one-half of one percent.[219] The tax must be reauthorized every 20 years.[220]

What may an MDC spend its sales tax revenues on?

An MDC may fund programs for: (1) job training; (2) early childhood development that prepares children to enter school; (3) after-school programs for primary and secondary schools; (4) postsecondary institutions and scholarships; (5) literacy programs; and (6) any other undertaking that the MDC's board determines will facilitate the development of a skilled workforce within the city.[221]

How does an MDC operate?

Similar to an economic development corporation, an MDC is governed by a board of directors that is appointed by—and serves at the will of—the city council.[222] A director may not be an employee or officer of the city that created the MDC.[223]

Does the city council have oversight over the MDC?

Yes. The budget for MDC program expenditures, as well as any budget amendments, must be approved by the city council.[224] The MDC's budget that is presented to the city council must include a detailed description of proposed expenditures.[225] Further, two-thirds of the city council can vote to amend the MDC's budget.[226] The MDC board must prepare annual financial statements

[218] TEX. LOC. GOV'T CODE § 379A.081(a).
[219] Id. § 379A.081(e).
[220] Id. § 379A.081(d).
[221] Id. § 379A.051(a).
[222] Id. § 379A.021.
[223] Id. § 379A.021(e).
[224] Id. § 379A.025(a).
[225] Id. § 379A.025(c).
[226] Id. § 379A.025(b).

to be presented to the city council, and the city council is entitled to the records of the MDC at all times.[227]

May an MDC be limited as to which programs it may pursue?

Yes, the city council may provide that an MDC's sales tax ballot proposition be limited to specific programs, rather than all of the purposes authorized by the MDC statute.[228] For instance, a city council could ensure that MDC revenues be spent only on job training, and not on other projects that the council might wish to avoid, by limiting the ballot proposition to job training projects.

MUNICIPAL DEVELOPMENT DISTRICT (MDD) SALES TAX

What is a municipal development district sales tax?

An MDD is a political subdivision created by a city to plan, acquire, establish, develop, construct, or renovate one or more development projects beneficial to the district.[229] An MDD closely resembles a Type B economic development corporation (EDC), with some key differences (discussed below). The MDD is funded through a dedicated local sales and use tax that must be approved by the voters in an election held within the district.[230] *Id.* § 377.101.

The concept of an MDD was first introduced in a limited capacity in 1999, when the Texas Legislature authorized the City of Aransas Pass to create an MDD. In 2001, legislation passed to provide that any city located in multiple counties could hold an election to adopt an MDD. Finally, in 2005, the Texas Legislature amended Chapter 377 of the Local Government Code to enable any city to establish an MDD.

How much can the MDD sales tax levy be?

The rate of an MDD sales tax may be one-eighth, one-fourth, three-eighths, or one-half of one percent of the cost of goods sold within the MDD that are subject to sales taxes.[231] The combined rate of all local sales taxes within the district, however, cannot exceed two percent.[232]

[227] Id. §§ 379A.025(d) and (e).
[228] Id. § 379A.081(c).
[229] Id. §§ 377.021 and 377.022.
[230] Id. § 377.101.
[231] Id. § 377.104.
[232] Id. § 377.101(c).

What may an MDD sales tax be spent on?

An MDD sales tax is a dedicated city sales tax, meaning its proceeds can only be spent on certain authorized projects (as distinguished from a general purpose tax, which can be spent on any lawful city purpose).

An MDD sales tax is an economic development tax that can be spent on authorized "development projects," which include any of the following:

(1) Any "project" as that word is defined by Sections 505.051 through 505.158 of the Local Government Code.[233] In other words, the MDD tax automatically encompasses any project available to a similarly-sized Type B economic development corporation.
(2) A convention center facility or related improvements such as a civic center or auditorium.[234]
(3) Parking lots for such convention or related facilities.[235]
(4) Civic center hotels.[236] This authority can be quite important; funding of civic center hotels with other funds, such as hotel occupancy taxes, is controversial both legally and politically.

Can an MDD be created to encompass the city's extraterritorial jurisdiction (ETJ)?

Yes. When a city holds the election to create a district, the district may be created in: (1) all or part of the boundaries of the city; (2) all or part of the boundaries of the city and all or part of the boundaries of the city's ETJ; or (3) all or part of the city's ETJ.[237]

While the MDD statute authorizes the boundaries of the MDD to include the city's ETJ upon the creation of the district, it should be noted that there is no express statutory authority to later modify the boundaries of the ETJ. In other words, an MDD that is initially created to only include the city limits cannot later be expanded—by election or otherwise—to include the city's ETJ.

If the MDD sales tax so closely resembles a Type B economic development sales tax, why not just enact a Type B economic development tax instead?

There are several distinctions between an MDD tax and a Type B tax that might make the MDD tax preferable to a particular city:

(1) The scope of projects that can be funded with an MDD sales tax is slightly larger than a Type B sales tax (see above);

[233] Id. § 377.001(3)(A).
[234] Id. § 377.001(3)(B).
[235] Id.
[236] Id.
[237] Id. § 377.002.

(2) An MDD sales tax need not be levied over the entire corporate limits of a city, as a Type B sales tax must. This can be useful for cities that straddle county boundaries and are thus "maxed out" at their two-percent local sales tax cap in some areas of the city but not in others. The statute states that the city can create the district (and thus levy the tax) in "all or part of the boundaries of the municipality."[238] A city might choose to limit the application of the tax to certain areas of the city for other reasons as well, including economic development considerations.

(3) As mentioned above, an MDD sales tax may be imposed in a city's extraterritorial jurisdiction (ETJ) if the voters of the entire district approve the tax.[239] The MDD sales tax is the only city sales tax that may be levied in the ETJ of a city.

(4) The MDD statute does not have the same level of detailed restrictions that the Type B statute does. For example, the EDC statute prevents the city from giving aid to an EDC.[240] The MDD statute contains no such restriction. The MDD statute only references the Type B law to define the permissible projects of an MDD; it does not incorporate the other procedural and substantive aspects of the EDC statutes.

(5) The board of an MDD consists of a minimum of four persons.[241] A Type B corporation has a seven-member board.[242] Many Type B cities, particularly smaller cities, report difficulty in locating persons willing to serve on the Type B board. The smaller MDD board can help in this regard.

Can an MDD spend its revenue for authorized projects outside the district?

One area where MDDs clearly have less flexibility than an EDC relates to spending on projects located outside the boundaries of the district. An EDC may undertake projects outside of the city limits with permission of the governing body that has jurisdiction over the property.[243] For instance, if a potential project is located completely within the jurisdiction of another city, the corporation would need approval of the city council of that city before funding the project.

An MDD, on the other hand, is only authorized to fund projects located within the boundaries of the district. As a general matter, an MDD may use money in the development project fund only to "pay the costs of planning, acquiring, establishing, developing, constructing, or renovating one or more development projects *in the district.*" (Emphasis added.)[244] So if the boundaries of an MDD include only the corporate boundaries of the city, the MDD is not clearly authorized to spend money on projects located in the ETJ.

[238] Id. § 377.002(a)(1).
[239] Id. § 377.002(a)(2).
[240] Id. § 501.007(a).
[241] Id. § 377.051(a).
[242] Id. § 505.051.
[243] Id. § 501.159.
[244] Id. § 377.072(a).

Is an MDD required to follow certain procedures when selling or conveying real property owned by the MDD?

Yes. Unlike an EDC, an MDD is considered to be a political subdivision of the state.[245] As such, an MDD must comply with laws that are generally applicable to political subdivisions. This includes Chapter 272 of the Local Government Code, which establishes a notice and bidding process for the sale of real property by a political subdivision.

Is an MDD required to have bylaws?

No. Chapter 377 of the Local Government code is silent regarding the adoption of MDD bylaws. Because MDDs operate in a similar manner to EDCs, and state statute specifically provides for the creation of EDC bylaws, many cities also adopt MDD bylaws. Unlike EDCs, there is no specific procedure to follow to adopt or amend MDD bylaws.

The ability of a Type B corporation to fund commercial and retail economic development projects depends on the size and/or Type B revenues of the city. Does this distinction extend to an MDD sales tax as well?

The likely answer is yes. The MDD statute, when listing eligible projects that can be funded by the MDD sales tax, incorporates by reference the section of the Type B laws that contains the population/revenue distinction with respect to commercial and retail projects.[246]

Thus, a court would likely find that the ability of an MDD to engage in general commercial and retail economic development projects depends on the same population/revenue distinction that is contained in the Type B statute.

Specifically, an MDD district with less than 20,000 population, ***or*** less than $50,000 in revenues from the MDD sales tax in each of the two preceding years, may fund commercial and retail economic development projects with the MDD sales tax.[247]

MDDs that don't meet either of those criteria would be limited to Type B projects other than commercial and retail. Typically, such projects are of a more "blue collar" variety (the statute uses the term "primary jobs"), such as industry and manufacturing, as well as certain targeted infrastructure projects, and recreational and community facilities, among other things. Such a district would still have the additional projects available to it such as convention centers and civic center hotels.

What is the procedure for levying an MDD sales tax?

[245] Id. § 377.022.
[246] Id. § 377.001(3)(A).
[247] Id. §§ 505.156 and 505.158.

Following are the procedures for levying an MDD sales tax.

(1) **Draft Order of Election.** The city must draft an order that does the following: (a) defines the boundaries of the proposed MDD; (b) calls for an election to be held within those boundaries for the creation of the district and the levy of a sales tax, with the ballot proposition containing the following exact language:

> *"Authorizing the creation of the _____ Municipal Development District (insert name of district) and the imposition of a sales and use tax at the rate of _____ of one percent (insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate) for the purpose of financing development projects beneficial to the district.";*[248] and

(c) provides that the district boundaries automatically conform to any changes in the boundaries of the city or the ETJ (this provision is optional).[249]

(2) **Call the Election.** The city council calls the election on creation of the MDD and the MDD sales tax by passing the order in step 1 above at a properly noticed public meeting.[250]

(3) **Conduct the Election.** The city holds the election on the creation of the MDD and the MDD sales tax on one of the two uniform election dates under Section 41.001 of the Texas Election Code (the first Saturday in May, or the first Tuesday after the first Monday in November).[251]

(4) **Notify Comptroller.** If the election is successful, the city should send a copy of the order and canvass documents to the comptroller's office, and request that the comptroller begin remitting the MDD sales tax to the city. The new tax won't officially be in effect until the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date on which the comptroller receives a notice of the results of the election adopting, changing, or repealing the tax.[252]

(5) **Appoint the MDD Board.** The city council should next appoint a board of directors to govern the MDD. The board must consist of at least four members, who serve staggered two-year terms.[253] Directors may be removed by the city council at any time without cause. Board members must reside in the city that created the MDD or in the city's ETJ. City councilmembers, city officers, and city employees may be members of the board, but may not have a personal interest in a contract executed by the district.[254]

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[248] Id. § 377.021(b).
[249] Id. § 377.021(g).
[250] Id. § 377.021(a).
[251] Id. § 377.021(g).
[252] Id. § 377.106.
[253] Id. § 377.051(c).
[254] Id. § 377.021(d).

(6) **Establish Development Project Fund.** The board of the MDD then must pass a resolution establishing the "development project fund."[255] It is into this fund that the sales tax proceeds are deposited and spent on authorized MDD projects (see above).

If a city wants to replace an EDC sales tax with an MDD sales tax, can it use a combined ballot proposition?

Section 321.409 of the Texas Tax Code authorizes a city to repeal or lower one city sales tax, and raise or adopt a different city sales tax, all with one combined ballot proposition. The fact that this can be accomplished by one combined ballot proposition protects the city's interest by eliminating the risk that one tax will be voted out by the citizens without the other tax being voted in. A combined ballot proposition must be worded to contain substantially the same language required by law for each of the two taxes individually.[256]

Although a city is permitted to have a combined ballot proposition to switch from an EDC sales tax to a MDD sales tax, doing so could create a unique problem. If the boundaries of a proposed MDD are to include all or a portion of the city's ETJ, then the MDD would cover a different taxing area than would the EDC. As a result, the combined ballot proposition would either: (1) allow voters living outside the city limits in the ETJ to vote to terminate the EDC sales tax that was never imposed on them in the first place; or (2) would allow voters inside the city limits to impose the MDD sales tax in an area in which the actual residents living in that area did not have the opportunity to vote.

In at least one instance, the comptroller's office refused to honor the results of a combined ballot proposition to replace the EDC sales tax with the MDD sales tax because the city permitted voters in the ETJ to vote on the proposition that would (in part) abolish the EDC sales tax, even though that tax was never imposed in the ETJ. Because the comptroller has taken this position in the past, a city should consider using two separate ballot propositions if the boundaries of the MDD will differ at all from the boundaries of the EDC.

May MDD sales taxes be pledged to pay off bonds?

Yes, MDD sales taxes may be pledged to pay off bonds, including revenue and refunding bonds, or other obligations to pay the costs of a legal MDD development project.[257]

OPEN RECORDS CHARGES

[255] Id. § 377.072(a).
[256] TEX. TAX CODE § 321.409(b).
[257] TEX. LOC. GOV'T CODE § 377.073.

What are open records charges?

Open records charges are fees that a city is authorized to charge in order to reimburse the city for the expense of providing copies of public records in compliance with Public Information Act requests.

How much may a city charge persons who request copies of open records?

If the city is required to produce copies of 51 or more pages of public records, the city may charge an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead.[258]

When providing a requestor 50 or fewer pages of public records, the city may only charge the cost of the photocopying itself, unless the pages to be photocopied are located in two or more separate buildings that aren't physically connected or in a remote storage facility.[259]

While the statute says that a city is entitled to recover its actual costs, the statute also authorizes the attorney general to promulgate rules that effectively limit the maximum amount that can be charged per photocopy. To summarize the combined effect of the statutes and rules, a city can ultimately charge the *lower* of (1) the actual cost of photocopying per page; or (2) 12.5 cents per page (ten cents, as authorized by attorney general rule, plus a 25-percent cushion allowed by Government Code Section 552.262(a)).

What must a city do if the charge for copies of records will be costly?

If the charges for compliance with a request for public records will exceed $40, the city must first give the requestor a written, itemized statement that details all the estimated charges, as well as informs the requestor what his or her rights are under the statute.[260] After giving the requestor such a letter, the city then waits for the requestor to respond whether or not the charges are acceptable before making the copies. A request is considered withdrawn if the city doesn't receive a response back from the requestor within ten business days after the itemized statement was sent.[261]

How does a city charge for its labor?

To recap, a city may generally only charge for the labor involved in producing copies if 51 or more copies are requested. If so, the city may charge $15 an hour for staff time involved in locating, compiling, and reproducing public information.[262]

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[258] TEX. GOV'T CODE § 552.261(a).
[259] Id.
[260] Id. § 552.2615(a).
[261] Id. § 552.2615(b).
[262] 1 TEX. ADMIN. CODE § 70.3.

When a charge for public records includes labor, the requestor has the right to request a free written statement outlining how the labor charges were computed.[263]

May a city require an up-front deposit from the requestor for expensive requests?

A requestor may be required to post an up-front deposit or bond if both of the following are true:

(1) The city has given the requestor the written itemized statement referred to above (for requests that will exceed $40)[264]
(2) The charge for providing the copies will exceed $100 if the government has more than 15 full-time employees or $50 if the governmental body has fewer than 16 full-time employees.[265]

What about charges of copies for things other than paper?

As with paper copies, the city may charge the lower of the actual costs to make the copy, or the rate provided for under attorney general rules plus 25 percent.[266] For example, the maximum charge for a DVD is $3.00.[267]

PROPERTY TAX FOR GENERAL REVENUE

What is the property tax for general revenue?

Any city may adopt a tax on the value of land, improvements, and certain personal property. Such a tax is sometimes referred to as the *ad valorem* tax, which is Latin for "according to value." Of the over 1,200 incorporated cities in Texas, 1,089 levy a property tax for general revenue.[268]

According to a recent survey conducted by TML, property taxes are the leading source of city revenue, accounting for 41 percent of city revenues on average statewide. Sales taxes are second at 29 percent.

As the largest source of revenue for many cities, combined with the fact that the rate is somewhat flexible from year to year, property taxes for general revenue tend to serve as a financial buffer

[263] TEX. GOV'T CODE § 552.261(b).
[264] Id. § 552.263(a).
[265] Id.
[266] TEX. GOV'T CODE § 552.262(a).
[267] 1 TEX. ADMIN. CODE § 70.3(b)(2)(G).
[268] Texas Comptroller, *Biennial Property Tax Report* - Tax Years 2020 and 2021, pg. 10.

that can smooth out yearly fluctuations in other revenue sources. Property taxes are also closely tied by law and practice to a city's budget calendar.

How is a property tax adopted?

Unlike adopting sales taxes, setting a property tax (including the first tax adopted by a city) does not require an election of the citizens. The council simply adopts the tax by ordinance prior to September 30 of each year.[269]

What did Senate Bill 2 from 2019 do?

Senate Bill 2, also known as the Texas Property Tax Reform and Transparency Act of 2019, was passed by the Texas Legislature in 2019. At its most fundamental level, S.B. 2 reforms the system of property taxation in three primary ways: (1) lowering the tax rate a taxing unit can adopt without voter approval and requiring a mandatory election to go above the lowered rate; (2) making numerous changes to the procedure by which a city adopts a tax rate; and (3) making several changes to the property tax appraisal process.

Do property taxes need to be approved by the voters?

City officials considering imposing a property tax for the first time often ask if citizen approval of property taxes is necessary. In addition, officials sometimes ask if they can go to the voters anyway for political "cover" because property taxes tend to be very controversial.

The answer to both questions is no, at least when it comes to the first property tax rate adopted in a city. According to the Texas Tax Code: "The governing body of each taxing unit shall adopt a tax rate for the current tax year and shall notify the assessor for the taxing unit of the rate adopted."[270] The decision to adopt an initial property tax rate belongs only to the city council.

However, once a city establishes a property tax rate, adopting a rate in subsequent years can require voter approval. Cities are required to receive voter approval if they adopt property tax rates exceeding certain thresholds, which were altered by S.B. 2 in 2019. For cities over 30,000 in population, in addition to a handful of cities under 30,000 in population with a large property tax base, the trigger for an automatic election to approve the property tax rate is called the "voter-approval rate." The voter-approval rate brings in 3.5 percent more maintenance and operations tax revenue than the previous year on existing properties, and cities can include "banked" amounts of "unused tax increments" from the three preceding years if the city adopted a rate lower than the voter-approval rate in any of those years.[271]

[269] TEX. TAX CODE § 26.05(a).
[270] Id.
[271] Id. § 26.013.

Most cities under 30,000 in population must keep their adopted property tax rate below the "de minimis rate" to avoid an automatic election.[272] The de minimis rate is the rate necessary to generate an additional $500,000 in property tax revenue over the previous year.[273] The de minimis rate can be significantly higher than the voter-approval rate.

If a city adopts a rate exceeding either the voter-approval rate or the de minimis rate, as applicable, it must order an election for the November uniform election date to receive voter approval.[274] In some smaller cities, the voters may be able to petition for an election under certain circumstances.[275]

Beyond the mandatory election requirements when cities adopt rates exceeding specific amounts, a home rule city could potentially hold an election on the imposition of a property tax if required to do so by the city charter. The attorney general opined that a court would likely conclude that Chapter 26 of the Tax Code does not conflict with or preempt a city charter provision that requires voter approval before city property taxes may be imposed.[276]

Of course, cities are not prohibited from gauging the will of the public when it comes to property taxes or any other issue. A city could conduct a non-binding poll or survey to find out whether the public supports imposition of property taxes. Some cities conduct such polls through inserts in utility bills, for instance.

Finally, it is sometimes asked whether home rule cities with the power of initiative and referendum may have their tax rates challenged by those charter-imposed processes. The answer is likely not. Texas cases have held that ordinances that rely on careful application of facts and figures are generally not subject to home rule voter initiative or referendum.[277]

What is the maximum property tax rate a home rule city may adopt?

For all home rule cities, the maximum property tax rate levy is $2.50 per $100 of taxable value, although a tax rate lower than $2.50 may be prescribed by the city charter.[278] Interestingly, the sentence in Art. XI, Sec. 5 of the Texas Constitution that sets the maximum tax rate provides as follows: "*Said cities* may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent. of the taxable property of such city… ." (Emphasis added.) The use of the term "said cities" comes after three sentences in the same section, the first of which refers to the ability of cities having more than 5,000 inhabitants being authorized to hold an election to adopt a home rule charter. The next sentence refers to cities that have adopted city charters but fallen below 5,000 inhabitants. As a result, Article XI, Section 5 would likely be construed by a

[272] Id. § 26.07(b).
[273] Id. § 26.012 (8-a)(B).
[274] Id. § 26.07.
[275] Id. § 26.075.
[276] Tex. Att'y Gen. Op. No. GA-1073 (2014).
[277] *Denman v. Quin*, 116 S.W.2d 783 (Tex. Civ. App.—San Antonio 1938, writ ref'd).
[278] TEX. CONST. art. XI, § 5.

court as authorizing a maximum property tax rate of $2.50 per $100 of taxable value for all home rule cities, regardless of population.

What is the maximum property tax rate a general law city may adopt?

The maximum property tax rate for a Type A general law city depends upon the population of the city. Any Type A general law city with fewer than 5,000 inhabitants has a maximum property tax levy of $1.50 per $100 of taxable value.[279] Meanwhile, a Type A general law city with a population of more than 5,000 inhabitants may adopt a maximum tax rate of $2.50 per $100 of taxable value.[280] This is due to the language mentioned above from Article XI, Section 5, which applies the $2.50 maximum to a city over 5,000 in population that is eligible to hold an election to adopt a home rule charter.

Type B general law cities are limited by state statute to a maximum property tax levy of $0.25 per $100 of taxable value.[281]

Type C general law cities' maximum tax rate is determined by population. A Type C general law city with 201 to 500 inhabitants generally has the same authority as a Type B general law city, unless state statute provides otherwise.[282] Because a Type B general law city has a maximum tax rate of $0.25 per $100 of taxable value, and there is no state law that specifies a maximum tax rate for a Type C general law city, the maximum property tax rate for a Type C general law city that has between 201 and 500 inhabitants is $0.25 per $100 of taxable value. Other Type C general law cities may levy a maximum tax rate of $1.50 per $100 if the city has fewer than 5,000 inhabitants, and a maximum tax rate of $2.50 per $100 if the city has more than 5,000 inhabitants.

Are there special quorum requirements at a meeting to impose property taxes?

Type A general law cities must have two-thirds (essentially four of five) of the council present at a meeting to adopt a property tax.[283] A home rule city may have special charter requirements relating to quorums. Home rule cities that do not have special charter requirements, and all other general law cities, follow their normal quorum rules when setting a property tax.

When must a property tax be adopted?

The answer depends on whether or not the city is adopting a tax rate exceeding the voter-approval rate. If so, state law requires a city to adopt a property tax rate not later than the 71st day before the November uniform election date.[284] If the city adopts a tax rate that does not exceed the voter-

[279] Id. § 4
[280] Id. § 5.
[281] TEX. TAX CODE § 302.001(b).
[282] TEX. LOC. GOV'T CODE § 51.051(b).
[283] Id. § 22.039.
[284] TEX. TAX CODE § 26.05(a).

approval rate, the council must adopt the rate before the later of September 30 or the 60th day after the date the city receives the certified appraisal roll from the chief appraiser.[285]

The chief appraiser must deliver the certified appraisal roll to the tax assessor for the city by July 25 of each year.[286] Alternatively, if the appraisal review board has not approved the appraisal records by July 20, the chief appraiser shall prepare and certify to the assessor for each taxing unit an *estimate* of the taxable value by not later than July 25.[287] If a certified estimate is provided instead of a certified appraisal roll, the officer or employee designated by the city council shall calculate the no-new-revenue tax rate and voter-approval tax rate using the certified estimate of taxable value.[288]

Assuming the certified appraisal roll is delivered to the tax assessor by July 25, the city has until "before September 30" to adopt a property tax rate that does not exceed the voter-approval rate. This means that the final day for cities to adopt a tax rate is September 29. The state statute governing city budgets provides that a city council "may levy taxes only in accordance with the budget."[289] Consequently, a city must adopt its annual budget prior to the adoption of the property tax rate, regardless of whether the rate exceeds the voter-approval rate.

Should a city official or staff member contact the appraisal district regarding property values?

No. A member of the governing body, officer, or employee of a taxing unit commits a Class A misdemeanor if the person directly or indirectly communicates with the chief appraiser or another employee of the appraisal district for the purpose of influencing the value at which property in the district is appraised.[290] There is an exception if the person actually owns or leases the property that is the subject of the communication.

What happens if a city fails to adopt its property tax rate by the deadline?

If a city fails to adopt a tax rate exceeding the voter-approval rate by the 71st day before the November uniform election date, then the city loses the ability to adopt a rate exceeding the voter-approval rate. (Note that pursuant to the Texas Election Code, the city must order its election not later than the 78th day before the election date.[291] If the city fails to do so, it also loses the ability to adopt a rate exceeding the voter-approval rate.) The city still could adopt a rate that does not exceed the voter-approval rate by the September 29 deadline. Cities that do not meet the September 29 deadline are nevertheless entitled to a "default" tax rate, which is equal to the lower of the following: (1) the no-new-revenue tax rate for the upcoming year; or (2) last year's actual tax rate.[292] The city council must pass an ordinance ratifying the default tax rate before the fifth day after the default rate is established. It is important to note that the September 29th deadline does

[285] Id.
[286] Id. § 26.01(a).
[287] Id. § 26.01(a-1).
[288] Id. § 26.04(c-2).
[289] TEX. LOC. GOV'T CODE § 102.009(a).
[290] TEX. TAX CODE § 6.155
[291] TEX. ELEC. CODE § 3.005(c).
[292] TEX. TAX CODE § 26.05(c).

not apply if the appraiser was late in delivering the certified roll to the city. In that case, the city would have 60 days following receipt of the certified roll to adopt its tax rate.[293]

Is a city still required to hold two public hearings on the tax rate if the rate exceeds the no-new-revenue rate?

No. A city that adopts a rate exceeding the lower of the no-new-revenue tax rate or the voter-approval tax rate must only hold one public hearing.[294]

The lone public hearing may not be held before the fifth day after the date the notice of the public hearing is given.[295] The city council also may not hold its public hearing or public meeting to adopt a tax rate until the fifth day after the date the chief appraiser of each appraisal district in which the city participates has delivered its tax estimate notice under Tax Code Sec. 26.04(e-2) and made various tax rate information and the tax rate calculation forms available on to the public via the property tax database under Tax Code Sec. 26.17(f).[296] In fact, the city council is prohibited from adopting a tax rate until the chief appraiser has given notice and updated the property tax database.[297]

There remains an exception to the public hearing requirement if the city proposes and ultimately adopts a tax rate that exceeds the lower of the no-new-revenue rate or voter-approval rate. A "low tax levy" city is defined as a city that proposes a tax rate of 50 cents per $100 of taxable value or less and has a total tax levy of less than $500,000.[298] A city that fits this criteria can elect to provide simplified notice authorized by state statute, which also authorizes the city to adopt a tax rate that exceeds the lower of the no-new-revenue tax rate or voter-approval rate without a public hearing, so long as it complies with the other statutory requirements in the Tax Code.[299]

Every year in late May or early June, TML publishes detailed property tax and budget procedures and deadlines for both large and small taxing cities. The deadlines vary from year to year because certain statutes prohibit some deadlines from falling on weekends or holidays. A copy of those procedures and deadlines is typically available under the legal section of the TML website, tml.org (Click "Policy" → Click "Legal Research" → Click "+" next to "Topics" → Click "Finance/Economic Development" → "Budget and Taxation Deadlines"), or can be obtained by calling the TML Legal Department at 512-231-7400.

What is the relationship between property taxes and a city's budget?

[293] Id. § 26.05(a).
[294] Id. § 26.05(d).
[295] Id. § 26.06(a).
[296] Id. § 26.05(d-1).
[297] Id. § 26.05(d-2).
[298] Id. § 26.052(a).
[299] Id. § 26.052(d).

A city may only levy property taxes in accordance with its budget.[300] Put another way, if the budget for the year that coincides with or overlaps the tax year doesn't show a property tax levy of an approximate amount, property taxes cannot be levied that year.

Further, a budget that will raise more total property taxes than the previous year must be posted on the city's website (if it operates one), have a special cover page, contain special hearing notices, and requires a separate ratification vote by city council.[301]

What are the different types of tax rates?

Following are the different types of tax rates a city must deal with during each tax/budget season:

(1) **No-New-Revenue Tax Rate.** The no-new-revenue tax rate is a benchmark tax rate that a city must calculate each year as it begins its property tax and budget process. The no-new-revenue rate is essentially a hypothetical rate that would raise the same amount of revenue from property taxes on existing property as last year, after taking into account changes in appraisals.[302]

For example, if property values increase by 10 percent over the previous year, the no-new-revenue rate would be 10 percent lower than last year's nominal (actual) rate, since a lower rate would be sufficient to raise the same amount of total tax revenue.

The significance of the no-new-revenue rate is that it forms the centerpiece of a concept known as "truth in taxation." Truth in taxation focuses on whether the actual number of dollars generated by property taxes goes up or down on an individual property, after taking into account appraisal fluctuations. As the foundation for city tax rate calculations, the no-new-revenue rate accomplishes this goal by generating a rate that would raise the same number of dollars as the prior year, making any increases in revenue more transparent.

Additionally, the legal effect of the no-new-revenue tax rate is very important. In the first place, a city can adopt a tax rate equal to (or less than) the no-new-revenue rate without as many additional requirements. If a city wants to exceed the no-new-revenue rate, however, the city must typically hold a public hearing specifically on the issue of raising taxes.[303] The presiding officer must also use the following language when moving to adopt a tax rate that exceeds the no-new-revenue rate: "I move that property taxes be increased by the adoption of a tax rate of (specify tax rate), which is effectively a (insert percentage by which the proposed tax rate exceeds the no-new-revenue tax

[300] TEX. LOC. GOV'T CODE § 102.009.
[301] Id. §§ 102.005(b) & (c), 102.006(c), and 102.007(c).
[302] TEX. TAX CODE § 26.04(c)(1).
[303] Id. § 26.05(d).

rate) percent increase in the tax rate."[304] Also, detailed published notice must be made of the tax increase hearing.[305]

At least 60 percent of the members of the governing body of a city must vote in favor of an ordinance setting a property tax rate that exceeds the no-new-revenue tax rate.[306] Most general law cities are unaffected by this requirement, because a simple majority in such cities already equates to 60 percent. However, cities with a city council consisting of seven, nine, eleven-plus voting members will need to add one additional councilmember vote to the number needed to adopt a tax rate exceeding the no-new-revenue rate.

(2) **No-New-Revenue Maintenance and Operations Rate.** The city's no-new-revenue tax rate should be distinguished from the city's no-new-revenue maintenance and operations tax rate. As the name suggests, the no-new-revenue maintenance and operations tax rate excludes debt from the calculation.[307] The no-new-revenue maintenance and operations rate is used to calculate both the voter-approval tax rate and the de minimis tax rate in cities with populations of less than 30,000.

(3) **Voter-Approval Tax Rate.** The voter-approval tax rate is another hypothetical tax rate that is equal to 103.5 percent of the no-new-revenue maintenance and operations rate, plus the debt rate and a new rate called the "unused increment rate."[308] Put another way, it is a rate that would raise precisely 3.5 percent more revenue from property taxes for maintenance and operations as the year before after taking into account appraisal fluctuations plus any "unused increment."

The significance of the voter-approval tax rate is that if the city adopts a tax rate that exceeds the voter-approval rate, it must—with some exceptions—hold an automatic election to approve the rate on the November uniform election date.

(4) **Unused Increment Rate.** The unused increment rate is a component of the larger voter-approval rate calculation. If the city adopts tax rates lower than the voter-approval rate, the city has the ability to "bank" these unused amounts to use for up to three years. The unused increment rate is the 3-year rolling sum of the revenue the city could have collected with that year's voter approval rate minus the revenue the city did collect with its nominal rate divided by current total value.[309] Under no circumstance can the unused increment rate be less than zero.[310]

The legislature's stated goal in relation to the unused increment rate is to discourage taxing units from automatically adopting a rate equal to the 3.5 percent voter-approval rate every year. Under the new framework, a city that experiences exceptional growth

[304] Id. § 26.05(b).
[305] Id. §§ 26.04(e), 26.06(b-1) – (b-3), 26.061, 26.062, and 26.063.
[306] Id. § 26.05(b).
[307] Id. § 26.012(18).
[308] Id. § 26.04(c)(2)(B).
[309] *See* ID.§ 26.013 (as amended by S.B. 1999 of the 88th Leg. R.S. Effective Jan. 1, 2024).
[310] TEX. TAX CODE § 26.013(b)(1).

in sales tax revenues in a year may be able to adopt a rate less than the 3.5 percent voter-approval rate and bank the difference for a future year when sales taxes perform worse than expected. On the other hand, many cities will likely be forced to go up to the 3.5 voter-approval rate every year just to keep up with rising costs. For those cities, the unused increment rate will be a non-factor.

(5) **De Minimis Rate.** The de minimis rate is a tax rate calculation designed to give smaller taxing units, including cities, additional ability to raise revenue from property tax above the 3.5 percent increase included in the voter-approval tax rate.

The de minimis rate is defined as the sum of:

- A taxing unit's no-new-revenue maintenance and operations rate;
- The rate that, when applied to a taxing unit's current total value, will impose an amount of taxes equal to $500,000; and
- A taxing unit's current debt rate.[311]

In a nutshell, the de minimis rate allows smaller cities to adopt a tax rate that generates $500,000 more in property tax revenue than the previous year. The thinking was that applying 3.5 percent voter-approval tax rate revenue ceiling in very small communities would unnecessarily restrict revenue growth to sometimes just a nominal amount, creating an unfair result for small towns.

If a city with a population of less than 30,000 adopts a tax rate that exceeds the greater of the city's voter-approval tax rate or the de minimis tax rate, the city council must order an election to approve the adopted tax rate for the November uniform election date.[312]

If a city with a population of less than 30,000 adopts a tax rate that exceeds the voter-approval rate but not the de minimis rate, it is possible, depending on the facts, including the level of the tax increase, that the voters would be required to petition for a tax approval election instead of the city being required to hold an automatic election.[313]

(6) **Proposed Tax Rate.** The proposed tax rate is the rate that the city council anticipates adopting while still working through the budget process.

(7) **Nominal Tax Rate.** The nominal tax rate is the actual tax rate that the city council adopts at the end of the tax and budget process. It is sometimes called the "actual rate," "gross rate;" or "adopted rate."

[311] Id. § 26.012(8-a).
[312] Id. § 26.07(b).
[313] Id. § 26.075(b).

(8) **Maintenance and Operations (M&O) Tax Rate.** The M&O rate is a component rate of the nominal tax rate (the debt service rate is the other component) that represents discretionary taxes that are used to fund general operations of the city.

(9) **Debt Service Tax Rate.** The debt service rate is the second component of the nominal tax rate (the M&O rate is the other) that represents the levy necessary to pay off obligations that are secured by property taxes, such as bonds and certificates of obligation. To be eligible for inclusion in this tax rate, the debt service must fit within the definition of "debt" in Section 26.012 (7) of the Texas Tax Code.

(10) **Emergency Revenue Rate.** If a city is located in an area declared a disaster area by the governor or the president of the United States, the city may adopt an tax rate that raises 8 percent more revenue over the previous year's rate without voter approval, if at least one person is granted a temporary property tax exemption for a portion of the appraised value of property damaged by the disaster.[314] The city can continue to calculate the tax rate in this manner until the first year in which total taxable value of property exceeds the value on January 1 of the year when the disaster was declared or the third tax year after the disaster occurred. If a city adopts such a rate, in the first tax year following the last tax year for which the city adopted the disaster-related rate, the city's voter approval rate is reduced by the "emergency revenue rate."[315] The emergency revenue rate subtracts out from the voter-approval rate the cumulative effect the disaster-related rates would continue to have on the no-new-revenue rate moving forward. Effectively, the emergency revenue rate calculation puts the city's tax rate where it would have been had the city adopted the voter-approval rate for each tax year when the city adopted a disaster-related rate.

What happens if voters do not approve a city tax rate at a tax rate approval election?

If voters do not approve the city's adopted tax rate at a tax rate approval election, the city's rate for the current tax year is set at the voter-approval tax rate.[316] If property owners pay their taxes using the originally adopted tax rate and the voters ultimately reject that rate at an election in November, the city must refund the difference between the amount of taxes paid and the amount of taxes due under the voter-approval tax rate.[317]

The ballot language must allow voting for or against the following proposition: "Approving the ad valorem tax rate of $_____ per $100 valuation in (name of taxing unit) for the current year, a rate that is $_____ higher per $100 valuation than the voter-approval tax rate of (name of taxing unit), for the purpose of (description of purpose of increase). Last year, the ad valorem tax rate in (name of taxing unit) was $_____ per $100 valuation."[318]

[314] Id. § 26.042.
[315] Id. § 26.042(b).
[316] Id. § 26.07(e).
[317] Id. § 26.07(g).
[318] Id. § 26.07(c).

If property values decline, will a city lose property tax revenue, or be forced to hold a tax rate approval election?

No. The no-new-revenue tax rate, a tax rate that the city must calculate each year, is a helpful mechanism that guarantees a city will never take in less revenue from property taxes than the year before, regardless of what happens to property values (see above). Of course, a city is not required to adopt a rate exceeding the no-new-revenue tax rate. The no-new-revenue tax rate is the rate a city would need to set in order to take in the same dollar amount of taxes as it did the previous year. It will thus be higher or lower than last year's actual tax rate, with an inverse correlation to what property values have done in the meantime. A city may always adopt the no-new-revenue rate as its actual rate, without facing a tax rate approval election. It is a rate, in other words, that protects the city against falling property values.

For example, assume that property values in a city have dropped by half since last year (not likely, of course). The no-new-revenue tax rate in such an example would be double the actual tax rate from last year, because given the lower property values, the city would not be taking in any more revenue from property taxes than it did the year before even with a significantly higher rate.

What property is exempt from property taxes?

State statutes contain numerous types of property that are automatically exempt from property taxes. These include:

(1) Public property (e.g., city-, county-, and state-owned land used for public purposes);
(2) Tangible personal property not producing income (see next question regarding optional taxability by a city);
(3) Family supplies;
(4) Farm products;
(5) Implements of husbandry;
(6) Cemeteries;
(7) Charitable organizations;
(8) Charitable hospitals;
(9) Religious organization property;
(10) Schools;
(11) A portion of the assessed value of property owned by a disabled veteran (or the surviving spouse or children of a disabled veteran, under certain circumstances); and
(12) Qualified property damaged by a disaster.[319]

What property can be exempted from property taxes (or taxed, if otherwise exempt) at the option of the city?

[319] Most property tax exemptions are covered in Chapter 11 of the Texas Tax Code.

Following is a list of exemptions (or optional taxable items) that can be imposed at the option of the city:

(1) **Optional Homestead Exemption.** A city council has the option of exempting a percentage, not to exceed 20 percent, of the value of residential homesteads for all homeowners in the city.[320] Such an exemption must be adopted by ordinance or resolution prior to July 1 if it is to apply to a given tax year. Once adopted, the exemption need not be re-adopted every year. The minimum application of the exemption to any property is $5,000.[321] A recent attorney general's opinion indicates that a city lacks the authority to raise the minimum application "floor" from $5,000 to $10,000.[322]

The optional homestead exemption for all citizens is for the council only to adopt; it cannot be forced on a city through petition and referendum.

(2) **Optional Senior and Disabled Exemption.** A city may adopt an optional exemption of a fixed dollar amount of property taxes on the homesteads of persons who are disabled or 65 years of age and older.[323] The optional senior and disabled exemption can be adopted in three different ways: (a) the city council can enact the exemption by ordinance or resolution; (b) the city council may call an election of the citizens to adopt the exemption; or (c) the council must call an election if it receives a petition signed by at least 20 percent of the qualified voters who voted in the preceding city election.[324]

The exemption can be for any amount exceeding $3000 of the appraised value of the residence homestead. Some cities exempt as much as the first $100,000 of appraised value of senior and disabled homesteads. More common is $10,000 or so, and some cities do not grant the exemption at all. The exemption can be reduced, increased, or repealed in subsequent years.[325]

(3) **Senior and Disabled Tax Freeze.** See next question.

(4) **Freeport Tax Exemption.** Certain goods known as "Freeport property" are exempt from property taxation in cities unless the city opted to tax these goods prior to an April 1, 1990, deadline. Most cities opted to continue taxing Freeport property at that time. Such cities may now change their mind, and exempt such property, typically as an economic development incentive. Once a city acts to exempt Freeport property, the decision is final.[326]

"Freeport property" includes certain types of tangible personal property that is detained in Texas for assembling, storing, manufacturing, or processing, only to be transported

[320] TEX. TAX CODE § 11.13(n).
[321] Id.
[322] Op. Tex. Att'y Gen. No. KP-0215 (2018).
[323] TEX. TAX CODE § 11.13(d).
[324] Id.
[325] Id. § 11.13(f).
[326] TEX. CONST. art. VIII, § 1-j(b).

outside the state within 175 days after the property was first acquired in the state.[327] In 2013, voters approved a constitutional amendment authorizing a city to take official action to extend the date by which aircraft parts exempted as Freeport goods must be transported outside the state to a date not later than 730 days after the property was first acquired in the state.[328]

(5) **Super Freeport Exemption.** Super Freeport goods are similar to Freeport goods, except they need not leave the state. A city may opt out of the exemption at any time, effective the subsequent tax year.[329]

Freeport property is typically warehouse inventory and manufacturing materials that pass through the state in less than 175 days.[330] Legislation passed in 2021 allows a city to extend this deadline to 270 days if the city is located in an area designated as a disaster area.[331] That legislation is set to expire December 31, 2025.

(6) **Tangible Personal Property not Producing Income.** See subsequent chapter: *Property Tax on Non-Income Producing Tangible Personal Property*.

(7) **Motor Vehicles Leased for Personal Use.** Motor vehicles leased for personal use are exempt from property taxes.[332] Cities had the ability to adopt ordinances before January 1, 2002, to authorize the collection of city property taxes on motor vehicles leased for personal use that would otherwise be exempt from property taxation.[333]

(8) **Historic Site Exemption.** A city council may, by ordinance or resolution, exempt from property taxation part or all of the assessed value of a structure or archeological site and the land necessary for access to and use of the structure or site if the site: (1) is designated as a Recorded Texas Historic Landmark or state archeological landmark by the Texas Historical Commission; or (2) is designated as a historically or archeologically significant site in need of tax relief to encourage its preservation pursuant to an ordinance or resolution adopted by the city council.[334] After the exemption is adopted, a city may only repeal or reduce the amount of the exemption for a property qualifying for the exemption if the owner of the property either consents to the repeal or reduction, or the city provides written notice of the repeal or reduction to the owner not later than five years before the date the governing body repeals or reduces the exemption.[335] Additionally while not technically an exemption, when appraising a residence in a historic district, the chief appraiser must consider the effect

[327] Id. § 1-j(a).
[328] Id. § 1-j(d).
[329] TEX. TAX CODE § 11.253.
[330] TEX. CONST. art. VIII, § 1-j(a).
[331] TEX. TAX CODE § 11.253(l).
[332] Id. § 11.252(a).
[333] Id. § 11.252(f).
[334] Id. § 11.24(a).
[335] Id. § 11.24(b).

on the property's value of any restriction placed by the historic district on the property owner's ability to alter, improve, or repair the property.[336]

(9) **Water Conservation Initiative Exemption.** A city council may, by ordinance or resolution, exempt from property taxation part or all of the assessed value of property on which approved water conservation initiatives, desalination projects, or brush control initiatives have been implemented.[337]

(10) **Temporary Exemption for Qualified Property Damaged by a Disaster.** If the governor first declares territory in a city to be a disaster area on or after the date a city adopts its tax rate for the tax year in which the declaration is issued, the city council may, by official action, adopt an exemption not later than the 60th day after the date the governor first declares territory in the taxing unit to be a disaster area.[338] If the governor declares the disaster prior to the city's adoption of the tax rate, then the exemption is automatic.[339]

What is a property tax freeze?

Tax freezes are a relatively new concept for cities. A 2003 amendment to the Texas Constitution, H.J.R. 16, and an enacting bill, H.B. 136, provided that a city may freeze the homestead taxes of individuals who are disabled or over the age of 65, similar to the current mandatory freeze on school district taxes. For example, if a person over 65 currently pays $800 in city property taxes, that person will never pay more than that dollar amount during the person's lifetime, or during the lifetime of certain surviving spouses, if the freeze is enacted. The freeze is at the option of the city council, except that an election is required if a petition is received by five percent of the registered voters in the city.[340]

If we pass a tax freeze, when does it go into effect?

The calendar year during which the tax freeze is adopted by the city essentially becomes the "baseline" year beyond which taxes on the elderly or disabled cannot increase. For example, a city that passes the tax freeze anytime during calendar year 2019 would use the 2020 tax levy as the baseline amount for the freeze. Beginning in tax year 2020, the elderly and disabled would have their city tax bills frozen at the 2019 level, regardless of rate or valuation increases. Put another way, the benefit of the tax freeze does not accrue until the tax year *after* the calendar year in which the freeze is enacted.[341]

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[336] Id. § 23.013(e).
[337] Id. § 11.32.
[338] Id. § 11.35(c).
[339] Id. § 11.35(b).
[340] TEX. CONST. art. VIII, § 1-b(h); see also TEX. TAX CODE § 11.261.
[341] TEX. TAX CODE § 11.261(b).

Is there a deadline to pass a city tax freeze?

No. A tax freeze enacted anytime in tax year 2021 is fully effective to freeze tax bills at the 2021 level. TML has been informed of some appraisal districts that are requesting that anticipated tax freeze ordinances be adopted and communicated to the district prior to a certain date in a given year—in June, for example. These requests are likely based on a misunderstanding of the tax freeze legislation, which contains no such deadlines.

If our city passes a tax freeze, can it change its mind later?

No. The constitution is clear that the tax freeze is permanent once enacted.[342]

How does the tax freeze interact with the optional senior tax exemption?

The tax freeze appears to be cumulative of the optional exemption.

For example, if a city currently grants an optional homestead exemption of $100,000, an elderly resident owning a homestead valued at $125,000 would currently pay city property taxes on only $25,000 of value. If the city then adopted a tax freeze, the amount of taxes paid on the homestead would be "frozen" at the amount paid on the $25,000 of remaining taxable value. Even if the city later cancelled or reduced the $100,000 optional exemption, the taxes would still be frozen at the amount paid on the $25,000.

What about persons who are not yet 65 when the tax freeze is enacted?

The baseline year for the freeze would be the first tax year in which a person qualifies for an over-65 homestead exemption under state law.

How is the tax freeze treated under Truth-in-Taxation laws?

Taxable value written off due to a tax freeze will be considered lost value for truth-in-taxation purposes, meaning the city will get credit for the lost value in its no-new revenue and voter-approval rate calculations.[343]

What happens if a senior enjoying a tax freeze moves to a more expensive home in the same city?

[342] TEX. CONST. art. VIII, § 1-b(h).
[343] Id. § 26.012(6)(B).

The freeze essentially transfers to the new home, but the taxes owed would increase based on the ratio between the relative values of the old and new homesteads.[344]

What happens if a person enjoying a tax freeze moves to a home in a different city?

Unlike the school district tax freeze, a city tax freeze is not transferable from city to city.

Cities often incur expenses to comply with TCEQ permitting requirements. May a city raise property taxes to compensate without facing a tax rate approval election?

Yes. A city may add to its voter-approval rate those expenditures made during the prior year that were necessary to pay for a facility, device, or method for the control of air, water, or land pollution that was necessary to meet the requirements of a permit.[345]

May a city require, as a revenue enhancing option, that candidates for mayor or city council not be delinquent in their city property taxes?

Several home rule city charters contain such a requirement, but the enforceability is unclear. The Texas Election Code spells out several eligibility criteria for city officials and authorizes additional requirements by home rule cities, but tax compliance is not mentioned among them. Two federal cases have addressed the situation and come to opposite conclusions. *Gonzales v. Sinton* holds that such a requirement is unconstitutional under federal law.[346] However, *Corrigan v. Newago*, another federal case, concludes otherwise.[347] Cities should consult with local legal counsel prior to attempting to reject an election applicant on the basis of delinquent taxes.

PROPERTY TAX ON NON-INCOME PRODUCING TANGIBLE PERSONAL PROPERTY

What is the property tax on non-income producing tangible personal property?

Non-income producing tangible personal property—certain luxury goods, for example, that fall outside the household goods exemption—is ordinarily exempt from city property taxes (income-producing tangible property is taxable, however).[348]

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[344] TEX. TAX CODE § 11.261(g).
[345] Id. § 26.045.
[346] *Gonzales v. Sinton*, 319 F. Supp. 189 (1970).
[347] *Corrigan v. Newaygo*, 55 F.3d 1211 (1995).
[348] TEX. TAX CODE § 11.14(a).

A city may choose to apply its property tax to such goods, however, after following certain procedures.[349]

What is the procedure for applying the city property tax to non-income producing tangible personal property?

The city council must follow these procedures to apply the city property tax to non-income producing tangible personal property:

(1) **Set Hearing Date.** The city council should schedule a public hearing to address taxation of non-income producing tangible personal property.

(2) **Newspaper Notice of Hearing.** The city must publish four newspaper notices of the hearing in the city newspaper, in a section other than the advertisements. The first notice must be published at least 31 days prior to the hearing date. The next three notices must appear on different days during the period beginning with the 10th day prior to the hearing and ending with the actual date of the hearing.[350]

(3) **Public Hearing.** The city council holds a public hearing at which all interested persons are entitled to speak and present evidence for or against taxing the property.[351]

(4) **Finding of Public Interest.** At the conclusion of public testimony at the hearing, the city council, pursuant to a properly noticed agenda item, must make a finding that the council action (taxation of the goods) will be in the public interest of all the residents of the city.[352]

(5) **Resolution or Order Taxing Goods.** After the hearing and finding above, the council adopts a resolution taxing the otherwise exempt tangible personal property.[353]

(6) **Notify Appraisal District and Tax Collector.**

PRO RATA FEES

What are pro rata fees?

[349] Id. § 11.14(c).
[350] Id. § 11.14(e).
[351] Id.
[352] Id.
[353] Id. § 11.14(c).

Pro rata fees are fees that result in cost sharing between a city and land owners and/or developers, whereby the city extends its water or sewer mains onto properties or into areas where it is not otherwise the duty of the city to do so, or improves water and sewer mains where it is not otherwise obligated to do so. Certain types of these fees are sometimes called "extension of the main" fees.

There are numerous variations of pro rata fees agreed upon by cities and developers or landowners. Sometimes the developer is asked to pay all the costs of lines or facilities up front, and the city reimburses the developer a portion of the costs after the land is occupied and other customers tie on to the main. Sometimes the opposite occurs, and the developer or final tenants reimburse the city a portion of the costs that the city fronted for the new main. Sometimes the developer pays for the entire extension, while the city pays the relative costs of a larger than normal main to accommodate special development.

How are pro rata fees imposed?

Other than their relationship to impact fees, pro rata fees are seldom mentioned in state statutes. A city need not find explicit authority to enact them because they aren't really fees in the usual, coercive sense of the word. Rather, they are simply an agreed-to contractual relationship where one party to development improves water or sewer lines beyond what is required by law and is reimbursed by the other party.

What is the relationship between pro rata fees and impact fees?

The impact fee statute, Chapter 395 of the Local Government Code, specifically excludes pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision from the statutory definition of impact fees.[354] As a result, cities may impose water and sewer pro rata fees without complying with the complicated and tedious procedures of the impact fee statute.

Exclusion of water and sewer pro rata fees from the impact fee statute has a potential downside legally. Some city attorneys argue that because only water and sewer pro rata fees are excluded from the definition of an impact fee, other attempts at pro rata fees—roadway escrow fees, for example—are not legally authorized unless the impact fee statute is complied with. Cities attempting to share costs for any infrastructure other than water and sewer should consult their city attorney.

PUBLIC IMPROVEMENT DISTRICT ASSESSMENTS

[354] TEX. LOC. GOV'T CODE § 395.001(4)(D).

What is a Public Improvement District?

A public improvement district (PID) is a special district within a city or the city's extraterritorial jurisdiction covering a defined geographical area. The purpose of the district is to establish a funding source that the owners of property in the district can use to jointly make authorized improvements in the district. The creation of PIDs is authorized by Chapter 372 of the Texas Local Government Code.

What are PID assessments?

PID assessments, also known as special assessments, are fees levied against property owners who will benefit from assessment-financed improvements within the PID. While the improvements are public improvements, they must confer a special benefit to the PID.[355] Assessments provide the mechanism to charge the costs of certain authorized public improvements to landowners within the PID.[356]

The list of "authorized improvements" allowed to be funded by a public improvement project includes: (1) landscaping; (2) the erection of fountains, distinctive lighting, and signs; (3) construction and improvement of sidewalks; (4) acquisition and installation of art; (5) acquisition, construction, or improvement of off-street parking facilities and mass transit; (6) the establishment or improvement of parks; and (7) similar projects.[357]

While assessments within PIDs can be used to improve streets, there exists separate authority for street assessments under the Texas Transportation Code. See Chapter: *Street Assessments*.

How are assessments levied?

Generally speaking, assessments are initiated by the property owners wishing to benefit from the improvements and cannot be unilaterally forced upon the property owners by the city. The necessary steps for levying assessments are as follows:

> **(1) Petition**. Before an assessment can be levied, the city must receive a petition signed by at least: (a) owners of taxable property representing more than 50 percent of the appraised value liable for assessment (that is, within the proposed PID); and (b) record owners of real property within the proposed PID that constitute more than 50 percent of all such record owners, or record owners that own taxable property constituting more than 50 percent of the total area within the PID.[358]
>
> Because of the complexity of the petition requirements, a city should consult with local counsel prior to determining whether a particular petition is sufficient to allow an assessment.

[355] Id. § 372.003(a).
[356] Id. § 372.003(b).
[357] Id. § 372.003.
[358] Id. § 372.005(b).

(2) Findings. Once a valid petition is filed, the city council may make initial findings by resolution as to the advisability of the PID, its cost, the method of assessment, and the apportionment of cost between the proposed improvement district and the city as a whole.[359]

(3) Feasibility Report. A city may, but is not required to, prepare a feasibility report (a study, essentially) to determine whether improvements should be made as proposed by the petition, as well as to determine the cost.[360]

(4) Advisory Body. After receipt of the petition, a city council may, but is not required to, appoint an advisory body with responsibility for recommending an improvement plan to the city council. The advisory body must include: (a) owners of taxable real property representing more than 50 percent of the appraised value of the land subject to the proposed assessment; and (b) at least 50 percent of the record owners and owners of taxable real property who will be subject to the proposed assessment.[361] The advisory body, or other entity in its absence, is responsible for preparing a minimum five-year service plan upon creation of the district.[362]

(5) Hearing on Creation of District. The city council must hold a public hearing prior to establishing a public improvement district and levying assessments.[363] A detailed newspaper notice of the hearing must occur at least 15 days prior to the hearing in a newspaper of general circulation in the city or county.[364] If any part of the district is to be located in the extraterritorial jurisdiction (ETJ) of the city, the notice must also be published in a newspaper of general circulation in the ETJ.[365] In addition to newspaper notice, written notice must be mailed at least 15 days prior to the hearing to each property owner who will be subject to assessments.[366]

(6) Improvement Order. During the six-month period after the hearing is finally concluded, the city council may create the improvement district by resolution, known as an "improvement order."[367] The improvement order authorizing the district must be filed with the county clerk of each county in which the PID is located.[368] Construction of an improvement may not begin until after the 20th day following the filing of the improvement order.[369] Also, construction of improvements can be stopped if two-thirds of the property owners in the district file written protests with the city during the 20 days after filing of the authorization.[370]

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[359] Id. § 372.006.
[360] Id. § 372.007.
[361] Id. § 372.008.
[362] Id. § 372.013.
[363] Id. § 372.009(a).
[364] Id. § 372.009(c).
[365] Id.
[366] Id. § 372.009(d).
[367] Id. § 372.010(a).
[368] Id. § 372.010(b).
[369] Id. § 372.010(c).
[370] Id.

(7) Preliminary Assessment Determination. The city council next determines how property within the district shall be assessed with the costs of the improvements in the district.[371] The apportionment of the assessments must bear a relationship to how each property is benefited by the improvements. Ideally, this calculation of assessment is being considered at each of the prior stages.

The statute provides numerous methodologies for apportioning the costs by assessment: equally by frontage or square foot; according to the value of the property; or in any other manner that results in imposing equal shares on properties similarly benefited.[372] The amount of assessment may be adjusted following an annual review of the service plan.[373]

(8) Assessment Roll. After the total cost and methodology of assessments are determined by the city council, the city council prepares an assessment roll that states the amount of the assessment against each parcel of land in the district.[374] The roll must be filed with the city secretary, and is an open record.[375]

(9) Hearing on Assessment Roll. After the council files the assessment roll with the city secretary, a public hearing on the proposed assessments must be held.[376] Newspaper notice of the hearing must be published at least 10 days prior to the hearing.[377] The city secretary must also mail notice of the assessment hearing to each affected property owner.[378] At the hearing, each and every objection lodged against the assessment must be voted on by the council.[379]

(10) Levy of Assessment. After all objections have been voted on by the council, the assessment is finally levied by ordinance or order of council.[380] The ordinance or order must specify the method of payment, which can include periodic installments.[381]

What projects may be funded by assessments within PIDs?

The statute lists a broad variety of projects that may be funded by assessments: landscaping; fountains; lighting; signs; street and road acquisition, construction, and repair; sidewalks; right-of-way acquisition; pedestrian malls; art; libraries; parking facilities; mass transportation facilities;

[371] Id. § 372.015.
[372] Id. § 372.015(b).
[373] Id. § 372.015(d).
[374] Id. § 372.016(a).
[375] Id. § 372.016(b).
[376] Id.
[377] Id.
[378] Id. § 372.016(c).
[379] Id. § 372.017(a).
[380] Id. § 372.017(b).
[381] Id.

water and wastewater facilities; drainage facilities; parks; other similar projects; and the "development, rehabilitation, or expansion of affordable housing."[382]

The statute also recognizes the acquisition of real property in connection with an improvement, special supplemental services for improvement and promotion of the district, and the payment of expenses incurred in establishing and operating the district as authorized projects.[383]

What happens if a property owner fails to pay an assessment?

If a property owner fails to pay an assessment, the assessment constitutes a lien against the property and is a personal debt of the property owner.[384] The lien is superior to all other liens except for non-payment of property taxes.[385] While the statute provides that an assessment lien may be enforced by the city council in the same manner than a property tax lien may be enforced, the attorney general has opined that a homestead may not be subjected to forced sale for nonpayment of a PID assessment.[386]

How may an improvement district, and its accompanying assessments, be dissolved?

To dissolve a district, the city must receive a petition signed by at least the same number of property owners in the district that were necessary to create the district in the first place.[387] After receipt of the petition, the city council calls a hearing.[388] At the conclusion of the hearing, the statute does not state exactly how the district is dissolved, but it is presumably done by resolution of the city council.

Are there other methods besides assessments to fund PIDs?

Yes, a city council may levy an annual tax to support the administrative and planning elements of a PID.[389] No procedures are specified in the chapter for levying this tax.

What is a tourism public improvement district?

A tourism public improvement district (PID) is designed to encompass one or more hotels and collect an assessment from hotels in the district to be used for advertising, promotion, and business recruitment directly related to hotels.[390] The concept of a tourism PID was first introduced in Texas

[382] Id. § 372.003.
[383] Id.
[384] Id. § 372.018(b)(3).
[385] Id. § 372.018(b)(2).
[386] Id. § 372.018(e); Tex. Att'y Gen. Op. No. JC-0386 (2001).
[387] TEX. LOC. GOV'T CODE § 372.011.
[388] Id.
[389] Id. § 372.021.
[390] Id. § 372.0035.

in 2011 when legislation passed authorizing a tourism PID only in the City of Dallas. Legislation passed in 2019 allows any city in Texas to create a tourism PID.[391]

A tourism PID can include noncontiguous areas so long as the areas consist of one or more hotels and share a common characteristic or use.[392] Further, a city council may later include additional property in a tourism PID if: (1) the property is a hotel; and (2) the property could have been included in the district without violating the petition process when the district was created regardless of whether the record owners of the property signed the original petition.

Unlike with a traditional PID, the petition for the establishment of a tourism PID is sufficient only if signed by record owners of taxable real property constituting: (1) more than 60 percent of the appraised value of taxable real property liable for assessment under the proposed tourism PID; and (2) either more than 60 percent of all record owners of taxable real property liable for assessment or more than 60 percent of the area of all taxable real property liable for assessment.[393]

A city that creates a tourism PID may adopt procedures for the collection of assessments that are consistent with the city's procedures for the collection of a local hotel occupancy tax and pursue remedies for failure to pay an assessment that are available to the city for failure to pay a hotel occupancy tax.[394]

[391] Id. (as added by H.B. 1136 of the 86th Leg. R. S. Effective June 14, 2019).
[392] Id. §§ 372.0035(b) and (c).
[393] Id. §§ 372.005(b-1).
[394] Id. §§ 372.0035(d).

RIGHT-OF-WAY RENTAL FEES

What are right-of-way rental fees?

"Right-of-way rental fees," also called "franchise fees," are the rental costs paid by utilities that use the city's rights-of-way or other city property to transmit their services. Rights of way, just like other land interests, are valuable to a city and cannot be given away to private companies free of charge.[395]

How are right-of-way rental fees calculated?

When the practice of franchising and receiving right-of-way compensation began, most fees were calculated by cities like any rental of rights-of-way would be, typically on a cost per linear foot of right of way or per pole methodology. Soon, that practice was replaced with one based on a gross receipts basis, which more accurately reflects the value of the use of the right of way to the utility occupying it. The gross receipts methodology was codified by federal law for cable television providers, and by state law for gas, electric, and water utilities.

Since the mid-1990s, however, telecommunications, electric, and cable/video industries have successfully lobbied for legislation that ties their right-of-way rental fees to other statutory formulas or methodologies. At present, electric, telecommunication, gas, water, cable television, and video service providers each have their own legal framework for how the fee is calculated and assessed. For those entities that do not gain access to a city's right-of-way under state law, such as use of the right-of-way to install or maintain fiber optic cable, the city may require a right-of-way license agreement and negotiate rental costs for use of the right-of-way.

RIGHT-OF-WAY RENTAL FEES ON CABLE TELEVISION AND OTHER VIDEO SERVICES

Are cities entitled to compensation for use of rights-of-way by cable and other video services providers?

Yes. Federal law requires a local authority (e.g., a state or local government) to issue a franchise agreement, and Texas law provides for compensation for the use of a city's rights-of-way under Chapter 66 of the Texas Utilities Code. Chapter 66 has several provisions, some of which are complex. Essentially, the law:

[395] TEX. CONST. art. III, § 52.

1. creates a state-issued cable and video franchise (known as a state-issued certificate of franchise authority or SICFA) to be administered by the Public Utility Commission (PUC);[396]
2. requires the holder of the SICFA to make a quarterly franchise payment to each city in which it provides service and that the payment be equal to five percent of gross revenues, as that term is defined in the law, earned by the franchise holder in that city;[397] and
3. requires the holder of a SICFA to pay each city a public, educational, and government (PEG) channel support fee an amount equal to one percent of the provider's gross revenue or, at the city's election, the per-subscriber line fee that was paid under previous franchise agreements.[398]

Every Texas city should now be compensated pursuant to a SIFCA from each provider. However, due to recent legislation, S.B. 1152, codified under Chapter 283 of the Local Government Code, cities might not receive right-of-way rental fees from certain providers in a given year.[399] Chapter 283 of the Texas Local Government Code and Chapter 66 of the Texas Utilities Code provide that a "bundled" cable and telecommunications provider is exempt from paying the lower of either its statewide cable right-of-way rental fees or state-wide telephone access line fees.[400] By October 1st of each year, the provider must file a written notification with each city of which fee will be exempted.[401]

How must the fees be spent?

The quarterly five-percent franchise fee can be spent in any manner a city council chooses. However, state law imposes limitations on the use of and accounting related to the one-percent PEG fee. Under Chapter 66, the PEG fee is paid quarterly in the same manner as the five percent franchise fee. The law requires:

1. the holder of a SICFA to specifically identify the amount of the PEG fee when it is paid;[402] and
2. a city to: (a) establish a separate account for the PEG fee revenue; and (b) maintain "a record of each deposit to and disbursement from [the PEG fee] the separate account, including a record of the payee and purpose of each disbursement."[403]

Note that a city must have only one separate PEG fee account, not necessarily a separate account for each provider in the city. It is advisable that a city keep the PEG fee account entirely separate from its general revenue fund to comply with the law, which states that the city "may not comingle" PEG fees "with any other money."[404]

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[396] TEX. UTIL. CODE § 66.003.
[397] Id. § 66.005.
[398] Id. § 66.006.
[399] TEX. LOC. GOV'T CODE § 283.051 ; TEX. UTIL. CODE §66.005(d).
[400] TEX. UTIL. CODE § 66.005(d).
[401] TEX. LOC. GOV'T CODE §283.051(f) ; TEX. UTIL. CODE § 66.005(f)
[402] TEX. UTIL. CODE § 66.006(c-1).
[403] Id. § 66.006(c-2).
[404] Id. § 66.006(c-2)(2).

What if the city has no PEG channels and doesn't anticipate having any in the near future?

Under Chapter 66, a PEG fee may be spent only as permitted by federal law.[405] Federal law provides that the fee must be used for "capital costs for PEG facilities."[406] This means that a city may not spend PEG fee revenue on general expenditures or PEG channel operational or other, non-capital costs. Some cities may not have enough PEG fee revenue now—or in the foreseeable future—to operate a PEG channel. Other cities may not desire to operate a PEG channel. Cities in either situation may choose to accumulate the PEG fee revenue in anticipation of spending it on allowable expenditures in the future, or may choose to "opt out" of the PEG fee by resolution or ordinance. Any city considering "opting out" of the PEG fee should consult with legal counsel on the matter prior to taking any action.

RIGHT-OF-WAY RENTAL FEES ON ELECTRIC UTILITIES

May cities charge for the use of rights-of-way by electric utilities?

Yes. Prior to 1999, electric right-of-way rental fees were calculated in much the same way that water and gas franchise fees were calculated (based on gross receipts). In 1999, the electric restructuring bill, S.B. 7, altered the right-of-way rental fee methodology for electric providers.[407] Under S.B. 7, cities retain the right to manage public rights-of-way and to collect compensation for use of rights-of-way and public property for the delivery of electric service, albeit under a different compensation methodology.

How are electric right-of-way rental fees calculated?

Compensation for use of rights-of-way and city land by electric providers is based on kilowatt hours of electricity delivered within the city.[408] The rate per kilowatt hour is based on the amount of compensation that the city received in calendar year 1998 for its then-existing electric right-of-way rental fee, divided by the number of kilowatt hours delivered to retail customers in the city during 1998.[409] In other words, 1998 is a "baseline" year from which cities calculate future fees based on usage. As electric consumption grows within the city, so will the total amount of

[405] Id. § 66.006(c).
[406] 47 U.S.C. § 521, *et seq*. (Federal Cable Law).
[407] Senate Bill 7, 76th Legislature, Regular Session (1999).
[408] TEX. UTIL. CODE § 33.008(B)
[409] Id.

compensation.[410] (Note: Some cities may still collect a gross receipts franchise fee from electric cooperatives and municipal electric utilities.[411])

If a city is already collecting a fee from the electric utility for the use of the right-of-way for the delivery of electricity to retail electric customers, the city may not require a franchise or an amendment to a franchise or require an additional charge, fee or tax from the utility for use of the right-of-way for middle mile broadband service.[412] If the city is not already collecting a fee from the electric utility for use of the right-of-way, the city may impose a fee on the provision of middle mile broadband service, but the charge may not be greater than the lowest charge that the city imposes on other providers of broadband service for use of the right-of-way in its jurisdiction.[413]

Are per kilowatt right-of-way rental fees automatically due the city?

No, the statute provides that a city is "entitled to collect" the fees but does not provide for automatic payment by the electric utility.[414] A city should adopt an electric franchise ordinance providing for collection of the fees to which it is entitled. Copies of sample electric right-of-way rental fee ordinances can be obtained from the TML Legal Department at 512-231-7400 or legalinfo@tml.org.

What about franchise agreements providing for different fees that are already in effect?

Generally, the per kilowatt hour methodology of right-of-way rental fees replace any franchise agreement fee provision in effect prior to January 1, 2002.[415]

What about existing franchise agreement provisions relating to matters other than fees?

Provisions in franchise agreements in existence as of January 1, 2002, that are not related to fees continue in effect after the new per kilowatt hour methodology of SB 7.[416]

What about cities that are newly incorporated since the 1998 base year?

Cities that are recently incorporated, or cities that have not previously collected electric right-of-way rental fees, may adopt a franchise ordinance that collects fees at the same per kilowatt hour rate that is collected by any other city in the same county that is served by the same electric utility.[417]

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[410] Id.
[411] Id. § 33.008(f).
[412] Id. § 43.101(e).
[413] Id. § 43.101(f).
[414] Id. § 33.008(b).
[415] Id. § 33.008(d).
[416] Id.
[417] Id. § 33.008(g).

May cities collect right-of-way rental fees by any methodology other than per kilowatt hour?

If a city had a franchise agreement in effect as of September 1, 1999, at the expiration of that agreement the city and the electric utility could agree to a different franchise fee methodology.[418] If such a rate methodology is not negotiated at that time, the per kilowatt hour methodology goes into effect.

How can a city make sure it is receiving all the electric franchise fees it is entitled to?

A city collecting per kilowatt hour right-of-way rental fees may audit an electric utility concerning any payment made within the past two years prior to the start of the audit.[419]

RIGHT-OF-WAY RENTAL FEES ON GAS AND WATER

May cities charge for the use of rights-of-way by gas and water utilities?

Yes, Section 182.025 (a) and (b) of the Texas Tax Code provide that:

> *(a) An incorporated city or town may make a reasonable lawful charge for the use of a city street, alley, or public way by a public utility in the course of its business.*
>
> *(b) The total charges, however designated or measured, may not exceed two percent of the gross receipts of the public utility for the sale of gas or water within the city.*

These sections are the original right-of-way rental fee statutes that applied to more than just gas and water franchises. Since these sections were adopted, other franchises—electric, telecommunications, and so on—have adopted more specialized rate methodologies. The result is that by default the Tax Code provisions now apply just to water and gas.

So, the maximum that can be charged for gas or water right-of-way rental fees is two percent of gross receipts, right?

Not necessarily. While Section 182.025(b) of the Tax Code seems to limit the total amount of a unilaterally-imposed gas or water right-of-way rental fee to two percent, the next section of the Tax Code provides as follows:

[418] Id. § 33.008(f).
[419] Id. § 33.008(e).

Section 182.026(b)(2):

(b) This subchapter does not…

(2) impair or alter a provision of a contract, agreement, or franchise made between a city and a public utility company relating to a payment made to the city.

These provisions taken together are normally interpreted to mean that while a city may unilaterally impose a two-percent right-of-way rental fee on a gas or water provider, the fee may be at a greater rate if the parties agree in writing.

Assuming the gas or water utility is willing to pay right-of-way rental fees, does the utility have an absolute right to use the rights-of-way?

No. Cities may choose to grant franchises as they see fit.[420] Gas companies do have a right to cross under city streets, however, subject to direction by the city.[421]

RIGHT-OF-WAY RENTAL FEES ON SMALL CELL NODES

What is a small cell node?

A small cell node is simply an antenna and related equipment that is placed on a pole (either a city pole such as a traffic signal or light pole or a stand-alone pole) that is generally shorter than 55 feet tall. Small cell nodes are not yet a replacement for the large "macro towers" that dot our landscape. Rather, the nodes are meant to expand network bandwidth in densely populated areas. S.B. 1004, which enacted Chapter 284 of the Texas Local Government Code in 2017, allows cell companies and others to place the nodes in city rights-of-way and on most types of city-owned poles.

May cities charge for the use of rights-of-way for small cell nodes?

Yes, a city can charge a maximum annual amount equal to $250 multiplied by the number of network nodes installed in the public right-of-way in the city's corporate boundaries.[422] A city may adjust the amount of the public right-of-way rate not more often than annually by an amount equal

[420] TEX. NAT. RES. CODE § 111.022; TEX. UTIL. CODE § 103.002.
[421] TEX. UTIL. CODE §§ 181.005 and 181.006.
[422] TEX. LOCAL GOV'T CODE § 284.053.

to one-half the annual change, if any, in the consumer price index.[423] (A cell company may also have to pay additional fees for "transport service" to connect a node to the network using fiber.[424])

Assuming the cell company is willing to pay right-of-way rental fees, does it have an absolute right to use the rights-of-way?

Probably, although the law grants some control to cities by allowing them to, among other things:

1. Adopt a "design manual," which can include things like aesthetics, insurance, and recommended placement locations;[425]
2. Create an "attachment agreement" governing how nodes are attached to city facilities;[426] and
3. Create "design districts" that can have more stringent aesthetic requirements.[427]

Most cities will also need to review their right-of-way management ordinance and may need to create or modify permit application forms for right-of-way access. The documents can be very simple or very complex, depending on the needs of each city.

Is the maximum amount a city can charge constitutional?

Several cities are arguing in court that it is not. The City of McAllen is leading a coalition of around 57 cities that has filed a lawsuit to challenge the unconstitutionally low right-of-way rental fees in Chapter 284. The coalition claims that the price per node in law is a taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities. A Travis County district court ruled in favor of the State of Texas, denying the cities' motion for summary judgment. The cities have appealed the decision, which is currently pending before the Third Court of Appeals.[428]

It should be noted that as a practical matter, any immediate impact of the court's ruling on SB 1004 may be minimal because of the current Federal Communications Commission's order that effectively capped small-cell right-of-way rental fees at $270—barely above the S.B. 1004 limit of $250.[429] The FCC order was challenged by numerous local governmental entities but was upheld by the Ninth Court of Appeals on June 28, 2021.[430]

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[423] Id. § 284.054.
[424] Id. § 284.055.
[425] Id. § 284.108.
[426] Id. § 284.201.
[427] Id. § 284.105.
[428] *City of McAllen v. State of Texas*, No. 03-22-00524-CV (Tex. App.- Austin Aug. 24, 2022).
[429] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 33 FCC Rcd. 9088 (2018) and *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 33 FCC Rcd. 7705, 7775–91 (2018)
[430] *City of Portland v. United States*, 969 F.3d 1020, 1032 (9th Cir. 2020), *cert. denied*, 141 S.Ct. 2855 (2021).

RIGHT-OF-WAY RENTAL FEES ON TELEPHONE (TELECOMMUNICATIONS) SERVICE

May cities charge for the use of rights-of-way by telephone companies?

Yes, cities may charge telecommunications right-of-way rental fees. However, S.B. 1152 from 2019 could limit right-of-way rental fees for cable paid by a company providing both cable and telecommunications services Similar to franchise fees on electric service, the state law regarding methodology of telecommunications franchise fees changed dramatically in 1999. That year, H.B. 1777 was enacted and created Chapter 283 of the Texas Local Government Code. Chapter 283 addresses city authority over its rights-of-way generally, and also establishes a formula for calculating right-of-way rental fees (called "access line fees" in the law).

How are right-of-way rental fees on telecommunications calculated?

Cities are entitled to a rate equal to the number of "access lines" (roughly speaking, end use local exchange lines within the city) currently located within the city multiplied by the access line fee rate calculated for each city based on the franchise fee revenues received by the city in 1998. In other words, 1998 is the "baseline" year for determining the rate, and the total revenue is that rate multiplied by the current number of access lines.[431] Added to this compensation is one-half of the annual change, if any, in the consumer price index.[432]

How are right-of-way rental fees on "bundled" cable and telecommunications providers calculated?

S.B. 1152, passed in 2019, allows a "bundled" cable and telecommunications provider to stop paying the lesser of its state cable right-of-way rental fees or telephone access line fees, whichever is less for the company statewide.[433] By October 1 of each year, the provider must file a written notification with each city of which fee will be eliminated.[434]

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[431] Id. § 283.055(f).
[432] Id. § 283.055(g).
[433] Id. § 283.051(d).
[434] Id. § 283.051(f).

A coalition of cities, led by the cities of McAllen, Dallas, and Houston, have filed a lawsuit challenging the constitutionality of S.B. 1152. The legislation eliminated over $100 million annually in rights-of-way fees from cable and telecom providers. A Travis County Court granted the cities' motion for summary judgment and declared that S.B. 1152 violates the prohibition on public gifting of things of value to private persons under Article III, Section 52, of the Texas Constitution. On August 24, 2022, the State of Texas appealed the decision to the Third Court of Appeals, where it is presently pending.[435]

How are pre-existing telecommunications right-of-way rental fee ordinances treated?

Right-of-way rental fee ordinances executed prior to January 12, 1999, continue in effect unless the provider company elected to terminate the agreement prior to December 1, 1999.[436] After termination of a pre-existing franchise fee ordinance, either through its terms or upon termination by the provider, the access line provisions of H.B. 1777 begin to apply for calculating franchise fees.[437]

What about cities that did not have telecommunications right-of-way rental fees as of 1999?

Such a municipality must follow the same general access line methodology as other cities, but in determining the base amount for rate calculations the city may elect from the following: (1) the statewide average paid by the city's incumbent provider; or (2) the amount a similarly sized city served by the same provider in the county or an adjacent county was receiving.[438]

What about right-of-way rental fees on cell phones and satellite service?

Remember, right-of-way rental fees exist to reimburse the city for use of the rights-of-way by a utility's cables, pipes, and other facilities. To the extent that cell phone usage or satellite service dispenses with physical facilities, no right-of-way rental fees are due.

SALES TAX FOR CRIME CONTROL

What is the sales tax for crime control?

[435] *State of Texas v. City of McAllen*, No. 03-22-00524-CV (Tex. App.- Austin Aug. 24, 2022).
[436] Id. § 283.054(a).
[437] Id.
[438] Id. § 283.053.

The sales tax for crime control is an optional, dedicated city sales tax that is levied within a crime control and prevention district (a "district") that may be spent on certain law enforcement projects within the district.

Which cities are eligible to adopt a sales tax for crime control?

Any city that is located wholly or partly in a county with a population of 5,000 or more may adopt the tax.[439]

Where is a sales tax for crime control levied within a city?

The tax is levied only within the boundaries of a crime control and prevention district.[440] A district may consist of all or a part of the corporate boundaries of a city that creates it.[441] In other words, the tax need not be levied across the entire corporate jurisdiction of the city, which may be useful to accommodate areas of a city that are "capped out" at the two-percent maximum local sales tax. Legislation passed in 2015 that authorizes a city council in a city that has a crime control and prevention district to call an election to add all or part of the territory within the city to the district and allows for the imposition of the sales tax in the new territory.[442]

How much sales tax for crime control may be levied?

The rate of a sales tax for crime control may be any rate that is an increment of one-eighth of one percent that the city determines is appropriate.[443] However, the total combined tax rate within the city may not exceed two percent.[444]

What may a sales tax for crime control be spent on?

Revenues from the sales tax for crime control may be spent to fund the following projects:

> a multi-jurisdiction crime analysis center; mobilized crime analysis units; countywide crime stoppers telephone lines; united property-marking programs; home security inspection programs; an automated fingerprint analysis center; an enhanced radio dispatch center; a computerized criminal history system; enhanced information systems programs; a drug and chemical disposal center; a county crime lab or medical examiner's lab; a regional law enforcement training center; block watch programs; a community crime resistance program; school-police programs;

[439] Id. § 363.051(a).
[440] Id. § 363.054(b)(6).
[441] Id. § 363.051(b).
[442] Id. § 363.181.
[443] Id. § 363.055(a).
[444] Id. § 363.055(a) and TEX. TAX CODE § 321.101(f).

> senior citizen community safety programs; senior citizen anticrime networks; citizen crime-reporting projects; home alert programs; a police-community cooperation program; a radio alert program; ride along programs; positive peer group interaction programs; drug and alcohol awareness programs; countywide family violence centers; work incentive programs; social learning centers; transitional aid centers and pre-parole centers; guided group interaction programs; social development centers; street gang intervention centers; pre-delinquency intervention centers; school relations bureaus; integrated community education systems; steered straight programs; probation subsidy programs; Juvenile Offenders Learn Truth (JOLT) programs; reformatory visitation programs; juvenile awareness programs; shock incarceration; shock probation; community restitution programs; team probation; electronic monitoring programs; community improvement programs; at-home arrest; victim restitution programs; additional probation officers; additional parole officers; court watch programs; community arbitration and mediation centers; night prosecutors programs; automated legal research systems; an automated court management system; a criminal court administrator; an automated court reporting system; additional district courts that are required by law to give preference to criminal cases, judges, and staff; additional prosecutors and staff; and additional jails, jailers, guards, and other necessary staff.[445]

What is the city's role in spending the sales tax for crime control?

Revenues from the tax are spent by the board of directors of the district, not the city council itself.[446] The seven-member board is appointed by the city council, however.[447]

How is the sales tax for crime control adopted?

Like all city sales taxes, a sales tax for crime control must be adopted at an election of the voters.[448] Technically, the temporary directors of a district order the election, but the city council alone is authorized to form the district and appoint the temporary directors.[449]

SALES TAXES FOR DEDICATED PURPOSES

What are sales taxes for dedicated purposes?

[445] TEX. LOC. GOV'T CODE § 363.151.
[446] Id. § 363.154(e).
[447] Id. § 363.101(a).
[448] Id. § 363.053.
[449] Id. §§ 363.051(a) and 363.054(a).

This manual refers to all city sales taxes other than the sales tax for general revenue as sales taxes for dedicated purposes. Revenue from each tax other than the sales tax for general revenue may be spent only on certain, or dedicated, items or projects.

Cities may have a mix of different dedicated taxes, in addition to the general revenue sales tax. A city could even have dedicated sales taxes in the absence of a general revenue sales tax, but no city is known to do so currently.

How many different sales taxes, including the sales tax for general revenue, may our city adopt?

There is no express limitation, so long as all local sales taxes combined must total no more than two percent at a given location. Because counties and special districts sometimes adopt local sales taxes, and because all such taxes count against the two-percent cap, a city might have less than two percent available for its own general revenue and dedicated sales taxes.

In 2015, important legislation passed in the form of H.B. 157, which gives cities increased flexibility to reallocate the amounts of its general revenue and dedicated sales taxes within the two-percent cap. Prior to the passage of H.B. 157, dedicated sales taxes were capped at certain amounts. For instance, an economic development corporation sales tax could not exceed one-half of one percent. Similarly, the street maintenance sales tax could not exceed one-fourth of one percent. House Bill 157 essentially removes the rate caps on the dedicated sales taxes for venue districts, crime control and prevention districts, economic development corporations, property tax relief, and street maintenance, and authorizes a city to hold an election to increase or decrease these dedicated sales taxes in any increment of one-eighth of one percent.

A dedicated sales tax may be adopted only by a vote of the citizens at an election. An election to adopt a dedicated sales tax generally cannot be held earlier than one year after the date of any previous sales tax election in the city.[450]

If a city is "maxed out" at the two-percent sales tax cap, can the city switch from one dedicated sales tax to another using one ballot proposition?

Yes. Legislation that passed in 2005 permits a city to repeal or lower one dedicated sales tax, and raise or adopt a different dedicated sales tax, all with one combined ballot proposition.[451] The fact that this can be accomplished by one combined ballot proposition protects the city's interest by eliminating the risk that one tax will be voted out by the citizens without the other tax being voted in.

How do we word a combined sales tax ballot proposition?

[450] TEX. TAX CODE § 321.406.
[451] Id. § 321.409.

The statute requires that the wording of the combined proposition contain substantially the same language required by law for each of the two taxes individually.[452] To make sure that the city properly words its ballot proposition, local legal counsel should be consulted. The TML Legal Department (512-231-7400 or legalinfo@tml.org) can provide samples of such combined propositions.

May the city's dedicated sales taxes be pledged to pay off bonds?

Yes, most can. A city should consult bond counsel prior to attempting to pledge a dedicated sales tax to the repayment of debt.

[452] Id. § 321.409(b).

SALES TAX FOR ECONOMIC DEVELOPMENT

What is the sales tax for economic development?

The sales tax for economic development is an optional, dedicated city sales tax that is used to attract and retain business in the city. There are two types of sales taxes for economic development, a Type A and a Type B tax. These are formerly known as "4A" and "4B" taxes, named for their respective locations in the Development Corporation Act of 1979. The laws regarding Type A and Type B economic development corporations are now codified in the Local Government Code.

What cities may adopt a sales tax for economic development?

Almost any Texas city, provided it has room under its two-percent local sales tax cap, can adopt one or the other (or both) of the Type A or Type B sales taxes. Any city located in a county with a population of less than 500,000 may adopt a Type A sales tax, as well as a few cities in larger counties.[453] All cities with room under the cap are eligible to adopt a Type B sales tax.[454]

How is a sales tax for economic development adopted?

Like all sales taxes, the sales tax for economic development is adopted by vote of the citizens at an election. A Type A or Type B election may be called by the city council on its own motion or on petition of 20 percent of the voters who voted in the most recent city election.[455]

How much economic development sales tax may a city levy?

The rate of a sales tax for economic development may be any rate that is an increment of one-eighth of one percent that the city determines is appropriate.[456] The combined rate of all local sales taxes within the city, however, cannot exceed two percent.[457] A city could adopt either or both of the Type A and Type B sales taxes for economic development if it has room under the cap.

[453] TEX. LOC. GOV'T CODE § 504.002.
[454] Id. § 505.002.
[455] Id. §§ 504.255(a) and 505.251.
[456] Id. §§ 504.252(b) and 505.252(b).
[457] Id. §§ 504.254(a) and 505.256.

Is it true that economic development sales taxes are not useful for direct incentives to retail and commercial businesses?

It depends on the size of the city, or the revenues of the economic development corporation. Legislation passed in 2003 cancelled the ability of all Type A and Type B sales tax corporations to give direct incentives to retail businesses. Legislation passed in 2005 restored retail authority for Type B corporations (but not Type A corporations) in either of the following circumstances: (a) the city has less than 20,000 population; or (b) the corporation receives less than $50,000 a year in Type B sales tax revenue for each of the prior two years.[458] Also, certain corporations located near Mexico, and certain "landlocked" cities in large urban areas, are once again eligible to promote retail business.

What may sales taxes for economic development be spent on?

Generally speaking, both the Type A and Type B sales tax for economic development may be spent on development projects and incentives that create "primary jobs."[459] Primary jobs are defined to include jobs in crop production, animal production, forestry and logging, fishing, mining, utilities, manufacturing, wholesale trade, transportation and warehousing, financial-related industry, scientific research and development, corporate management, and prisons.[460]

Both the Type A and Type B sales taxes may also be spent to promote the city, provided no more than ten percent of the tax is used for promotional purposes.[461]

Both taxes may also be spent on certain infrastructure that benefits any new or expanded business, provided the infrastructure consists of streets, roads, rail spurs, water and electric utilities, gas utilities, drainage and related improvements, and telecommunications and Internet improvements.[462]

Type B sales taxes for economic development (but not Type A) may be spent on: (1) sports stadiums[463] (Type A taxes may be spent on stadiums only after an election[464]); (2) entertainment and convention facilities[465]; (3) city parks[466]; (4) affordable housing[467]; and (5) for cities with less than 20,000 population or less than $50,000 in Type B sales tax revenues for each of the prior two years, commercial and retail economic development incentives.[468]

[458] Id. §§ 505.156 and 505.158(a).
[459] Id. § 501.001.
[460] Id. § 501.002(12).
[461] Id. §§ 504.105 and 505.103.
[462] Id. § 501.103.
[463] Id. § 505.152.
[464] Id. § 504.152.
[465] Id. § 505.152.
[466] Id. § 505.152.
[467] Id. § 505.153.
[468] Id. §§ 505.156 and 505.158(a).

What is the city's role in spending the proceeds of the sales taxes for economic development?

The city itself does not spend sales tax proceeds. Instead, the city creates an economic development corporation that is governed by a board of directors. The board of the economic development corporation is responsible for deciding how to spend the proceeds of the sales tax for economic development. The city council must approve each expenditure, however, hence the city has a sort of "veto" power over the corporation.[469]

SALES TAX FOR GENERAL REVENUE

What is the sales tax for general revenue?

The sales tax for general revenue is a tax that may be levied by a city on all goods sold in the city. The revenues from the tax may be spent on almost any lawful purpose of the city.

How much general revenue sales tax may be levied by the city?

When the legislature authorized cities to adopt a general revenue sales tax in 1967, it provided that the rate of the general revenue sales tax must be set at one percent—no higher and no lower. After initial adoption of a general revenue sales tax, cities had no authority to call an election to raise or lower the one-percent general revenue sales tax.

This general structure remained in place until 2015. House Bill 157, passed in 2015, authorizes a city to hold an election to impose its general sales tax at any rate that is an increment of at least one-eighth of one percent and that would not result in a combined rate that exceeded the maximum local sales and use tax rate of two percent. [470] In other words, a city with an existing one-percent general revenue sales tax may now order an election to increase or decrease the tax, assuming that there is room under the two-percent local sales tax cap for any potential increase.

A city may adopt additional sales taxes beyond the general revenue sales tax, but all such additional sales taxes are for dedicated purposes, and not for general revenue. Examples of additional sales taxes for dedicated purposes include economic development, property tax relief, crime control, and street maintenance. Each of these additional, dedicated sales taxes is outlined in separate chapters in this manual. See chapter: *Sales Taxes for Dedicated Purposes*.

How does a city adopt a sales tax for general revenue?

[469] Id. § 501.073.
[470] TEX. TAX CODE § 321.103(a).

The sales tax for general revenue is adopted by an election of the city voters.[471] A sales tax for general revenue election may be called by either of two methods: (1) the city council can call the election by adopting an ordinance by majority vote of its own members[472]; or (2) the city council must call the election if it receives a petition signed by at least 20 percent of the number of qualified voters who voted in the most recent regular city election.[473]

A sales tax for general revenue election must be held on the first uniform election date that occurs after the tax election is called for by ordinance or petition.[474] Specific ballot language is required by statute.[475]

If a city is "maxed out" at the two-percent sales tax cap, can the city reduce or repeal one dedicated sales tax and increase the general revenue sales tax by the same amount using one ballot proposition?

Yes. Legislation that passed in 2005 permitted a city to repeal or lower one dedicated sales tax, and raise or adopt a different dedicated sales tax, all with one combined ballot proposition.[476] At the time, the combined ballot proposition only applied to dedicated sales taxes because the general revenue sales tax, if adopted by a city, was fixed at one percent. Following the passage of H.B. 157 in 2015, a city could hold an election to increase or decrease its general revenue sales tax in any increment of one-eighth of one percent, as mentioned above. In 2017, the combined ballot proposition statute was amended to apply to all city sales taxes, which would include the general revenue sales tax.[477] Now a city can use a combined ballot proposition at an election to adjust the rates of any dedicated city sales tax or the city's general revenue sales tax.

How is the sales tax for general revenue collected?

All city sales taxes, including the sales tax for general revenue, are collected by the Texas Comptroller, along with the state sales tax.[478] The comptroller then remits the city its portion of the taxes at least twice a year (though it is done more often in practice).[479]

The comptroller keeps two percent of city sales taxes as payment for the state's services in collecting the tax.[480] Cities can independently sue businesses to collect unpaid taxes, but in practice this almost never happens because the state, when suing for its own taxes, customarily sues on behalf of the city as well.

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[471] Id. § 321.101(a).
[472] Id. § 321.401(a) and (b).
[473] Id. § 321.101(c).
[474] Id. § 321.403.
[475] Id. § 321.404.
[476] Id. § 321.409.
[477] House Bill 3046, 85th Legislature, Regular Session (2017).
[478] TEX. TAX CODE § 321.301.
[479] Id. § 321.502.
[480] Id. § 321.503.

May the city's general revenue sales tax be pledged to pay off bonds?

Generally not.[481] Excepted from this prohibition, however, are certain sports and community venue projects.[482]

We aren't sure that our city is receiving all the sales taxes it is due from the comptroller. For instance, there is a business on the edge of town with an out-of-town address. We don't think it is collecting city sales taxes. What can we do?

Making sure cities receive proper sales taxes from businesses located within the city is known as "sales tax allocation." Though the comptroller employs over a dozen allocation specialists, the sheer volume of sales tax applications submitted by businesses necessitates that the initial determination about sales tax allocation comes from the face of the application itself. This leads to occasional errors, typically about whether a business is located within or outside the city.

Cities concerned about proper allocation should: (1) familiarize themselves with the various sales tax reports and lists available from the comptroller; (2) contact the comptroller about specific allocation concerns toll free at 1-800-531-5441, ext. 34530; (3) consider requiring a copy of a sales tax permit as a condition of issuing a certificate of occupancy or other permit to a business; (4) make sure that city maps and city limit descriptions are as clear and up-to-date as possible; and (5) notify the comptroller immediately whenever city boundaries change.

Legislation was passed in 2011 that provides some limited authority for a city to receive information used by the comptroller in making a reallocation determination. If city sales tax revenue is refunded or reallocated from one city to another, a city is now authorized to receive from the comptroller all sales tax returns and reports (whether confidential or not) filed by not more than five individual taxpayers in the city, if the amount of the reallocation exceeds: (a) $200,000; (b) ten percent of the revenue received by the city during the previous calendar year; or (c) an amount that increases or decreases the amount of revenue the city receives during a calendar month by more than 15 percent as compared to the same month in a previous year.[483] The city must request the information within 90 days of discovering the reallocation or refund.[484]

What other information may a city obtain about businesses that collect sales taxes within the city?

Cities are somewhat limited by state law regarding the information that they can obtain from the comptroller about how much sales taxes, local or state, particular businesses collect within the city. Historically, it was believed that the proprietary nature of business sales information was too valuable to share with anyone other than state officials, lest businesses be tempted to move to other states that didn't disclose that data. Whether or not this would happen in practice is debatable.

[481] Id. § 321.506.
[482] Id. § 321.508.
[483] Id. § 321.510(b).
[484] Id. § 321.510(f).

Specifically, a city may request information from the comptroller regarding sales taxes collected by businesses in the city that annually collect more than $5,000 in state and local sales taxes.[485] Cities that do not impose a property tax may request information from the comptroller regarding sales taxes collected by businesses in the city that annually collect more than $500 in state and local sales taxes.[486]

Any city may request from the comptroller, however, aggregate sales tax collection data for businesses within a particular economic development zone or other defined region.[487] Such information is useful for revenue sharing arrangements and for economic forecasting, and must be kept confidential by the city and used only for those purposes.[488] A city council may meet in executive session to receive information about such confidential data.[489]

May a city rebate municipal sales taxes?

Yes. Cities may offer sales tax rebates and refunds for a period of up to ten years in neighborhood empowerment zones and North American Free Trade Agreement Impact Zones.[490] Sales tax rebates also commonly occur pursuant to an economic development agreement adopted under Chapter 380 of the Local Government Code, and can be offered in a state enterprise zone.[491]

May a city offer to rebate city sales taxes to entice a business to move its call center into town?

Perhaps not. A rebate of city sales taxes to attract new business to a city is a legitimate economic development tool. But a city must be careful to avoid "purchasing office" schemes. Under such a scheme, a business with existing facilities in another city offers to move the business' order-taking facility—often just a single office with a telephone—to a nearby city, provided the new city promises to rebate a portion of city sales taxes.

The scheme is based on the fact that the Texas Tax Code sources local sales taxes to the location where orders are received in cases where businesses have more than one physical location within the state.[492] This sourcing rule is true even where the bulk of the business operations take place elsewhere. The comptroller promulgated rules to take effect in October of 2020 that would have sourced local sales tax to the location of the buyer rather than the seller, but those rules were enjoined by a court on procedural grounds. As of the publication of this manual, the comptroller is in the process of revising the local sales tax sourcing rules.

[485] Id. § 321.3022(a-1).
[486] Id. § 321.3022(a-2).
[487] Id. § 321.3022(b).
[488] Id. § 321.3022(f).
[489] Id. § 321.3022(i).
[490] TEX. LOC. GOV'T CODE §§ 378.004(2) and 379.004.
[491] TEX. GOV'T CODE § 2303.505.
[492] TEX. TAX CODE § 321.002(a)(3).

Legislation was passed in 2003 (as well as clarifying legislation in 2011) that prohibits the sourcing of sales taxes at locations only to alter the sourcing of sales taxes by setting up a purchasing office.[493]

Which utility services are subject to state and local sales taxes?

Residential and commercial use of water is not subject to the application of state or local sales taxes.[494]

Domestic sanitary sewer service is not subject to state or local sales taxes, nor is industrial discharge, provided it is regulated by the Texas Commission on Environmental Quality (TCEQ).[495]

Garbage collection service is subject to the state and local sales tax as a taxable real property service.[496] Industrial solid waste is not taxable, however, nor are garbage collection services used by some contractors.

Gas and electricity that are sold for commercial use are subject to both state and local sales taxes.[497] Commercial use is defined as use by a person engaged in selling a commodity or service, but does not include manufacturing, mining, or agricultural activities. In other words, lighting, heating, and cooling services to most retail businesses are subject to sales tax unless they fit into the manufacturing exception.

Residential gas and electricity service is exempt from state sales taxes.[498] Residential gas and electricity are also exempt from city sales taxes, unless the city adopted a sales tax prior to October 1, 1979, and has acted by ordinance to tax gas and electricity.[499] Cities that adopted a sales tax after October 1, 1979, may not tax residential gas and electric.

Cable television services are subject to both state and local sales taxes.[500] This includes satellite T.V.[501]

Telecommunications services are generally subject to state sales taxes.[502] Specifically exempt from sales taxes, however, are certain long-distance telephone services, commercial radio and television (other than cable), and a portion of monthly Internet access service charges.[503]

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[493] Id. § 321.002(a)(3).
[494] Id. § 151.315.
[495] Id. § 151.0048(a)(3).
[496] Id. §§ 151.0048(a)(3) and 151.0048(b).
[497] Id. § 151.317.
[498] Id. § 151.317(a)(1).
[499] Id. § 321.105.
[500] Id. § 151.0101(a)(2).
[501] 34 TEX. ADMIN. CODE § 3.133.
[502] TEX. TAX CODE § 151.0101(a)(6).
[503] Id. §§ 151.323 and 151.325.

Telecommunications services are exempt from city sales taxes unless the city council repeals the exemption by an ordinance recorded in the minutes and filed with the comptroller.[504] A city that repeals the exemption may tax only those telecommunications services taxable by the state, with the exception of otherwise taxable interstate long-distance services. Repeal of the city telecommunications exemption could be a significant source of new revenue for cities, but relatively few cities have taken advantage of it. See Chapter: *Sales Tax on Telecommunications Services*.

SALES TAX FOR PROPERTY TAX RELIEF

What is the sales tax for property tax relief?

The sales tax for property tax relief is an optional, dedicated city sales tax, the revenues of which offset an equivalent amount of city property tax revenue.

How does the sales tax for property tax relief increase city revenue?

It doesn't. The sales tax for property tax relief merely shifts existing revenue from property taxes to sales taxes.[505]

What good is the sales tax for property tax relief if it doesn't increase revenue?

Some cities find sales taxes preferable to property taxes for budgeting or political reasons.

How much sales tax for property tax relief may be levied by the city?

The rate of a sales tax for property tax relief may be any rate that is an increment of one-eighth of one percent that the city determines is appropriate.[506] The combined rate of all local sales taxes within the city, however, cannot exceed two percent.[507]

How is the sales tax for property tax relief enacted?

Like all optional, or dedicated, city sales taxes, the sales tax for property tax relief is adopted by an election of the citizens. An election may be called by the city council on its own motion, or

[504] Id. § 321.210.
[505] Id. § 321.507.
[506] Id. § 321.103(b).
[507] Id. § 321.101(f).

must be called by the council upon receipt of a petition signed by at least five percent of the registered voters in the city.[508]

How does the sales tax for property tax relief operate to lower property taxes?

Revenues from the sales tax for property tax relief are subtracted from the city's no-new-revenue and voter-approval property tax rate calculations.[509] This has the effect of decreasing property tax revenue by an equivalent amount.

If sales tax proceeds exceed the estimate used in calculating the no-new-revenue and voter-approval rate discounts, the excess revenues are deposited in a special account and may only be used for debt service.[510]

What is the sales tax for property tax relief also known as?

The Texas Tax Code does not use the term sales tax for property tax relief. Instead, the code refers to the "additional municipal sales and use tax." At the end of the sales tax chapter, however, it is explained that the additional sales tax may only be spent to reduce property taxes – hence the common term "sales tax for property tax relief."[511]

SALES TAX FOR STREET MAINTENANCE

What is the sales tax for street maintenance?

The sales tax for street maintenance is an optional, dedicated city sales tax, the revenues of which may be spent to repair and maintain existing city streets and sidewalks.

How much sales tax for street maintenance may be levied by the city?

The rate of a street maintenance sales tax may be any rate that is an increment of one-eighth of one percent that the city determines is appropriate.[512] The combined rate of all local sales taxes within the city as a result of the adoption of the tax, however, cannot exceed two percent.[513]

[508] Id. § 321.401(a) and (d).
[509] Id. § 26.041.
[510] Id. § 321.507(a).
[511] Id. § 321.507.
[512] Id. § 327.004.
[513] Id. § 327.003(b).

How is the sales tax for street maintenance adopted?

Like all optional, or dedicated, city sales taxes, the sales tax for property tax relief is adopted by an election of the citizens. An election is called by an ordinance adopted by the city council.[514] The election may not be triggered by petition.

After an election to adopt a street maintenance sales tax, how long is the tax active?

Unlike nearly all other city sales taxes, the sales tax for street maintenance "sunsets," or expires, after four years, unless another election is held.[515] Legislation passed in 2013 and 2015 to allow two cities to hold reauthorization elections every eight and ten years, respectively, instead of every four years.[516]

May the sales tax for street maintenance be used to build new streets?

No. The sales tax for street maintenance may be used only to maintain and repair city streets and sidewalks existing on the date of the election to adopt the tax.[517] Many city attorneys believe that the sales tax for street maintenance could also be used to maintain and repair city streets and sidewalks existing on the date of a subsequent reauthorization of the tax.

SALES TAX ON RESIDENTIAL GAS AND ELECTRICITY

Are gas and electricity use subject to state and city sales taxes?

Gas and electricity sold for most commercial uses are subject to both state and city sales tax.[518] Industrial, agricultural, and manufacturing uses are typically exempt.

Residential use of gas and electricity are exempt from state sales tax and is ordinarily exempt from city sales tax.[519] However, any city that imposed sales tax prior to October 1, 1979, and chose to retain sales tax on residential use of gas and electricity on or before May 1, 1979, may charge sales tax on residential use of gas and electricity.[520] Additionally, a city that adopted a sales tax prior to

[514] Id. § 327.006.
[515] Id. § 327.007(a).
[516] Id. §§ 327.007(a)(2-a) and (3).
[517] Id. § 327.008.
[518] Id. § 151.317.
[519] Id. §151.317(b).
[520] Id. § 321.105; 34 Tex. Admin. Code § 3.334(l).

October 1, 1979, and did not choose to maintain a sales tax on residential use of gas and electricity may reimpose the sales tax at any time.[521] To reimpose the sales tax, the city must adopt an ordinance by majority vote of the membership of the city council. [522]The vote must be a record vote and recorded in the minutes of the city. [523] finally, the city must send a copy of the ordinance to the comptroller by registered or certified mail.[524]

If the city had no sales tax prior to October 1, 1979, it may not impose city sales tax on residential use of gas and electricity.[525]

Which cities can repeal the exemption on residential gas and electricity?

As stated above, only cities that had a sales tax in place prior to October 1, 1979, are eligible to repeal the exemption.

Any city that was created since October 1, 1979, or was in existence on that date but had no sales tax, cannot repeal the exemption.

What steps must a city take to tax residential gas and electricity?

Following are the steps necessary to tax residential gas and electricity:

(1) Adopt an ordinance by majority vote of the membership of the city council.[526] The phrase "of the membership," indicates that the vote needed is a majority of the entire council, not just a majority of those present and voting, as is usually required to pass a general agenda action item.

(2) Record the vote in the minutes of the city.

(3) The city secretary must send a copy of the ordinance to the comptroller by registered or certified mail.[527]

How many Texas cities have repealed the tax exemption on residential gas and electricity?

According to 2022 comptroller data, about 785 cities have repealed the exemption on residential gas and electricity. That leaves well over a hundred cities that are eligible to repeal the exemption

[521] TEX. TAX CODE § 321.105.
[522] Id.
[523] Id.
[524] Id.
[525] TEX. ADMIN. CODE § 3.334(l).
[526] TEX. TAX CODE § 321.105(c).
[527] Id. § 321.105(d).

but have not done so.[528] The comptroller maintains a list of cities that have repealed the exemption[529] and a list of cities that are eligible to do so but have not.[530]

SALES TAX ON TELECOMMUNICATIONS SERVICES

What is the sales tax on telecommunications services?

The sales tax on telecommunications services is not really a separate city sales tax. Rather, it represents the optional repeal of an exemption to the city's other sales taxes.

Telecommunications services are generally subject to state sales taxes.[531] Specifically exempt from sales taxes, however, are certain long-distance telephone services, commercial radio and television (other than cable), and a portion of monthly Internet access service charges.[532]

Telecommunications services are exempt from city sales taxes unless the city council repeals the exemption by an ordinance recorded in the minutes and filed with the comptroller.[533] A city that repeals the exemption may tax only those telecommunications services taxable by the state, with the exception of otherwise taxable interstate long-distance services.

Repeal of the city telecommunications exemption could be a significant source of new revenue for cities, but many cities do not take advantage of it.

What are telecommunications services?

According to the Texas Tax Code, telecommunications services are:

> …the electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other method not in existence or that may be devised, including but not limited to long-distance telephone service. The term does not include: (1) the storage of data or information for subsequent retrieval or the processing, or reception and processing, of data or information intended to change its form or content; (2) the sale or use of a telephone prepaid calling card; (3) Internet access service; or (4) a pay telephone coin sent-paid telephone call.[534]

[528] https://comptroller.texas.gov/taxes/sales/utility
[529] https://comptroller.texas.gov/taxes/sales/utility/cities.php
[530] https://comptroller.texas.gov/taxes/sales/utility/cities-eligible.php
[531] Id. § 151.0101(a)(6).
[532] Id. §§ 151.323 and 151.325.
[533] Id. §§ 321.210.
[534] Id. § 151.0103.

Which cities can repeal the exemption on telecommunications services?

All cities that have adopted sales taxes are eligible to repeal the exemption on telecommunications services.[535]

What steps must a city take to repeal the exemption on telecommunications services?

(1) Adopt an ordinance by majority vote of the city council that repeals the exemption.[536]
(2) Record the votes in the minutes of the city council.[537]
(3) The city secretary must send a copy of the ordinance to the comptroller by certified or registered mail.[538]

How many Texas cities impose sales taxes on telecommunication services?

According to 2023 comptroller data, 538 cities have repealed the tax exemption and impose sales taxes on telecommunication services.[539]

SPECIAL IMROVEMENT DISTRICT FUND TAX

What is a special improvement district fund tax?

A city council may levy an annual tax to support the administrative and planning elements of a public improvement district (PID).[540] No procedures are specified in the chapter for levying this tax. See Chapter: *Assessments.*

STREET ASSESSMENTS

What are street assessments?

[535] This is contrasted with repeal of the exemption for residential gas and electricity, which can only be accomplished by cities that had a sales tax prior to October 1, 1979.
[536] TEX. TAX CODE § 321.210(b).
[537] Id. § 321.210(d).
[538] Id. § 321.210(d).
[539] https://comptroller.texas.gov/taxes/publications/96-339.php
[540] TEX. LOC. GOV'T CODE § 372.021.

Cities may require adjoining landowners to share in the cost of street improvements within the city. The landowners' share is known as a street assessment and is governed by the Texas Transportation Code. Separate statutes apply to home rule and general law cities.

A city should be careful to contrast street assessments, which can be unilaterally imposed on landowners, with assessments within public improvement districts (PIDs), which can be used for street improvement but require the petition of the landowners to initiate. For a discussion of assessments within PIDs, see Chapter: *Assessments*.

How do home rule cities levy street assessments?

Home rule cities may assess a landowner for the cost of improving a city street if the city's charter provides for apportioning the cost between the city and the landowner.[541]

Home rule cities that are authorized by their charters to levy street improvement assessments may not levy an assessment in an amount that exceeds the amount by which the improvement specially benefits the owner's abutting land by enhancing the land's value.[542] This peculiar statute thus limits the amount of street assessments in home rule cities to the financial benefit on the adjoining land, which is likely lower than the cost of the street improvement.

Home rule cities may also levy assessments for opening (building), extending, or widening new city streets following eminent domain of the right-of-way.[543] The city's share of street construction shall be no more than one-third of the total cost, with the landowner paying two-thirds.[544]

How do general law (Type A) cities levy street assessments?

Type A general law cities actually have a more favorable street improvement assessment statute than do home rule cities. Type A cities may levy a street assessment against landowners abutting a street improvement if two-thirds of the councilmembers present vote for the assessment.[545]

A street assessment in a Type A general law city must apportion the costs at two-thirds to the landowner, one-third to the city.[546] The landowners must be permitted to pay their two-thirds cost assessment in not fewer than five equal, annual payments.[547] The assessment constitutes a lien against the property.[548]

Is there any other authority for a city to levy street assessments?

[541] TEX. TRANSP. CODE § 311.091(a).
[542] Id. § 311.091(a).
[543] Id. § 311.092.
[544] Id. § 311.092(b).
[545] Id. § 311.095(a).
[546] Id. § 311.095(b).
[547] Id. § 311.095(c).
[548] Id. § 311.095(f).

Yes. Interestingly, Chapter 313 of the Transportation Code authorizes any city with a population of over 1,000 to impose assessments to pay for improvements to city streets. This authority is separate from cities' authority to impose assessments pursuant to Chapter 311, Subchapter E, of the Transportation Code, which is discussed above.

Under this alternate street assessment process, cities—by ordinance—may assess the cost of an improvement against property that abuts the city street or portion of the street that is to be improved.[549] A city council may not assess more than nine-tenths of the estimated cost of a street improvement against an abutting property, but may assess the entire cost of constructing or repairing a curb, gutter, or sidewalk against an abutting property.[550] The ordinance may prescribe the terms of payment and default of the assessment, including setting the interest rate at a rate not to exceed eight percent per year.[551]

An assessment under Chapter 313 of the Transportation Code can only be imposed after the city council has prepared an estimate of the cost of the improvement, provided proper notice of a hearing on the proposed assessment, and held the assessment hearing.[552] Written notice must be mailed to all property owners abutting the part of the street to be improved and must be published in the local newspaper at least three times, with the first published notice running not later than the 21st day before the hearing date.[553] In order to be considered sufficient, the notice must: (1) describe the nature of the improvement for which the assessment will be imposed; (2) describe the portion of the street to be improved; (3) state the estimated amount per front foot proposed to be assessed; (4) state the estimated total cost of the improvement; (5) state the amount proposed to be assessed in the area near a railway; and (6) state the time and place of the hearing.[554]

An assessment imposed under Chapter 313 of the Transportation Code constitutes a lien on the property that is superior to any other lien or claim except a lien or claim for property taxes.[555]

TIME WARRANTS

What is a time warrant?

A time warrant is defined by state statute as "any warrant issued by a municipality that is not payable from current funds."[556] Time warrants are non-negotiable instruments that are issued to

[549] Id. § 313.042(a).
[550] Id. §§ 313.042(b) and (c).
[551] Id. § 313.042(d).
[552] Id. §§ 313.024, 313.047, and 313.048.
[553] Id. § 313.047.
[554] Id. § 313.047(f).
[555] Id. § 313.042(e).
[556] TEX. LOC. GOV'T CODE § 252.001(8).

obtain property or labor on credit, and are delivered to the contractor rather than sold for cash.[557] Practically speaking, time warrants are seldom used, because cities generally find it advantageous to utilize other financing alternatives like certificates of obligation.

Must voters approve time warrants?

Although there is no up-front election requirement for the issuance of a time warrant (as there is for general obligation bonds), a city may be petitioned by city taxpayers to conduct an election. If at least 10 percent of the qualified voters of the city whose names also appear as property taxpayers from the most recently approved tax roll sign a petition requesting a referendum on the question of whether time warrants should be issued, the city may not authorize the expenditure unless first approved by a majority at an election held by the city.[558] However, a petition for a referendum election may not be submitted if the total amount of time warrants issued by a city in a calendar year falls below a specified amount as follows:

(1) $7,500 if the city's population is 5,000 or less;
(2) $10,000 if the city's population is 5,001 to 24,999;
(3) $25,000 if the city's population is 25,001 to 49,999; or
(4) $100,000 if the city's population is more than 50,000.[559]

Must notice be given of the issuance of time warrants?

Yes, if a city intends to issue time warrants for the payment of a contract procured under Chapter 252 of the Local Government Code. In that case, the city must include in the notice a statement of: (1) the city council's intention to issue time warrants; (2) the maximum amount of the proposed time warrant indebtedness; (3) the rate of interest the time warrants will bear; and (4) the maximum maturity date of the time warrants.[560]

Does a time warrant need to receive attorney general approval?

No. Time warrants are specifically exempted from the general requirement that a public security be approved by the Texas attorney general.[561]

[557] *See City of Del Rio v. Lowe*, 111 S.W.2d 1208, 1214 (Tex.Civ.App.—San Antonio, 1937, rev'd on other grounds, 132 Tex. 111, 122 S.W.2d 191 (1938); *see also Lewis v. Nacogdoches County*, 461 S.W.2d 514, 518. (Tex.Civ.App.—Tyler 1970, no writ).
[558] TEX. LOC. GOV'T CODE § 252.045(a).
[559] Id. § 252.023.
[560] Id. § 252.041(d).
[561] TEX. GOV'T CODE § 1202.007(a)(4).

TRAFFIC FINE REVENUE

Is there a limit on how much city revenue can come from traffic fines?

Yes, for cities under 5,000 population, the annual revenue from traffic fines (including deferred disposition special expenses) may not exceed 30 percent of a city's total annual revenue from all sources, other than federal funds and bond proceeds.[562]

The restriction only applies to cities under 5,000 population; larger cities are not affected.

Who enforces the 30-percent restriction?

The Texas Comptroller enforces the 30-percent traffic fine restriction, and may conduct audits.[563] Further, a city that legally collects between 20 and 30 percent of its annual revenue from traffic fines must send the comptroller its annual financial report and a report that shows the total amount collected during the year from traffic fines and special expenses.[564] Failure to properly send the reports to the comptroller results in the city being responsible for the costs of any audit.[565]

What is the consequence for a city that receives more than 30 percent of its revenue from traffic fines?

Any fine money that exceeds the 30-percent limit is forfeited to the comptroller, except for $1 of each fine.[566]

Don't city-option court costs simply have the effect of replacing an equivalent amount of fine revenue, as judges are likely to consider the total payment when assessing a fine?

Yes and no. It is true that judges tend to adjust assessed fines downward to account for court costs. What's also true, however, is that most court costs—roughly $82 for a basic speeding ticket—go straight to the state to fund state activities. Furthermore, state fees and costs tacked onto municipal court fines have complete precedence over the fine. For instance, if a defendant has $83 to his name, the first $82 goes to the state and the city gets to keep the $1, regardless of the actual fine. Local-option court costs have the effect of correcting this discrepancy to some degree, as all court costs (local and state) are treated equally.

[562] TEX. TRANSP. CODE § 542.402(b).
[563] Id. § 542.402(c).
[564] Id. § 542.402(d).
[565] Id. § 542.402(e).
[566] Id. § 542.402(b).

USER FEES

What are user fees?

For purposes of this handbook, user fees are any charges that a city levies for the right to use city services or facilities that aren't otherwise covered in this manual. For example, if a city operates a municipal swimming pool and charges a $2 entry fee, that constitutes a user fee, and is perfectly legal. Building permitting and inspection fees may also be viewed as a user fee, in that the builder pays for the cost of the particular city service (in this case, permitting and inspections).

When are user fees legal, and when are they illegal?

There are only a handful of cases and opinions that deal with the legality/illegality of user fees. The principal legal issue is this: when does a user fee, which is routine and legal, cross over into the realm of a "tax," which is illegal unless a city can point to a specific authority that authorizes a tax?

Two general guidelines emerge from reading the opinions and cases:

(1) **A user fee should bear some relation to the actual cost of providing a service.** For example, if a $2 swimming pool fee raises $50,000 a year in revenue, and the cost of personnel, maintenance, and other items relating to operating a city pool is somewhere in the $50,000 range, such a fee is clearly legal. On the other hand, if the fee raised two or three times the revenue necessary to operate the pool, the excess revenue runs the risk of being labeled a "tax."

General law cities have no authority to levy a "swimming pool tax." As a result, such a fee would be in danger of being struck down by a court. General law cities possess only those taxing powers that the legislature or the constitution expressly grant them.[567] For home rule cities, the issue is more complicated, as it is unclear what taxing authority a home rule city can derive solely from its charter. Home rule city officials should discuss the issue with their city attorney.

(2) **A user fee shouldn't be attached to a bill for unrelated services.** For example, the Texas attorney general has concluded that a general law city may not attach a monthly fee on utility bills to finance the police department.[568] Nor may a city attach a mandatory fee in water bills to pay for volunteer fire fighting services.[569]

[567] *Vance v. Town of Pleasanton*, 261 S.W. 457, 458 (Tex. Civ. App.—San Antonio 1924).
[568] Op. Tex. Att'y Gen. No. JM-338 (1985).
[569] Op. Tex. Att'y Gen. No. GA-84 (2003).

For instance, a recent Texas Supreme Court case clarified that a city may not charge a license fee calculated as a percentage of the business's revenue.[570] A percentage-of-revenue fee is based on fluctuating market forces rather than recovery of the cost of regulation, so the court noted that fixed amount or volume-based fees are appropriate.

UTILITY FEES

How much may cities charge as utility fees?

Similar to user fees generally (see above), utility fees must bear some relation to the actual cost of providing the utility service. Utility billing is different from other fees in one important way, however: it has long been recognized that cities may make a reasonable profit from operation of their utility system.[571] A city can transfer the reasonable profit to the city's general fund, provided the amount complies with the provisions of any debt instrument that is paid by the utility proceeds.

A court may grant relief, however, to utility customers who can prove that a city's profit or return is unreasonable and excessive.[572]

May a city charge a late fee for delinquent utility bills?

Yes. A late charge on utility services bills is neither illegal interest nor penalty, but a cost of doing business properly assessed against a delinquent customer.[573] A late fee should be authorized by the utility ordinance.

VENUE TAXES

What are venue taxes?

Venue taxes are a collection of different taxes that a city is authorized to levy within the city to fund a "venue project." Some of the taxes might already be imposed by the city, like sales taxes and hotel occupancy taxes, and the "venue tax" would be an increased rate on the tax that would be dedicated to the venue project. Other venue taxes are new types of taxes that are created to fund the project.

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[570] *Builder Recovery Services, LLC v. Town of Westlake*, 650 S.W.3d 499 (Tex. 2022), reh'g denied (Sept. 2, 2022).
[571] *San Antonio Ind. S.D. v. City of San Antonio*, 550 S.W.2d 262, 264 (Tex. 1976).
[572] *San Antonio, supra*, at 265, citing *State v. Southwestern Bell Tel. Co.*, 526 S.W.2d 526 (Tex. 1975).
[573] Op. Tex. Att'y Gen. No. H-1289 (1978).

What are "venue projects" that may be funded by venue taxes?

When venue taxes were authorized in 1997, they were established as a means of providing facilities for professional athletic teams and other recreational activities deemed to be of benefit to a community. Since 1997, the definition of "venue project" has broadened to encompass additional purposes.

Venue projects are now defined as arenas, coliseums, stadiums, and other facilities that are used for sports and community events and for which a fee for admission is charged.[574] The term also includes convention and civic centers, civic center hotels, auditoriums, museums, plazas, and parks in the vicinity of a convention center facility.[575]

Also, a venue project includes any authorized project under the Type A and Type B economic development sales tax laws as they existed on September 1, 1997, a municipal parks and recreation system or improvements to such a system, and watershed protection and preservation projects.[576]

What are the different venue taxes that can be levied to fund venue projects?

The following taxes are all available to fund venue projects. These taxes may be levied in addition to similar taxes the city already levies for other purposes, including for general revenue.

(1) **Sales Tax.** A city may levy an optional sales tax for funding the venue project at any rate that is an increment of one-eighth of one percent that the city determines is appropriate.[577] However, the total combined tax rate within the city may not exceed two percent.[578] If the total tax rate within a city is maxed-out at the two percent local sales tax cap, state statute allows the adoption of the venue sales tax to cause the local sales tax rate of one of four other taxing authorities in the area to be automatically reduced or require the city to withdraw from the other taxing authority in order to make room for the venue sales tax.[579] The four taxing entities that may have their sales tax rate reduced to allow for a venue sales tax are: (1) a rapid transit authority; (2) a regional transportation authority; (3) a crime control and prevention district; and (4) an economic development corporation.[580]

(2) **Short-Term Motor Vehicle Rental Tax.** A city may levy a tax on the rental of motor vehicles for less than 30 days within the city at a rate not to exceed five percent.[581] Revenue from the motor vehicle rental tax may not be used to finance a parks and

[574] TEX. LOC. GOV'T CODE § 334.001(4)(A).
[575] Id. § 334.001(4)(B).
[576] Id. § 334.001(4)(D), (E), and (F).
[577] Id. § 334.083.
[578] Id. § 334.082(a) and TEX. TAX CODE § 321.101(f).
[579] TEX. LOC. GOV'T CODE § 334.085.
[580] Id.
[581] Id. §§ 334.101 and 334.103.

recreation system that would otherwise qualify as a venue project.[582] A city may impose a motor vehicle rental tax only if the city issues bonds or other obligations before the first anniversary of the date the tax is imposed.[583]

(3) **Parking Tax.** A city may generally levy a tax on each motor vehicle that parks at a venue project facility at a flat rate not to exceed $3.[584] A city may impose a parking tax only if the city issues bonds or other obligations to finance the venue project.[585]

(4) **Hotel Occupancy Tax.** A city may levy a hotel occupancy tax at a rate not to exceed two percent on all hotels in the city to fund certain venue projects, except that a city may not propose a hotel occupancy tax rate that would cause the combined hotel occupancy tax rate imposed from all sources at any location in the city to exceed 17 percent of the price of a room.[586] Revenue generated by the venue hotel occupancy tax may not be spent on park and recreation systems, watershed protection and preservation projects, and certain Type A or Type B EDC projects.[587] A city may impose a hotel occupancy tax only if the city issues bonds or other obligations before the first anniversary of the date the tax is imposed.[588]

(5) **Facility Use Tax.** A city may levy a tax on each member of a professional sports team who uses a venue project facility for a game. The rate may be up to $5,000 per player per game.[589] A facility use tax may only be imposed if the city has issued bonds to plan, acquire, establish, develop, construct, or renovate the approved venue project.[590]

(6) **Livestock Facility Use Tax.** A city may levy a tax not to exceed $20 on each stall or pen at a livestock show or rodeo at a venue project facility.[591]

(7) **Admissions Tax.** A city may levy a tax not to exceed ten percent of the price of an admission ticket to a venue project facility event.[592] An admissions tax may only be imposed if the city has issued bonds to plan, acquire, establish, develop, construct, or renovate the approved venue project.[593]

How are venue taxes levied?

[582] Id. § 334.1015.
[583] Id. § 334.112(b).
[584] Id. § 334.202.
[585] Id. § 334.205(b).
[586] Id. § 334.254.
[587] Id. §§ 334.2515 and 334.2517.
[588] Id. § 334.257(b).
[589] Id. § 334.303.
[590] Id. § 334.302(b).
[591] Id. § 334.404.
[592] Id. § 334.152.
[593] Id. § 334.151(b).

All venue taxes, as well as the underlying venue project, must be approved at an election of the city's voters. The voters must be allowed to vote on each venue project, as well as on each separate venue tax that is proposed to finance that project.[594]

Prior to the election, the Texas Comptroller must determine that the venue project and accompanying taxes won't negatively impact state revenue.[595] This process is triggered once the city council adopts a resolution authorizing the project and submits the resolution to the comptroller.[596] If the comptroller determines that the venue project will have a negative fiscal impact on state revenue, the comptroller must indicate in writing how the city could change the resolution so that there would not be a negative impact.[597] The city has 10 days to appeal the comptroller's decision.[598]

Does specific ballot language need to be used in a venue tax election?

Yes. Chapter 334 of the Local Government Code contains specific language that must be used for each type of venue tax proposition. In all cases, the required language includes a description of the project and language specifying the tax rate. The attorney general has concluded that the language of an election order for a venue project creates a "contract with the voters" in terms of the permissible projects for which venue tax revenue may be spent.[599]

How must the city handle venue tax revenue?

Once the voters have authorized a tax to support a venue project, the city must establish by resolution a fund known as the venue project fund.[600] The city must deposit certain revenue into the venue project fund, including any venue tax proceeds and all revenue from the sale of bonds or other debt obligations.[601] A city has the discretion to deposit various other sources of revenue associated with a venue project into the fund.[602] A city is required to establish separate accounts within the fund for the various revenue sources.[603]

Money in the venue project fund may be used by the city to: (1) pay the costs of operating or maintaining a venue project; (2) reimburse or pay the costs of planning, acquiring, establishing, developing, constructing, or renovating one or more approved venue projects; or (3) pay the principal, interest, or other costs relating to bonds or other debt obligations issued by the city to support a venue project.[604]

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[594] Id. § 334.024.
[595] Id. § 334.022.
[596] Id. § 334.021.
[597] Id. § 334.022.
[598] Id. § 334.023.
[599] Tex. Att'y. Gen. Op. No. GA-0156 (2004).
[600] TEX. LOC. GOV'T CODE § 334.042(a).
[601] Id. § 334.042(b).
[602] Id. § 334.042(c).
[603] Id. § 334.042(a).
[604] Id. § 334.042(d).

OF A SUCCESSFUL FIRST TERM ON CITY COUNCIL

By **TML Legal Staff**

Congratulations, you just got elected to your first term in municipal office! Below are the ABCs of a successful first term.

A. **ATTITUDE.** The right attitude goes a long way toward successful service in municipal office. Think of your first term as an opportunity to learn and serve. City government is complicated and difficult. If you think your election was a mandate from the people to "shake things up" at city hall, you might want to reconsider. It may be better to lay low, learn the ropes, and improve through contribution.

B. **BUDGET.** Crafting, passing, and following a city budget are among the most important tasks you will perform as a councilmember. Cities cannot make expenditures except in strict accordance with a budget, and they can levy taxes only in accordance with the budget. The state comptroller's office publishes the *Budget Manual for Texas Cities.* The latest version was published in 2010, and it continues to be an excellent resource.

C. **CONFLICTS OF INTEREST.** As a councilmember, you are prohibited from voting or deliberating on agenda items that affect your own business, property, or financial interests. You'll be required to file an affidavit with the city secretary disclosing the details of your financial interests and that affidavit becomes a public record. Further, you may have to disclose in writing the receipt of certain gifts or income of a certain amount from a vendor who does business with the city.

D. **DUAL OFFICEHOLDING.** Councilmembers cannot hold other paid public offices and, in many cases, cannot hold other unpaid public offices either. Furthermore, councilmembers can't take paid jobs with their own city, nor can they appoint themselves to other posts or positions. Finally, think twice about announcing to run for other public office while you're still a councilmember—you may automatically resign your council seat when you do. Check with your city attorney before considering any other position or job that might be a problem.

E. **EMPLOYMENT POLICIES.** Except in cities with the city manager form of government, the final authority over employment decisions typically rests with the council as a whole. As a member of the council, you should familiarize yourself with the city's employment policies and periodically consult with your city attorney to ensure they are kept updated.

F. **FREEDOM OF INFORMATION.** The Texas Public Information Act and the Open Meetings Act requires public access to city records and meetings. After a city receives a written request for information, it must promptly provide copies or access to information with limited exceptions. The Texas Attorney General determines whether information is excepted from public disclosure. City officials are required by law to attend training in both Acts within 90 days of taking office. You should provide the certificate received for completing the training to the city secretary to keep on file.

G. **GIFTS.** Cities are prohibited by the Texas Constitution from giving money or anything of value to a private individual, association, or corporation. An exception to this prohibition arises when the city council determines that a donation/gift will serve a public purpose of the city. The decision as to what constitutes a public purpose is left to the discretion of the city council but may be overturned by a court.

H. **HOLDOVER.** The Texas Constitution includes a provision that allows an elected official who resigns from office to continue to serve until his or her place is filled by a qualified individual. This provision allows a city to continue to conduct business, even when it loses one or more councilmembers.

I. **INTERNET.** A wealth of information about serving in your new municipal office can be found on the Internet, including the Texas Municipal League website at www.tml.org, under "Legal Research"; the Texas Attorney General website at www.texasattorneygeneral.gov; and the Texas Legislature Online website at www.capitol.state.tx.us.

J. **JUGGLE.** You will practice your balancing skills and become even better at juggling all facets of your public service, work, and home life.

K. **KNOWLEDGE.** New city councilmembers must use all available resources to develop their background knowledge about the diverse issues their constituents will expect them to resolve.

L. **LIABILITY.** Councilmembers will generally be held personally liable only for actions taken outside the scope of their duties and responsibilities as members of the governing body. However, the city itself will be potentially liable for actions taken by its councilmembers *within* the scope of their official duties. (See Tort Claims Act below.)

M. **MEETING.** Almost everyone intuitively knows what a meeting is. For example, a regular meeting of a city council, where agenda items are discussed and formal action is taken, is clearly a meeting. However, according to the Texas Open Meetings Act, many other gatherings of the members of a governmental body may constitute a meeting. Generally, any time a quorum is present and

city business is discussed, all the Open Meetings Act requirements, including posting an agenda and keeping minutes, must be followed.

N. **NEPOTISM.** Remember that you may not hire close relatives as employees of the city if you are on the city council. Personal recusal from the hiring decision is not enough; your close relatives are prohibited from working for the city. There are some exceptions. For example, if your relative worked for the city for at least six months before you took office and has maintained continuous employment with the city during that time, then that relative may continue to work in the position held. Also, a relative is always welcome to work as an uncompensated volunteer.

O. **OPEN.** The governing process must be open and transparent if it is to be effective. This means refraining from conducting business behind closed doors in executive session unless specifically authorized by state law (for example, consultation with an attorney or discussion of the employment of a specific employee).

P. **PROACTIVE.** Be proactive in dealing with city issues. Don't wait until a problem is right on top of you. By that point, it's often too late to take effective action. Always have an eye on the future and try to anticipate the needs of the city and your constituents.

Q. **QUORUM.** A city council must have a quorum to call a meeting to order and conduct business. The number of councilmembers required to establish a quorum varies by city. A quorum in a general law city is determined by state law, while a quorum in a home rule city is spelled out in the city's charter.

R. **RESPECT.** Mutual respect is the key to effective governing. City councilmembers should avoid personal attacks and focus on the issues at hand.

S. **SOLUTIONS.** It is always easy to criticize others' ideas. As a member of the city council, however, your goal should be to propose solutions and work toward a consensus rather than simply saying, "No, I don't like that idea."

T. **TORT CLAIMS ACT.** The Texas Tort Claims Act limits governmental liability and provides for damage caps for governmental entities. The Act provides that liability for engaging in 36 specifically enumerated "governmental functions" (such as provision of police and fire protection, maintaining city parks, and other activities one expects of a local government) is limited by statute. The Tort Claims Act does not generally provide for private causes of action against individual councilmembers for the actions of the city government.

U. **UNILATERAL.** Councils enact policies by acting as a whole. In most cases, individual councilmembers have no power to take unilateral action on behalf of the city.

V. **VOTES BY COUNCIL.** When a council votes on an ordinance or resolution, all that is typically needed to pass the item is a majority of those present and voting. While a quorum is the number needed to conduct a meeting, it is not necessary that a quorum actually vote on each agenda item. Local practices may vary from city to city.

W. **WORK TOGETHER.** Even if you disagree or don't get along with other members of the council, your first obligation is to solve problems and provide effective services to your local constituents. Try to put petty disagreements aside.

X. **EXCELLENCE.** (Hey, X is a tough letter!) Strive every day for excellence for your city. Voters elected you to your office, and they are depending on you giving your very best every day.

Y. **YEAR.** Cities often operate on a fiscal year that is different from the calendar year. For a majority of cities, the fiscal year begins in October.

Z. **ZONING.** This is the ability of a city council to divide a city into districts and allow in each district only certain land uses, such as commercial, residential, or industrial. Zoning protects property values, promotes public safety, and is one of the main reasons cities incorporate in the first place.

Okay, it's time to get started. Keep these ABCs handy, and remember that the League is just a phone call, email, or text message away. Best wishes in your new position! ★

Understanding Your Personal Liability as a City Official: A Primer

Updated Oct 2017

This paper is meant to provide basic information regarding *state* laws that may result in criminal or personal liability for city officials. A home rule charter, local policy, or ordinance may provide for more stringent requirements in some circumstances. This paper is not comprehensive in nature, but rather is intended to highlight some of the state law provisions that most commonly give rise to personal liability in connection with the holding of or running for a city office. Please consult the individual state laws cited for detailed information about the issues discussed here. You can find additional resources regarding many of the topics discussed in this paper on our Web site at www.tml.org.

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I. OPEN GOVERNMENT

This Section examines Texas open government laws related to meetings and records, both of which can result in personal liability for a local public official.

A. Open Meetings

The Texas Open Meetings Act (TOMA) is found in chapter 551 of the Government Code. The TOMA works to protect the public's interest in knowing what a governmental body (e.g., a city council) decides and observing how and why a body reaches a decision. To that end, the general rule is that every regular, special, or called meeting of a governmental body, including a city council and some boards and commissions (depending on membership and authority), must be open to the public and comply with the requirements of the TOMA.[1]

The TOMA does not apply to every gathering of the members of a governmental body. For instance, attendance at purely social gatherings, candidate forums, or conventions and workshops is not a meeting under the TOMA, so long as any discussion of city business is incidental to the gathering and no formal action is taken.[2]

When a governmental body holds a meeting subject to the TOMA, the body must post a notice that includes the date, hour, place, and subject of the meeting.[3] There are additional notice requirements for a meeting held by videoconference.[4] The notice must be posted on a bulletin board at city hall in a place readily accessible to the public at all times for at least 72 hours before the meeting.[5] In addition, the following requirements apply to cities that have a Web site: (1) a city under 48,000 in population must post meeting notices on the site; and (2) a city over 48,000 in population must post the entire agenda on the site.[6] Emergency meetings to address a matter of urgent public necessity may be called with two hours notice that identifies the nature of the emergency.[7]

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[1] TEX. GOV'T CODE §§ 551.001(3)–(4) (defining the terms "governmental body" and "meeting"), 551.002 ("Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.").
[2] *Id.* § 551.001(4).
[3] *Id.* § 551.041.
[4] *Id.* § 551.127.
[5] *Id.* §§ 551.043, 551.050.
[6] *Id.* § 551.056(b)(1), (c)(1). The attorney general has explained that "[t]he terms 'agenda' and 'notice' have been used interchangeably in discussions of the Open Meetings Act, because of the practice of posting the agenda as the notice or as an appendix to the notice. However, an agenda of a meeting is defined as 'a list, outline, or plan of things to be considered or done,' while the notice of the meeting is a written announcement." Tex. Att'y Gen. Op. No. DM-228 (1993) at n.2 (citations omitted).
[7] TEX. GOV'T CODE § 551.045.

If, at a meeting, a member of the public or the governmental body inquires about a subject not on the agenda, any response must be limited to either (1) a statement of factual information; or (2) a recitation of existing policy.[8] And any deliberation or decision about the subject must be limited to a proposal to place the subject on a future agenda.[9] The governing body of a city may receive from staff, or a member of the body may make, a report about "items of community interest" without having given notice of the subject matter if no action is taken in regard to the item.[10]

There are various exceptions that authorize closed meetings, also known as "executive sessions." Some of the most commonly-used exceptions include discussions involving: (1) the purchase or lease of real property; (2) the receipt of gifts; (3) consultations with an attorney; (5) personnel matters; (5) economic development; and (6) certain security matters.[11] The governing body must first convene in open session, identify which issues will be discussed in executive session, and cite the time and applicable exception.[12] All final actions, decisions, or votes must be made in an open meeting.[13]

Cities must keep written minutes (or a "certified agenda" for executive sessions) or recordings of all meetings, except those involving a closed consultation with an attorney.[14] The minutes of an open meeting must state the subject of deliberations and indicate each vote, decision, or other action taken.[15] Minutes do not have to be a verbatim transcript. Minutes of open meetings must be kept forever.[16] Executive session certified agendas or recordings must be kept for at least two years, and longer if litigation is pending.[17] A home-rule city with a population of 50,000 or more must make a video and audio recording of each regularly scheduled open meeting available on its Web site.[18]

Penalties for violating the TOMA range from having actions voided to the imposition of fines and incarceration. Any action taken in violation of the TOMA is voidable and may be reversed in a civil lawsuit.[19] There are four criminal provisions under the Act; those provisions prohibit: (1) knowingly conspiring to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations;[20] (2) calling or participating in an impermissible closed meeting;[21] (3) participating in a closed session without a certified agenda or tape recording;[22] and

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[8] *Id.* § 551.042.
[9] *Id.*
[10] *Id.* § 551.0415 (defining "items of community interest" to include things like an expression of thanks, congratulations, or condolence).
[11] *Id.* §§ 418.183, 551.071, 551.072, 551.073, 551.074, 551.076, 551.087.
[12] *Id.* §§ 551.101, 551.103(c)(3).
[13] *Id.* § 551.102.
[14] *Id.* §§ 551.021, 551.103.
[15] *Id.* § 551.021.
[16] 13 TEX. ADMIN. CODE § 7.125 (Tex. St. Lib. & Archives Comm'n, Local Schedule GR). Local retention schedules are available at *https://www.tsl.texas.gov/slrm/recordspubs/localretention.html*.
[17] TEX. GOV'T CODE § 551.104.
[18] *Id.* § 551.128.
[19] *Id.* §§ 551.141-.142.
[20] *Id.* § 551.143.
[21] *Id.* § 551.144.
[22] *Id.* § 551.145.

(4) disclosing a certified agenda or recording of a closed meeting to a member of the public.[23] Violations are misdemeanor offenses. Depending upon the offense, fines may be up to $2,000, and incarceration may be up to six months.

As to the second violation—calling or participating in an illegal closed meeting—an official may be convicted for participating even if unaware that the meeting is prohibited.[24] It is a defense that the member or the official acted in reasonable reliance on a: (1) court order; (2) written opinion of a court of record; (3) written attorney general's opinion; or (4) written opinion of the attorney for the governing body.[25]

Elected and appointed officials who are members of a governmental body subject to the TOMA must complete a one hour open meetings training course regarding the Act.[26] If a member of the governmental body fails to attend the required training course, it does not impact the validity of an action taken by the governmental body.[27] A certificate of course completion is admissible as evidence in a criminal prosecution under the TOMA, although it is not prima facie evidence that the defendant knowingly violated the TOMA.[28]

B. Public Information

The Texas Public Information Act (PIA) is found in Government Code Chapter 552. Under the PIA, information that is written, produced, collected, assembled, or maintained in connection with the transaction of official city business is generally available to the public.[29] While many cities have professional staff that manage the city's records and respond to public requests for records, it is important for officials to have an understanding of what constitutes a public record and the duties of a city under the PIA.

The PIA applies to all city records, on practically any media and created on any device.[30] For example, items such as handwritten notes taken by a city councilmember during a city council meeting, an interview, or during an evaluation in connection with the official business of the city are public records.[31] E-mails sent from a councilmember's personal computer to constituents relating to city business are public records subject to the PIA.[32]

When a city receives a request, it should never inquire why a person is requesting information, but if a request for information is unclear, a city official may ask for clarification.[33] All requests

[23] *Id.* § 551.146.
[24] *Tovar v. State*, 949 S.W.2d 370 (Tex. App.—San Antonio 1997), *aff'd*, 978 S.W.2d 584 (Tex. Crim. App. 1998).
[25] TEX. GOV'T CODE § 551.144(c).
[26] *Id.* § 551.005(a).
[27] *Id.* § 551.005(f).
[28] *Id.* § 551.005(g).
[29] *Id.* § 552.002.
[30] *Id.*
[31] *See, e.g.*, Open Records Decision Nos. 626 (1994) (concluding handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members are subject to the PIA), 450 (1986) (concluding handwritten notes taken by appraiser while observing teacher's classroom performance are subject to the PIA) .
[32] *See* GOV'T CODE § 552.002 (defining "public information").
[33] *Id.* § 552.222.

should be treated the same, without regard to the requestor's identity.[34] Members of the public may request copies of information or inspect information at city hall, and information should be available, at a minimum, during normal business hours.[35]

Certain specifically-listed information is made "automatically" public under the PIA. For example, a completed report, audit, evaluation, or investigation made of, for, or by a governmental body must almost always be released unless made confidential under law.[36] Information must be released "promptly," which is defined in the PIA as being "as soon as possible under the circumstances, that is, within a reasonable time, without delay."[37] If a requestor seeks a large volume of information, a city may certify to the requestor in writing a reasonable date by which it will provide the information.[38]

While certain information has to be disclosed, there are literally hundreds of exceptions that either allow or require (also known as permissive and mandatory exceptions) a city to withhold certain types of information. The exceptions range from information regarding ongoing law enforcement investigations to certain medical information. If a city official believes that requested information is confidential by law or may be withheld pursuant to an exception, the city has ten business days to seek an attorney general ruling to allow it to withhold the information, and an additional five business days to submit samples of the information with arguments as to why the information may be withheld.[39] *Generally*, the only way that a city can withhold information under the PIA is if the attorney general rules that it may do so, and missing the ten-day deadline may waive the city's right to withhold.[40] Because of the strict deadlines, cities should develop procedures for receiving and processing requests for information. Both city staff and officials should be familiar with any such procedures.

A city may charge fees for providing public information.[41] In many cases, the fees may include the reasonable costs of copies and labor.[42] If a city does not act in good faith in calculating the costs, a requestor is entitled to recover three times the amount of the overcharge actually paid.[43]

The PIA provides for both criminal penalties and civil remedies. The criminal provisions prohibit: (1) willfully destroying, mutilating, removing without permission, or altering public information;[44] (2) distributing information that is confidential under the PIA, knowingly using

[34] *Id*. § 552.223. A city is not, however, required to accept or comply with a request for information from a person who is imprisoned or confined in a correctional facility. *Id*. § 552.028.
[35] *Id*. §§ 552.021, 552.221.
[36] *Id*. § 552.022.
[37] *Id*. § 552.221.
[38] *Id*.
[39] *Id*. § 552.301; *but see* TEX. OCC. CODE § 1701.662 (establishing a different time frame to request an attorney general decision for body worn camera recordings).
[40] TEX. GOV'T CODE § 552.301. There are a limited number of statutes that allow a city to withhold information without requesting a ruling from the attorney general. *See, e.g., id.* § 552.1175(f) (relating to the address, phone number, social security number and personal family information of peace officers and others).
[41] *Id*. §§ 552.261–.275.
[42] *Id*. § 552.261.
[43] *Id*. § 552.269.
[44] *Id*. § 552.351.

confidential information in an impermissible manner, permitting inspection of confidential information by a person who is not authorized to inspect the information, or disclosing confidential information to an unauthorized person;[45] or (3) with criminal negligence, failing or refusing to give access to or provide copies of public information to a requestor.[46] Violations are misdemeanor offenses. Depending on the offense, fines may be up to $4,000 and up to six months in jail may be served.[47] A city official may also be ordered to release public information by a civil court.[48] In addition to constituting a crime, violations of the second and third offenses listed above also constitute official misconduct and thus, may be grounds for removal under the "official misconduct" provisions of Texas Local Government Code Sections 21.025(a)(2) and 21.031(a) or through a recall or other removal action authorized by a city charter.

As to the third offense—failing or refusing to provide access to or copies of information—it is, by its terms, limited to an officer for public information or the officer's agent. Therefore, it likely would not apply to a councilmember.

C. Records Retention

The Local Government Records Act (LGRA) is found in Chapters 201 through 205 of the Local Government Code. Under the LGRA, a city is required to establish a records management program.[49] In simple terms, such a program generally addresses the creation, use, maintenance, retention, preservation, and disposal of city records.

Local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are city property and must be preserved and managed in accordance with state law.[50] There are statutory procedures by which a city can seek to recover a local government record.[51]

It is a Class A misdemeanor for an officer or employee to knowingly or intentionally violate the LGRA or rules adopted pursuant to the LGRA by: (1) impermissibly destroying or alienating a local government record; or (2) intentionally failing to deliver records to a successor in office as required by the LGRA.[52]

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[45] *Id.* § 552.352.

[46] *Id.* § 552.353. It is an affirmative defense that the officer reasonably believed that public access was not required and that (1) the officer relied on a court order or attorney general opinion, (2) the officer requested a decision from the attorney general, (3) the governmental body filed a petition for declaratory judgment after the attorney general issued a ruling; or (4) the person is an agent of an officer for public information and relied on the written instructions of that officer not to disclose the information. *Id.*

[47] *Id.* §§ 552.351–.353.

[48] *Id.* § 552.321.

[49] TEX. LOC. GOV'T CODE §§ 203.026, 203.047.

[50] *Id.* § 201.005.

[51] *Id.* § 202.005.

[52] *Id.* § 202.008. As discussed elsewhere, city records are also protected from destruction by state laws outside of the LGRA. *See* TEX. GOV'T CODE § 552.351 (providing that the willful destruction or mutilation of a public record is a criminal offense), TEX. PENAL CODE § 37.10(3) (providing that the intentional destruction of a governmental record is a criminal offense).

II. CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE

A common source of alleged wrongdoing revolves around conflicts of interest. Whether real or perceived, these allegations often arise out of a conflict of interest relating to personal financial gain, employment, or special treatment for family members or business relations. This section highlights various state laws that require city officials disclose information about these matters to the public by filling out some type of disclosure or abstaining from voting on a matter. If you have any doubt whether you have a conflict of interest, you should comply with these requirements.

A. Local Government Code Chapter 171: Real Property and Business Interests

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest.[53] It prohibits a local public official from voting on or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public.[54]

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper (usually the city secretary), stating the nature and extent of the interest.[55] In addition, a public official is required to abstain from further participation in the matter except when a majority of the members of the governing body also have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter.[56]

The term "local public official" is defined to mean "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . or other local governmental entity who exercises responsibilities beyond those that are advisory in nature."[57] This term includes a member of a planning and zoning commission.[58]

A public official has a substantial interest in a business entity if the official:

(1) owns 10 percent or more of the voting stock or shares of the business entity;

(2) owns either 10 percent or more or $15,000 or more of the fair market value of the business entity; or

(3) receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year.[59]

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[53] TEX. LOC. GOV'T CODE §§ 171.001–.010.
[54] *Id.* § 171.004.
[55] *Id.*
[56] *Id.*
[57] *Id.* § 171.001(1).
[58] Tex. Att'y Gen. Op. Nos. KP-0105 (2016), DM-309 (1994).
[59] TEX. LOC. GOV'T CODE § 171.002(a).

A public official has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of $2,500 or more.[60]

A public official is also considered to have a substantial interest in a business entity or real property if the official's relative within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the business entity or real property.[61] As such, any "substantial interest" that a public official's spouse, parent, child, step-child, father or mother-in-law, or son or daughter-in-law has is imputed to the public official. For example, a public official has a "substantial interest" in a business that employs the official's daughter if the official's daughter earns a small income, which exceeds ten percent of her gross income.[62]

A business entity is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law."[63] A nonprofit corporation is considered a business entity.[64] The term also includes a business entity that represents an entity or person with an interest in a matter before the city council.[65] Public entities such as a city, state university or school district, are not a business entities.[66]

The limit on "further participation" by a public official who has a conflict does not preclude the public official from attending meetings, including executive session meetings, relevant to the matter in which he has a substantial interest, provided that the official remains silent during the deliberations.[67] Thus, an interested public official does not participate in a matter by merely attending an executive session on the matter and remaining silent during the deliberations.[68]

The question of whether a vote or decision has a "special economic effect" on a business entity or on the value of real property is generally a question of fact.[69] However, a vote or decision will, as a matter of law, have a "special economic effect" if the governing body considers purchasing goods or services from a business entity in which a local public official has a substantial interest.[70] Additionally, the issue of whether a vote or decision has a special economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property.[71]

Whether it is "reasonably foreseeable" that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, is fact specific.[72]

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[60] *Id.* § 171.002(b).
[61] *Id.* § 171.002(c).
[62] Tex. Att'y Gen. Op. No. JC-0063 (1999).
[63] TEX. LOC. GOV'T CODE § 171.001(2).
[64] Tex. Att'y Gen. Op. No. JM-424 (1986), at 2.
[65] Tex. Att'y Gen. Op. No. DM-309 (1994), at 2.
[66] Tex. Att'y Gen. Op. Nos. GA-0826 (2010), at 1, DM-267 (1993), at 2, JM-852 (1988), at 2.
[67] Tex. Att'y Gen. Op. No. GA-0334 (2005), at 6.
[68] *Id.*
[69] Tex. Att'y Gen. Op. No. GA-0796, at 4 (2010); Tex. Att'y Gen. LO-98-052.
[70] Tex. Att'y Gen. Op. No. GA-0136 (2004), at 3.
[71] Tex Att'y Gen. Op. No. GA-0796 (2010), at 4 (discussing *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 281-82 (Tex. App.—Dallas 1991, writ denied)).
[72] Tex. Att'y Gen. LO-96-049.

In instances where the economic effect is direct and apparent at the time of the action, both a court and the attorney general have concluded that the economic effect was "reasonably foreseeable."[73]

There are special rules beyond the filing of an affidavit and abstaining from voting that apply to the adoption of a budget. If an item of the budget is specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest, the governing body must vote on that line item separately.[74] The affected member may not generally participate in consideration of that item.[75]

If a public official votes on a matter that he or she has a substantial interest in or fails to abstain from further participation, the action of the governing body on the matter is not voidable, unless the matter that was the subject of the action would not have passed without the vote of the person who had a substantial interest.[76] A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.[77]

B. Local Government Code Chapter 176: Vendor Relationships

Chapter 176 of the Local Government Code requires certain local government officers to disclose employment, business, and familial relationships with vendors who conduct business, or consider conducting business, with local government entities. The requirements apply to most political subdivisions, including cities.[78] The Chapter also applies to a "local government corporation, a board, commission, district, or authority" whose members are appointed by a mayor or the city council.[79]

A "local government officer" (officer) includes: (1) a mayor or city councilmember; (2) a director, administrator, or other person designated as the executive officer of the city; and (3) an agent (including an employee) of the city who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.[80]

An officer is required to file a conflicts disclosure statement in at least three situations:

1. An officer must file a statement if the officer or officer's family member[81] has an employment or other business relationship with a vendor that results in the officer or officer's family member receiving taxable income of more than $2,500 in the preceding

[73] *Dallas Cty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 278 (Tex. App.—Dallas 1991, writ denied); Tex. Att'y Gen. Op. No. GA-0796 (2010), at 6.
[74] TEX. LOC. GOV'T CODE § 171.005.
[75] *Id.*
[76] *Id.* § 171.006.
[77] *Id.* § 171.003.
[78] TEX. LOC. GOV'T CODE § 176.001.
[79] *Id.*
[80] *Id.*
[81] An officer's family member is a person related to the officer within the first degree by consanguinity (blood) or affinity (marriage). *Id.*

twelve months.[82] An officer who only receives investment income, regardless of amount, is not required to file a disclosure statement. Investment income includes dividends, capital gains, or interest income gained from a personal or business checking or savings account or other similar account, a personal or business investment, or a personal or business loan.[83]

2. An officer is required to file a statement if the officer or officer's family member accepts one or more gifts (including lodging, transportation, and entertainment accepted as a guest) from a vendor that has an aggregate value of more than $100 in the preceding twelve months.[84] An officer is not required to file a statement in relation to a gift, regardless of amount, if the gift: (1) is a political contribution; (2) is food accepted as a guest; or (3) is offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.[85]

3. An officer is required to file a statement if the officer has a family relationship with the vendor.[86]

There is at least one exception to the three situations set out above. A local government officer does not have to file a statement if the vendor is an administrative agency supervising the performance of an interlocal agreement.[87]

An officer is required to file a statement no later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of facts that require a filing of the statement.[88]

A "vendor" includes any person that enters or seeks to enter into a contract with a city.[89] The term also includes: (1) an agent of a vendor; (2) an officer or employee of a state agency when that individual is acting in a private capacity; and (3) Texas Correctional Industries (but no other state agency).[90]

Chapter 176 applies to any written contract for the sale or purchase of real property, goods (personal property), or services.[91] A contract for services would include one for skilled or unskilled labor, as well as professional services.[92]

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[82] *Id.* § 176.003(a)(2)(A).
[83] *Id.* § 176.001.
[84] *Id.* § 176.003(a)(2)(B) .
[85] *Id.* §§ 176.001(2-b), 176.003(a-1).
[86] *Id.* § 176.003(a)(2)(C). An officer has a family relationship with a vendor if they are related within the third degree by consanguinity (blood) or second degree by affinity (marriage). *Id.* § 176.001.
[87] *Id.* § 176.003(a-2).
[88] *Id.* §176.003(b).
[89] *Id.* §176.001.
[90] *Id.*
[91] *Id.*
[92] *Id.*

A vendor is required to file a conflict of interest questionnaire if the vendor has a business relationship with the city and has: (1) an employment or other business relationship with an officer or an officer's family member that results in the officer receiving taxable income that is more than $2,500 in the preceding twelve months; (2) has given an officer or an officer's family member one or more gifts totaling more than $100 in the preceding twelve months; or (3) has a family relationship with an officer.[93]

A vendor is required to file a questionnaire not later than the seventh business day after the later of the following: (1) the date that the vendor begins discussions or negotiations to enter into a contract with the city or submits an application or response to a bid proposal; or (2) the date that the vendor becomes aware of a relationship or gives a gift to an officer or officer's family member, or becomes aware of a family relationship with an officer.[94]

The statements and disclosures must be filed with the records administrator of the city.[95] A records administrator includes a city secretary, a person responsible for maintaining city records, or a person who is designated by the city to maintain the statements and disclosures filed under Chapter 176.[96]

A city that maintains a Web site is required to post on that site statements and disclosures that are required to be filed under Chapter 176.[97] However, a city that does not have a Web site is not required to create or maintain one.[98]

An officer or vendor who knowingly fails to file a statement or a disclosure when required to do so commits a Class A, B, or C misdemeanor, depending on the amount of the contract.[99] It is an exception to prosecution that an officer/vendor files a statement/questionnaire not later than the seventh day after the date the person receives notice from the city of the alleged violation.[100] The validity of a contract between a city and a vendor is not affected solely because a vendor fails to file a questionnaire.[101]

The Texas Ethics Commission is charged with creating statements and disclosure forms. The forms (Form CIS and Form CIQ) may be found at https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm.

[93] *Id.* §176.006(a).
[94] *Id.* §176.006(a-1).
[95] *Id.* §§176.003(b), 176.006(a-1).
[96] *Id.* §176.001(5).
[97] *Id.* § 176.009.
[98] *Id.*
[99] *Id.* §§ 176.013.
[100] *Id*.
[101] *Id.* § 176.006(i).

C. Government Code Chapter 553: Property Acquisition

Chapter 553 of the Government Code provides that a "[a] public servant who has a legal or equitable interest in property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation."[102]

Chapter 553's affidavit requirement applies to a "public servant," defined as a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as: (1) a candidate for nomination or election to public office; or (2) an officer of government.[103]

The term "public funds" is defined to "include[] only funds collected by or through a government."[104] The language of Chapter 553 suggests that a public servant is required to disclose his/her interest in property even when the property is to be acquired by a separate governmental entity with which the public servant is not affiliated. There appears to be no case or attorney general opinion that addresses this issue. Thus, a public servant or official subject to Chapter 553 should consult his/her private legal counsel regarding the application of Chapter 553 in this scenario.

Chapter 553 is not, by its language, limited to real property interests. Thus, if a public servant has a legal or equitable interest in any real (e.g., land) or personal (e.g., a vehicle) property acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant should file a Chapter 553 affidavit.[105]

A Chapter 553 affidavit has to be filed within ten days before the date on which the property is to be acquired by purchase or condemnation.[106] The affidavit is filed with the county clerk of the county in which the public servant resides as well as the county clerk of each county in which the property is located.[107]

The affidavit must include: (1) the name of the public servant; (2) the public servant's office, public title, or job designation; (3) a full description of the property; (4) a full description of the nature, type, and amount of interest in the property, including the percentage of ownership interest; (5) the date the public servant acquired an interest in the property; (6) the following verification: "I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code;" and (7) an acknowledgement of the same type required for recording a deed in the deed records of the county.[108] An affidavit example is available on our Web site at: http://www.tml.org/example-documents.

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[102] TEX. GOV'T CODE § 553.002(a).
[103] *Id*. § 553.001(2).
[104] *Id*. § 553.001(1).
[105] *Id*. § 553.002.
[106] *Id*. § 553.002(a).
[107] *Id*. § 553.002(c).
[108] *Id*. § 553.002(b).

A person who violates Section 553.002 of the Government Code by failing to file the required affidavit is presumed to have committed a Class A misdemeanor offense if the person had actual notice of the acquisition or intended acquisition of the legal or equitable interest in the property.[109]

D. Local Government Code Chapter 145: Cities with a Population of 100,000 or More

Local Government Code Chapter 145's financial disclosure requirements apply *only in a city with a population of 100,000 or more*.[110] In general terms, Chapter 145:

1. requires each mayor, each member of a city council, each city attorney, each city manager, and each candidate for city office to file an annual financial statement with the city clerk or secretary;[111]

2. requires that the financial statement include an account of the financial activity of the covered individual and the individual's spouse and dependent children, if the individual had control over that activity; and[112]

3. requires that the financial statement include all sources of income; shares of stocks owned, acquired, or sold; bonds, notes, or other paper held, acquired, or sold; any interest, dividend, royalty, or rent exceeding $500; each person or institution to whom a personal debt of $1,000 or more exists; all beneficial interests in real property or businesses owned, acquired, or sold; certain gifts received; income in excess of $500 from a trust; a list of all boards of directors on which the individual serves; and information about certain contracts with a governmental entity.[113]

Candidates for elected city office are required to file the financial disclosure statement not later than the earlier of: (1) the twentieth day after the deadline for filing an application for a place on the ballot in the election; or (2) the fifth day before the date of the election.[114] Annually, the mayor, city councilmembers, the city manager, and the city attorney must file a financial disclosure statement for the preceding year by April 30.[115] A new city manager or a new city attorney must file a financial disclosure statement within forty-five days of assuming the duties of office.[116]

City officers and candidates for elected city office must file the financial statement on a form provided by the Texas Ethics Commission.[117] The form (PFS-Local) is available here:

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[109] *Id*. § 553.003.
[110] TEX. LOC. GOV'T CODE § 145.001.
[111] *Id*. §§ 145.002–.003. The requirements seem to apply to interim city managers and city attorneys as well. *Cf*. Tex. Ethics Comm'n Op. Nos. 27 (1992), 265 (1995).
[112] *Id*. § 145.003(b)(2), TEX. GOV'T CODE § 572.023(a).
[113] TEX. LOC. GOV'T CODE § 145.003(b)(2), TEX. GOV'T CODE § 572.023(b).
[114] TEX. LOC. GOV'T CODE § 145.004(c).
[115] *Id*. § 145.004, TEX. GOV'T CODE § 572.026(a).
[116] TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(c).
[117] TEX. LOC. GOV'T CODE § 145.005(a).

https://www.ethics.state.tx.us/filinginfo/pfsforms_insLocal.html. A detailed listing of the required contents can be found in Section 572.023 of the Texas Government Code. If information in the financial disclosure form is required to be filed by category, Section 572.022 sets forth reporting categories. The city secretary must deliver (by mail, personal delivery, e-mail, or other electronic transfer) copies of the form to city officers and candidates for city office within certain time deadlines.[118]

The completed financial disclosure statement is filed with the city clerk or secretary.[119] Statements are public records and are to be maintained so as to be accessible to the public during regular office hours.[120]

Both criminal and civil penalties may be imposed for failure to file a financial disclosure statement. An offense under Chapter 145 is a class B misdemeanor, which is punishable by a fine up to $2,000 and/or confinement up to 180 days.[121] Section 145.010 sets forth a process whereby a civil penalty up to $1,000 can be assessed upon failure to comply after notice is received from the city attorney.

The city secretary shall grant an extension of not more than sixty days for the filing of the financial disclosure statement to a city officer or a person appointed to a city office if: (1) the individual makes an extension request before the filing deadline; or (2) the individual's physical or mental capacity prevents either the filing or the request for an extension before the filing date.[122] Extensions shall not be granted to candidates for elected city office.[123]

The city secretary shall maintain a list of the city officers and candidates required to file a financial disclosure statement. No later than ten days after the filing deadline, the city secretary shall provide a list to the city attorney showing for each city officer and candidate for city office: (1) whether the individual filed a timely statement; (2) whether the individual was granted an extension and the new filing deadline; or (3) whether the individual did not timely file a financial statement or receive an extension of time.[124]

E. Miscellaneous Conflicts Provisions

1. Plats

A provision governing conflicts of interest in the plat approval process was added to state law in 1989. It requires a member of a municipal authority responsible for approving plats who has a substantial interest in a subdivided tract to file an affidavit stating the nature and extent of the interest and abstain from further participation in the matter.[125] The affidavit must be filed with

[118] *Id*. §§ 145.002, 145.005(b)
[119] *Id*. § 145.003(b).
[120] *Id*. § 145.007(a).
[121] *Id*. § 145.009.
[122] *Id*. § 145.004(e).
[123] *Id*. § 145.004(f).
[124] *Id*. § 145.008.
[125] *Id*. § 212.017(d).

the municipal secretary or clerk before a vote or decision regarding the approval of a plat for the tract.

For purposes of this disclosure requirement, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.[126]

A person has a substantial interest in a subdivided tract if the person:

(1) has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more;

(2) acts as a developer of the tract;

(3) owns 10% or more of the voting stock or shares of or owns either 10% or more or $5,000 or more of the fair market value of a business entity that:

(A) has an equitable or legal ownership interest in the tract with a fair market value of 2,500 or more; or

(B) acts as a developer of the tract; or

(4) receives in a calendar year funds from a business entity described in (3) that exceed 10% of the person's gross income for the previous year.[127]

A person is also considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity to another person who has a substantial interest in the tract. An offense under this subsection is a Class A misdemeanor.[128] The finding by a court of a violation of this requirement does not render voidable an action of the municipal authority responsible for approving plats, unless the measure would not have passed without the vote of the member who violated the requirement.[129]

2. Depository

Local Government Code Section 131.903 regulates conflicts of interest with respect to a city's selection of a depository. A bank is disqualified from serving as the depository of the city if an officer or employee of the city who has a duty to select the depository owns or has a beneficial interest, individually or collectively, in more than 10 percent of the outstanding capital stock of the bank.[130] In other words, a city council may not select a bank as the city's depository if a mayor or councilmember owns more than 10 percent of the bank.

If an officer or employee of the city is a director or officer of the bank, or owns 10 percent or less of the capital stock of the bank, the bank is not disqualified from serving as the city's depository so long as: (1) the interested officer or employee does not vote or take part in the proceedings; and (2) a majority of the other members of the city council vote to select the bank as the depository.[131]

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[126] *Id*. § 212.017(a).
[127] *Id*. § 212.017(b).
[128] *Id*. § 212.017(e).
[129] *Id*. § 212.017(f).
[130] *Id*. § 131.903(a)(2).
[131] *Id*.

The attorney general has concluded that Section 131.903 is an exception to the general conflicts of interest statute in Chapter 171 of the Local Government Code.[132] That being said, TML attorneys advise that any local public official with a "substantial interest" in a bank, as that term is defined by Chapter 171 of the Local Government Code, comply with the Chapter 171 requirements of (1) filing an affidavit that discloses the potential conflict; and (2) abstaining from participating in the selection of the bank, even if the potential conflict doesn't trigger the specific conflict of interest provision under Local Government Code Section 131.903.

III. ACTING AS A SURETY

There are various instances in which a city may require an entity with which it contracts to utilize a surety (sometimes referred to as a guarantor or secondary obligor).[133] In addition, certain city officers may be required to execute a bond in conjunction with their office.[134]

A local public official commits a Class A misdemeanor offense if the official knowingly: (1) acts as a surety for a business entity that has work, business, or a contract with the governmental entity or (2) acts as a surety on any official bond required of an officer of the governmental entity.[135] For the purposes of these violations, a "local public official" is defined to mean "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . who exercises responsibilities beyond those that are advisory in nature."[136]

IV. PURCHASING

At meetings throughout the budget year, the city council may be called on to approve the purchase of goods, services, and property. With limited exceptions, before a city enters into a contract that requires an expenditure of more than $50,000, it must comply with the procedures for competitive sealed bidding or competitive sealed proposals in Chapter 252 of the Texas Local Government Code.[137] As an alternative to competitive sealed bidding or proposals, a city may use the following procurement methods: (1) the reverse auction procedure for purchasing in Section 2155.062(d) of the Government Code; (2) a cooperative purchasing program under Subchapters D and F of Chapter 271 of the Local Government Code; or (3) an alternative

[132] Tex. Att'y Gen. LO-97-093.
[133] *See, e.g., Wisenbaker v. Johnny Folmar Drilling Co.*, 334 S.W.2d 465, 466 (Tex. Civ. App.—Texarkana 1960, writ dism'd)(describing that the City of Quitman had filed suit against a drilling company and its surety on the company's performance bond for breach of contract).
[134] *See, e.g.,* TEX. LOC. GOV'T CODE § 22.072(c) (authorizing the city council in a type A general law city to require municipal officers to execute a bond payable to the city and conditioned that the officer will faithfully perform the duties of the office).
[135] TEX. LOC. GOV'T CODE § 171.003; *see also* Tex. Att'y Gen. Op. No. KP-0132 (2017) (concluding that 171.003 does not prohibit a local public official from acting as a surety on a bail bond, i.e., a surety for an individual made to secure the release of an individual defendant from the State's custody).
[136] TEX. LOC. GOV'T CODE § 171.001(1).
[137] *Id*. §§ 252.021, 252.022.

procurement method for city construction projects set out in Chapter 2269 of the Texas Government Code.[138]

A city may use competitive sealed proposals for the purchase of any goods or services, including high technology items and insurance.[139] However, construction projects must generally be procured using competitive bidding or specific alternative methods (discussed below).

For general procurement of goods or services (as discussed below, special rules may apply to construction procurement), a contract must be awarded to: (a) the lowest responsible bidder, or (b) the bidder who provides goods or services at the "best value."[140] When determining "best value," the city may consider factors other than the purchase price of the goods and services, including among other things: (1) the reputation of the bidder and the bidder's goods or services; (2) the quality of the bidder's goods or services; (3) the bidder's past relationship with the city; and/or (4) any other lawful criteria.[141]

The city must indicate in the bid specifications and requirements that the contract will be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the "best value" for the city.[142]

In addition, two provisions—Local Government Code Sections 271.905 and 271.9051—authorize the use of local preference when awarding a contract *under the Local Government Code*. Section 271.905 allows a city to consider a bidder's principal place of business when a city awards a contract for real or personal property.[143] Specifically, it provides that if a city receives one or more bids from a bidder whose principal place of business is in the city and whose bid is within three percent of the lowest bid price of a non-resident, the city may pick the resident bidder after a written determination that the decision is in the best interests of the city.[144] This is a useful provision for awarding contracts, but it appears to be directed towards the purchase of tangible items rather than services.

Section 271.9051 authorizes a city to give a preference to a local bidder when awarding a contract for personal property *or services* if: (1) the local bid is within five percent of the lowest bid that isn't local, and (2) the city's governing body finds in writing that the local bid offers the best combination of price and economic development factors such as local employment and tax revenues. Legislation passed in 2009 and 2011 limits the applicability of this provision to contracts for construction services that are less than $100,000 and contracts for other purchases that are less than $500,000.

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[138] *Id.* § 252.021. House Bill 628, passed during the 2011 regular legislative session, consolidated the alternative procurement methods for most governmental entities into a new Chapter 2267 of the Texas Government Code. Senate Bill 1093, passed during the 2013 regular legislative session, moves those methods to Chapter 2269 of the Texas Government Code.
[139] *Id.* § 252.021(b).
[140] *Id.* § 252.043.
[141] *Id.*
[142] *Id.*
[143] *Id.* § 271.905.
[144] *Id.*

A city does not have to comply with competitive procurement requirements for certain expenditures, even if the expenditure is over $50,000. The most common exemptions are as follows (see Section 252.022(a) of the Local Government Code for a complete list of exemptions):

- A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the city's residents or to preserve the property of the municipality.[145]
- A procurement necessary to preserve or protect the public health or safety of the city's residents.[146]
- A procurement necessary because of unforeseen damage to public machinery, equipment, or other property.[147]
- A procurement for personal, professional, or planning services.[148]
- A purchase of land or a right-of-way.[149]
- A procurement of items that are available from only one source.[150]

Whether or not to use any of the exemptions is up to each city, and the decision should be made based on the advice of local legal counsel.

A city, in making an expenditure of more than $3,000 but less than $50,000, shall contact at least two HUBs on a rotating basis, based on information provided by the Texas Comptroller's Office pursuant to Chapter 2161 of the Government Code, see information at https://comptroller.texas.gov/purchasing/.[151] If the list fails to identify a HUB in the county in which the city is located, the city is exempt.[152]

For construction projects that involve the construction of a building that is to be designed and constructed in accordance with accepted building codes (commonly referred to as "vertical construction projects"), and those that are civil engineering projects (commonly referred to as "horizontal construction projects"), a city may use many of the alternative procurement methods set out in Chapter 2269 of the Texas Government Code.[153] The alternative methods are:

[145] *Id*. § 252.022(a)(1).
[146] *Id*. § 252.022(a)(2).
[147] *Id*. § 252.022(a)(3).
[148] *Id*. § 252.022(a)(4). Certain professional services, however, must be procured through a competitive selection process under Chapter 2254 of the Government Code (the Professional Services Procurement Act).
[149] *Id*. § 252.022(a)(6).
[150] *Id*. § 252.022(a)(7).
[151] *Id*. § 252.0215.
[152] *Id*.
[153] House Bill 628, passed during the 2011 regular legislative session, consolidated the alternative procurement methods for most governmental entities into a new Chapter 2267 of the Texas Government Code. Senate Bill 1093, passed during the 2013 regular legislative session, moves those methods to Chapter 2269 of the Texas Government Code.

- Competitive bidding (which is different than the "standard" competitive bidding processes in Chapter 252/Chapter 271, Subchapter B).[154]
- Competitive sealed proposals (may be used for civil engineering projects).[155]
- Construction manager agent.[156]
- Construction manager at risk (may be used for civil engineering projects).[157]
- Design-build[158] (may not generally be used for civil engineering projects, although a handful of very large cities—those over 100,000 in population—may use design-build for a limited number of civil works projects under Government Code Chapter 2269, Subchapter H).
- Job order contract (may not be used for civil engineering projects).[159]

For each of the methods listed above, a city awards the contract to the contractor who provides the "best value" to the city based on the selection criteria established by the city in its procurement documents. The selection criteria may generally include factors other than the construction cost, including among other things: (1) the reputation of the contractor and the contractor's goods or services; (2) the quality of the contractor's goods or services; and (3) the contractor's past relationship with the city.[160]

Any provision in the charter of a home rule city that relates to the notice of contracts, advertisement of the notice, requirements for the taking of sealed bids based on specifications for public improvements or purchases, the manner of publicly opening bids or reading them aloud, or the manner of letting contracts that is in conflict with Chapter 252 controls unless the governing body elects to have Chapter 252 supersede the charter.[161]

Chapter 271, Subchapters D and F, of the Local Government Code (Cooperative Purchasing Programs) authorize cities to enter into cooperatives with the state or other local governments for the purpose of procuring goods and services. The state purchasing cooperative is online at https://comptroller.texas.gov/purchasing/, and a joint TML/Texas Association of School Board cooperative is online at https://www.tasb.org/Services/BuyBoard.aspx. In addition, several councils of governments offer cooperative purchasing.

Section 2155.062(d) of the Texas Government Code authorizes the use of the reverse auction method for the purchase of goods and services. A reverse auction procedure is: (1) real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or (2) a bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled

[154] TEX. GOV'T CODE Chapter 2269, Subchapter C.
[155] *Id*. Chapter 2269, Subchapter D.
[156] *Id*. Chapter 2269, Subchapter E.
[157] *Id*. Chapter 2269, Subchapter F.
[158] *Id*. Chapter 2269, Subchapters G and H.
[159] *Id*. Chapter 2269, Subchapter I.
[160] *Id*. § 2269.056.
[161] TEX. LOC. GOV'T CODE § 252.002.

Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.[162]

A contract made without compliance with competitive procurement laws is void, and performance of the contract may be enjoined by any property tax paying resident or 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.[163] The specific criminal penalties are as follows:

- A municipal officer or employee who intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive procurement requirements of Chapter 252 commits a Class B misdemeanor.[164]
- A municipal officer or employee who intentionally or knowingly violates the competitive procurement requirements of Chapter 252 commits a Class B misdemeanor.[165]
- A municipal officer or employee who intentionally or knowingly violates Chapter 252 other than by conduct described above commits a Class C misdemeanor.[166]

A final conviction for an offense constituting a Class B misdemeanor results in the immediate removal of that person from office or employment. For a period of four years following conviction, the removed officer or employee is ineligible to be appointed or elected to a public office in Texas, to be re-employed by the city, or to receive any compensation through a contract with that city.[167]

A more detailed discussion of these and other purchasing issues are addressed in TML's Municipal Procurement Made Easy paper, available here: https://www.tml.org/p/procurement_easy%202017.pdf/.

V. NEPOTISM

"Texas was the first state in the nation to recognize 'the need for nepotism regulations and restrictions'; it first did so in 1907."[168] Chapter 573 of the Texas Government Code is the primary anti-nepotism law in Texas.[169]

In many cities, the city council exercises final control over hiring decisions. In such a city, the general rule is that a councilmember is prohibited from appointing, confirming the appointment

[162] TEX. GOV'T CODE § 2155.062(d).
[163] TEX. LOC. GOV'T CODE § 252.061.
[164] *Id.* § 252.062.
[165] *Id.*
[166] *Id.*
[167] *Id.* § 252.063.
[168] OFFICE OF THE TEXAS ATTORNEY GENERAL, 2006 PUBLIC OFFICERS: TRAPS FOR THE UNWARY 17 (2006) (citing *Collier v. Firemen's & Policemen's Civil Serv. Comm'n of Wichita Falls*, 817 S.W.2d 404, 408 (Tex. App.—Fort Worth 1991, writ denied); Richard D. White Jr., *Consanguinity by Degrees: Inconsistent Efforts to Restrict Nepotism in State Government*, 32 ST. & LOC. GOV'T REV. 108, 109 (Spring 2000)).
[169] TEX. GOV'T CODE §§ 573.001–.084.

of, or voting on the appointment of an individual if: (1) the individual is related to himself or any member of the council within the third degree by consanguinity (blood) or within the second degree by affinity (marriage); and (2) the position will be directly or indirectly compensated from public funds.[170] Chapter 573 does not require that the nepotism problem be disclosed or documented in any particular fashion.

The resignation of a councilmember does not resolve nepotism problems where the councilmember continues to serve in a holdover capacity.[171] However, once the city fills the former officer's position and has qualified and sworn a new person into office, the local entity may then hire a close relative of the former official.

There are two statutory exceptions to the prohibition against the appointment of close relatives. Chapter 573 does not apply to cities with fewer than 200 people.[172] An exception (referred to as the "continuous employment exception") also exists for relatives who are continuously employed prior to the public official's election or appointment for: (a) thirty days, if the public official was appointed; (b) six months, if the public official is elected at an election other than the general election; or (c) one year, if the public official is elected at the general election.[173] But if an individual continues in a position under this exception, the public official to whom the individual is related "may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees."[174]

In some cities, the city council has delegated final hiring authority to an employee. The delegation of final hiring authority, by ordinance, does not relieve a city council of its nepotism problems.[175] However, if final hiring authority has been delegated by city charter, reserving no authority in the city council, it is a valid delegation and may relieve the council of nepotism problems.[176]

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[170] *Id.* § 573.041. A "public official" is defined to mean "(A) an officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state; (B) an officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state; or (C) a judge of a court created by or under a statute of this state." *Id.* § 573.001(3).

[171] TEX. CONST. art. XVI, § 17; Tex. Att'y Gen. Op. No. JM-636 (1987).

[172] TEX. GOV'T CODE § 573.061(7).

[173] *Id.* § 573.062.

[174] *Id.*; *see also* Tex. Att'y Gen. Op. No. JC-0558 (2002) (concluding that a city commissioner could not participate in a deliberation regarding a merit salary increase for his sibling who was working under the continuous employment exception and explaining that the term deliberation "embraces any discussion or consideration of a measure").

[175] Tex. Att'y Gen. Op. No. DM-2 (1991) (members of city council of a Type A general law city did not avoid prohibitions of anti-nepotism law by delegating hiring responsibility to the city administrator).

[176] Tex. Att'y Gen. Op. Nos. GA-0226 (2004) (explaining that a home-rule city may delegate final hiring authority to the city manager to avoid application of Section 573.041 to the city council if it delegates full and final authority by charter, reserving no authority in the city council); GA-0595 (2008) ("If the charter provides the city manager with full and final appointing authority . . . and reserves no authority for the city's governing body . . . the city manager may appoint an individual who is related to a city commissioner, but is not related to the city manager, without contravening the nepotism statutes, Government Code chapter 573.").

In addition to placing prohibitions on the hiring of close relatives, Chapter 573 prohibits a public official from trading nepotistic appointments.[177] For instance, a city councilmember is prohibited from appointing an individual who is closely related to a county commissioner where there is an understanding that the county commissioner will return the favor by hiring the city councilmember's close relative.

Chapter 573 also contains prohibitions applicable to candidates. A candidate is prohibited from taking "affirmative action to influence the following individuals regarding the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of another individual related to the candidate within" the third degree by blood or second degree by marriage: (1) an employee of the office to which the candidate seeks election; or (2) an employee or officer of the governmental body to which the candidate seeks election.[178]

Noncompliance with Chapter 573 may subject the appointing officer(s) to severe consequences including removal from office and criminal sanctions.[179]

A more detailed discussion of the state nepotism law is available here: https://www.tml.org/p/Texas%20Nepotism%20Laws%20Made%20Easy%202016.pdf.

VI. PENAL CODE PROVSIONS

There are various provisions of the Texas Penal Code commonly used to prosecute crimes related to government and government officials. This section highlights some of these provisions.

A. Bribery, Gifts, and Honorariums

Chapter 36 of the Texas Penal Code, entitled "Bribery and Corrupt Influences," proscribes certain conduct such as bribery, coercion of a public servant or voter, attempts to influence the outcome of certain proceedings, and tampering with a witness.[180] The Chapter deals generally with offenses involving a "public servant," which is defined to include a person elected, selected, appointed, employed or otherwise designated as an "officer, employee, or agent of government," which includes a city.[181] The Texas Ethics Commission is authorized to prepare written advisory opinions regarding Chapter 36[182] and those opinions are available on the Commission's Web site: https://www.ethics.state.tx.us/.

[177] TEX. GOV'T CODE § 573.044.
[178] *Id*. § 573.042.
[179] *Id*. §§ 573.081–.084.
[180] TEX. PENAL CODE §§ 36.01–.10.
[181] *Id*. §§ 1.07(24)(B), (41)(A).
[182] TEX. GOV'T CODE § 571.091(a)(8).

1. Bribery

"A person commits the offense of bribery if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant."[183] It is no defense to prosecution that a person whom the actor sought to influence was not qualified to act in the desired manner because he had not assumed office or, for some other reason, lacked jurisdiction.[184]

A "benefit" is anything reasonably regarded as pecuniary gain or advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest (such as a relative or business partner).[185] At least one Texas Court has indicated that the term should be broadly construed to promote justice.[186]

The offense of bribery is a second degree felony.[187]

2. Honorariums and Other Gifts

A councilmember may not solicit, accept, or agree to accept an honorarium in consideration for services that the member would not have been requested to provide but for the member's official position or duties.[188] The term "'honorarium' is commonly understood to be 'a payment in recognition of acts or professional services for which custom or propriety forbids a price to be set.'"[189] An honorarium may include such things as fees for speaking, fees for teaching, severance pay, and moving expenses.[190]

Not included in the honorarium prohibition are: (1) transportation and lodging expenses in connection with conferences or similar events where the councilmember provides services (e.g., addressing the audience) so long as the service is more than merely perfunctory (i.e., superficial); and (2) meals provided in connection with an event described in (1) above.[191]

A councilmember may not solicit, accept, or agree to accept *any* benefit from a person the councilmember knows is interested in or likely to become interested in any contract, purchase,

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[183] *Valencia v. State*, No. 13-02-020-CR, 2004 WL 1416239 at *2 (Tex. App.—Corpus Christi June 24, 2004, pet. ref'd)(not desig. for pub.); *see also* TEX. PENAL CODE § 36.02.
[184] TEX. PENAL CODE § 36.02(b).
[185] *Id*. § 36.01(3).
[186] *Valencia v. State*, No. 13-02-020-CR, 2004 WL 1416239 at *3 (Tex. App.—Corpus Christi June 24, 2004, pet. ref'd)(not design. for pub.)(concluding that the offer to vote for or recommend the appointment of someone for a constable position is commensurate with an offer of a "benefit"); *but see Gándara v. State*, No. 08-15-00201-CR, 2016 WL 6780081 (Tex. App.—El Paso Nov. 16, 2016) (concluding that a sitting councilmember's solicitation of a local business for public support of the city's annexation in exchange for his efforts to "mediate" or "spearhead" favorable initiatives for the business did not constitute bribery).
[187] TEX. PENAL CODE § 36.02(e).
[188] *Id*. § 36.07(a); Texas Ethics Comm'n Op. No. 173 (1993).
[189] Tex. Att'y Gen. Op. No. GA-0354 (2005).
[190] *Id*.
[191] TEX. PENAL CODE § 36.07(b).

payment, claims, or transaction involving the exercise of the member's discretion.[192] Texas Penal Code Section 36.10 carves out exceptions under which a city official may accept certain gifts or benefits, including:

(1) fees prescribed by law to be received by a councilmember or any other benefit to which the member is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a councilmember (e.g., a jury duty fee);

(2) gifts given by a person with whom the councilmember has a familial, personal, business or professional relationship, independent of the member's official status (e.g., birthday gift from a family member);

(3) certain benefits for which the councilmember files a statement under Chapter 572, Government Code, or a report under Title 15 of the Texas Election Code (TEX. ELEC. CODE § 251.001 *et seq*.);

(4) political contributions as defined by Title 15 of the Texas Election Code (TEX. ELEC. CODE § 251.001 *et seq*.);

(5) items with a value of less than $50, excluding cash or a negotiable instrument (e.g., a check);[193]

(6) items issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;

(7) transportation, lodging, and meals that are allowed under the honorarium prohibition (Penal Code § 36.07(b));

(8) certain complimentary legal advice or legal services rendered to a public servant who is a first responder; and

(9) food, lodging, transportation, or entertainment accepted as a guest, if the donee is required by law to report those items.[194]

[192] *Id*. § 36.08(d); *see also* Tex. Att'y Gen. Op. No. KP-0003 (2015) (concluding it is a fact question as to whether a sheriff, who has no authority to accept donations from the public to the county, engaged in illegal solicitation by attempting to raise funds to purchase scanning sonar for use in a lake patrol program). Texas Ethics Commission Opinion No. 543 (2017) concluded that, based on the facts described in the opinion, the executive director of a state agency would not receive an "honorarium" for purposes of Section 36.07(a) of the Penal Code or a "benefit" for purposes of Section 36.08 of the Penal Code by accepting a reimbursement of certain travel expenses that are payable by the state agency. The executive director would not be required to report the reimbursement on a personal financial statement.

[193] A prepaid debit card or gift card is considered to be cash for purposes of Section 36.10(a)(6) of the Penal Code. Tex. Ethics Comm'n Op. No. 541 (2017).

[194] TEX. PENAL CODE § 36.10.

If a city official receives an unsolicited benefit from someone under the official's jurisdiction that he is prohibited from accepting under Texas Penal Code Section 36.08, he may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.[195]

A violation of either of the bribery and gift laws described above is a Class A misdemeanor.[196] There are no specific provisions in Chapter 36 of the Texas Penal Code providing for removal of a public official or employee due to a conviction under these laws. However, such a conviction may be grounds for removal under the "official misconduct" provisions of Texas Local Government Code Sections 21.025(a)(2) and 21.031(a) or through a recall or other removal action authorized by a city charter.

B. Falsification of Government Documents and the Misuse of Information

City officials have access to and responsibility for documents and information. For instance, under the Public Information Act, a councilmember acting in his official capacity may review records of the city without implicating the PIA's prohibition against selective disclosure.[197] And under the Open Meetings Act, a councilmember may participate in a closed session to discuss the purchase or lease of real property.[198] Once privy to information or documents not available to the public, it is important for a councilmember to understand what liability he or she may have in regard to those documents and that information.

1. Falsification of Governmental Records

Penal Code Section 37.10 works to prevent, among other things, the falsification of governmental records. A governmental record is broadly defined to include, among other things, anything belonging to, received by, or kept by government for information, including court and election records.[199]

The following activities are prohibited: (1) knowingly making a false entry in or false alteration of a governmental record; (2) making, presenting, or using a record, document or thing with knowledge of its falsity and an intent that it be taken as a legitimate government record; (3) intentionally destroying, concealing, removing or impairing the truth, legibility, or availability of a governmental record; (4) possessing, selling, or offering to sell a governmental record or blank form with the intent that it be used unlawfully; (5) making, presenting, or using a governmental

[195] *Id*. § 36.08(i).
[196] *Id*. §§ 36.07(c), 36.08(h).
[197] *See, e.g.*, Tex. Att'y Gen. Op. No. JM-119 (1983) at 2 ("[W]hen a trustee of a community college district, acting in his official capacity, requests information maintained by the district, he is not a member of the 'public' for purposes of the Open Records Act."); Open Records Decision No. 666 at 2 (2000) ("[A] member of a governmental body who is acting in his or her official capacity is not a member of the public for purposes of access to information in the governmental body's possession. Thus, an authorized official may review records of the governmental body without implicating the Act's prohibition against selective disclosure.").
[198] TEX. GOV'T CODE § 551.072.
[199] TEX. PENAL CODE § 37.01(2).

record with knowledge of its falsity; or (6) possessing, selling, or offering to sell a governmental record or blank form with knowledge that it was obtained unlawfully.[200]

A violation of Section 37.10 can range from a misdemeanor to a third degree felony, depending upon the intent of the actor and type of record involved.

2. Misuse of Official Information

Penal Code Section 39.06 proscribes the misuse of official information. A public servant commits an offense if, in reliance on information to which he has access by virtue of his office or employment and that has not been made public, he: (1) acquires or helps another acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information; (2) speculates or helps another speculate on the basis of the information; or (3) coerces another into suppressing or failing to report that information to a law enforcement agency.[201]

A public servant commits an offense if, with intent to obtain a benefit or intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that: (1) he has access to by means of his office or employment; and (2) is not public.[202] Conversely, a person commits an offense if, with intent to obtain a benefit or intent to harm or defraud another, he solicits or receives from a public servant information that: (1) the public servant has access to by mean of his office or employment; and (2) is not public.[203]

For purposes of this statute, "information that has not been made public" is information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 552 of the Government Code (the Public Information Act),[204] such as the social security number of a peace officer where the officer has chosen to restrict access to that information or the proprietary information received from a third party in response to a request for proposals.

Coercing an employee into suppressing or failing to report information is a Class C misdemeanor.[205] Otherwise, the misuse of official information is a felony, the degree of which depends on the net pecuniary gain.[206]

3. Fraudulent Use or Possession of Identifying Information

Penal Code Section 32.51 prohibits the fraudulent use or possession of identifying information (e.g., social security number, date of birth, fingerprints, bank account number). It is an offense, with the intent to harm or defraud another, to obtain, possess, transfer or use an item of (1) identifying information of another person without that person's consent; (2) information

[200] *Id*. § 37.10(a).
[201] *Id*. § 39.06(a).
[202] *Id*. § 39.06(b).
[203] *Id*. § 39.06(c).
[204] *Id*. § 39.06(d).
[205] *Id*. § 39.06(f).
[206] *Id*. § 39.06(e).

concerning a deceased person if obtained, possessed, transferred or used without legal authorization; or (3) identifying information of a child younger than eighteen years.[207] An offense is a felony.[208]

C. Abuse of Official Capacity

A public servant may not intentionally or knowingly, with the intent to obtain a benefit or harm or defraud another, violate a law relating to the public servant's office or employment.[209] This provision may be best described as a "catch all" for bad government officials and because of its broad language may be used to attach a criminal penalty to varied conduct that may not have another criminal statute tied to it. A violation of this prohibition is a Class A misdemeanor.

A public servant may not intentionally or knowingly, with the intent to obtain a benefit or harm or defraud another, misuse government property, services, personnel or other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of his office or employment.[210] For instance, a city councilmember may not use city staff to gather information for use in a reelection campaign[211] or use city funds to purchase paint for use on his house.[212] Items such as frequent flyer miles, rental car or hotel discounts, or food coupons are *not* things of value belonging to the government for the purposes of Penal Code section 39.02.[213]

The penalty for misusing government property, services, or personnel varies, depending upon the value of the thing misused:

- Class C misdemeanor if the value is less than $100;
- Class B misdemeanor if the value is $100 or more but less than $750;
- Class A misdemeanor if the value is $750 or more but less than $2,500;
- State jail felony if the value is $2,500 or more but less than $30,000;
- Third degree felony if the value is $30,000 or more but less than $150,000;
- Second degree felony if the value is $150,000 or more but less than $300,000; and
- First degree felony if the value is $300,000 or more.[214]

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[207] *Id*. § 32.51(b).
[208] *Id*. § 32.51(c).
[209] *Id*. § 39.02(a).
[210] *Id*.
[211] *See* Tex. Ethics Comm'n Op. Nos. 522 (2014) (concluding that the work time of state employees is a thing of value belonging to the state and may not be misused by state employees or members of the legislature; and the use of a legislative employee's work time for purely personal activities would not further a state purpose and would constitute a misuse), 431 (2000) (concluding that it is a misuse of state resources for a legislator to use legislative staff members to gather information for use at a campaign fundraiser).
[212] *See State v. Trevino*, 930 S.W.2d 713, 714 (Tex. App.—Corpus Christi 1996, pet. ref'd) (describing the indictment of a city maintenance director who instructed employees to purchase paint for use to paint the city manager's home).
[213] TEX. PENAL CODE § 39.02(d).
[214] *Id*. § 39.02(c).

D. Official Oppression

A public servant commits an offense by acting under color of his office or employment to intentionally: (1) subject another person to mistreatment, arrest, detention, search, seizure, dispossession, assessment, or lien that the public servant knows is unlawful; (2) deny or impede another person in the exercise or enjoyment of a right, privilege, power, or immunity, knowing his conduct is unlawful; or (3) subject another to sexual harassment.[215] These offenses constitute a Class A misdemeanor, except that it's a third degree felony if the public servant tries to impair the accuracy of data reported to the Texas Education Agency through the Public Education Information Management System.[216]

E. Forgery

To "forge" something means to alter, make complete, execute, or authenticate any writing so that it purports: (1) to be the act of a person who did not authorize that act; (2) to have been executed at a time, place, or in a sequence other than was in fact the case; or (3) to be a copy of an original when no such original exists.[217] The term also means to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged or to possess the same.[218]

It is an offense to forge a writing with the intent to defraud or harm another.[219] An offense ranges from a misdemeanor to a felony. With certain exceptions, it is a third degree felony to forge a writing that is or purports to be a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States.[220] And a person is presumed to intend to defraud or harm another if the person acts with respect to two or more writings of the same type and if each writing is one of the government writings listed above.[221]

F. Theft

It is unlawful to appropriate property with the intent to deprive the owner of the property.[222] There is a value ladder to determine the punishment range such that the higher the value of the property stolen, the more severe the punishment. An offense is increased to the next higher category of offense if: (1) the actor was a public servant at the time of the offense and the property appropriated came into the actor's custody, possession, or control by virtue of his status as a public servant; or (2) the actor was in a contractual relationship with government at the time of the offense and the property appropriated came into the actor's custody, possession, or control by virtue of that contractual relationship.[223]

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[215] *Id*. § 39.03(a).
[216] *Id*. § 39.03(d).
[217] *Id*. § 32.21(a).
[218] *Id*.
[219] *Id*. § 32.21(b).
[220] *Id*. § 32.21(e).
[221] *Id*. § 32.21(f).
[222] *Id*. § 31.03(a).
[223] *Id*. § 31.03(f).

VII. CEMETERIES

Cities with cemeteries should be aware that an officer, agent, or employee of a city commits a criminal offense (ranging from a Class A misdemeanor to a second degree felony) if the person:

> (1) engages in a business for cemetery purposes other than through a corporation organized for that purpose, if a corporation is required by law;
> (2) fails or refuses to keep records of interment as required by state law;
> (3) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment;
> (4) represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that improvements will be made in the cemetery, or that merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery organization for the represented purpose;
> (5) makes more than one interment in a plot in a cemetery operated by a cemetery organization other than as provided by law;
> (6) removes remains from a plot in a cemetery operated by a cemetery organization without complying with state law;
> (7) offers or receives monetary inducement to solicit business for a cemetery broker;
> (8) fails or refuses to keep records of sales or resales or to collect and remit fees as required by state law; or
> (9) fails or refuses to register as a cemetery broker as required by state law.[224]

There are additional prohibitions placed on officers, agents, and employees of cemetery organizations.[225] The Finance Commission of Texas is authorized to adopt rules to implement these prohibitions.[226]

VIII. POLITICAL CONTRIBUTIONS, POLITICAL ADVERTISING, AND CAMPAIGN COMMUNICATIONS

The Texas Ethics Commission (TEC) is the best source of information for a candidate or an official regarding unlawful political contributions, political advertising, and campaign communications because TEC is charged by state law with administering and enforcing Title 15 of the Election Code (TEX. ELEC. CODE § 251 *et seq*.) which governs these matters.[227] That said, the following discussion highlights several key provisions of which candidates and officials should be aware.

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[224] TEX. HEALTH & SAFETY CODE § 711.052.
[225] *Id*. § 711.001(7) (defining "cemetery organization" to mean: (1) an unincorporated association of plot owners not operated for profit that is authorized by its articles of association to conduct a business for cemetery purposes; or (2) a corporation, as defined by Section 712.001(b)(3), that is authorized by its certificate of formation or its registration to conduct a business for cemetery purposes).
[226] *Id*. § 711.012.
[227] TEX. GOV'T CODE § 571.061(a)(3).

A. Political Contributions

There are various prohibitions related to making and accepting political contributions, including prohibitions against accepting contributions without a campaign treasurer appointment in effect[228] and accepting cash contributions that exceed $100.[229] Violations of these two prohibitions are Class A misdemeanors. The Election Code also prohibits the conversion of political contributions for personal use.[230]

Chapter 253 of the Election Code provides not only criminal, but also civil liability for violations of its provisions. For instance, a person who knowingly makes or accepts a campaign contribution in violation of Chapter 253 may have to pay an opposing candidate damages amounting to twice the value of the unlawful contribution or expenditure and attorney's fees.[231]

B. Political Advertising and Campaign Communications

Certain disclosures must be made in relation to political advertising. "[P]olitical advertising that contains express advocacy is required to include a disclosure statement. The person who causes the political advertising to be published, distributed, or broadcast is responsible for including the disclosure statement."[232] A violation may result in a civil penalty in an amount determined by the TEC.

There are restrictions on the contents of political advertising and campaign communications. Political advertising and campaign communications must not misrepresent a person's identity or title or the source of the advertising or communication.[233] A violation is a misdemeanor offense.[234] A TEC publication entitled "Political Advertising: What You Need to Know" is available at https://www.ethics.state.tx.us/guides/Bpolad.pdf.

There are restrictions on the use of a city's internal mail system to distribute political advertising. Officers and employees of a city are prohibited from knowingly using or authorizing the use of an internal mail system for the distribution of political advertising.[235] The prohibition does not apply to use of the city's mail system to distribute political advertising that: (1) is delivered to the city's premises through the U.S. postal service; or (2) is the subject of or related to an investigation, hearing, or other official proceeding of the city.[236] A violation of the prohibition is a Class A misdemeanor.[237]

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[228] TEX. ELEC. CODE § 253.031.
[229] *Id*. § 253.033.
[230] *Id*. § 253.035.
[231] *Id*. § 253.131.
[232] TEX. ETHICS COMM'N, POLITICAL ADVERTISING: WHAT YOU NEED TO KNOW (Jan. 1, 2017), *available at https://www.ethics.state.tx.us/guides/Bpolad.pdf*; *see also* TEX. ELEC. CODE § 255.001. There are certain exceptions to these rules.
[233] *Id*. §§ 255.004–.006.
[234] *Id*.
[235] *Id*. § 255.0031.
[236] *Id*.
[237] *Id*.

Finally, it is important for a city official to understand the limitations on spending public funds (i.e., city funds) for political advertising. City officers and employees are prohibited from knowingly spending city funds for political advertising. The prohibition does not apply to a communication that factually describes the purpose of a measure so long as it does not advocate the passage or defeat of the measure.[238] A permissible communication may not, however, contain false information that is likely to influence a voter to vote for or against the measure.[239] A violation of these prohibitions is a Class A misdemeanor. Additionally, an officer or employee could be fined by the TEC. A city council that has ordered an election on a measure (e.g., a bond election), may request the TEC to issue a written advisory opinion as to whether a particular communication violates these prohibitions and the written opinion, among other things, serves as an affirmative defense to prosecution or imposition of a civil penalty. A TEC publication entitled "A Short Guide to the Prohibition Against Using Political Subdivision Resources for Political Advertising in Connection with an Election" is available at https://www.ethics.state.tx.us/pamphlet/Bpad_pol.pdf.

IX. RANGES OF PUNISHMENT

Following is a list of the various levels of punishment prescribed by the Texas Penal Code and referenced throughout this Primer:

- Class C Misdemeanor – punishable by a fine not to exceed $500.[240]
- Class B Misdemeanor– punishable by a fine not to exceed $2,000, confinement in jail for a term not to exceed 180 days, or both.[241]
- Class A Misdemeanor– punishable by a fine not to exceed $4,000, confinement in jail for a term not to exceed one year, or both.[242]
- State Jail Felony−generally punishable by confinement in jail for a term of not more than two years or less than 180 days, a fine not to exceed $10,000, or both.[243]
- Third Degree Felony−punishable by imprisonment for a term of not more than ten years or less than two years, a fine not to exceed $10,000, or both.[244]
- Second Degree Felony−punishable by imprisonment for a term of not more than twenty years or less than two years, a fine not to exceed $10,000, or both.[245]
- First Degree Felony−punishable by imprisonment for life or for any term of not more than 99 years or less than 5 years, a fine not to exceed $10,000, or both.[246]

[238] *Id*. § 255.003.
[239] *Id*.
[240] TEX. PENAL CODE § 12.23.
[241] *Id*. § 12.22.
[242] *Id*. § 12.21.
[243] *Id*. § 12.35.
[244] *Id*. § 12.34.
[245] *Id*. § 12.33.
[246] *Id*. § 12.32.

X. LEGAL EXPENSES

Service as a city official brings with it duties and responsibilities that are unique to public servants. Public officials often enjoy immunity from suits arising from their actions as a public official. And, to the extent that the Legislature has waived that immunity, the Legislature may have limited an official's liability and/or provided that officials may be indemnified.[247]

In the absence of a governing statute, the attorney general has opined that city officials may have their legal expenses paid for in *civil* suits brought against them personally if a majority of the city council determines: (1) payment of the legal fees serve a public interest and not merely the defendant's private interest; and (2) the officer committed the alleged action or omission forming the basis of the suit while acting in good faith within the scope of his or her official duties.[248] It is common for a city to purchase insurance (sometimes referred to as "errors and omissions insurance") that may provide coverage for officials in this regard.

The payment of legal expenses in relation to a *criminal* prosecution is analyzed differently. An official must pay criminal defense costs up-front because a city may not pay the expenses of an official who is found guilty of criminal charges. In other words, a city must defer payment of criminal legal expenses until they know the outcome of the case.[249] If a public official is found not guilty, a city has discretion to pay for a person's legal expenses in a criminal matter upon findings that the payment furthers a city purpose and that the prosecution was for an act performed in the bona fide performance of official duties.[250] A city councilmember is disqualified from voting on the issue of whether to pay his or her own legal fees, or the legal fees of another city councilmember indicted on the same facts for the same offense.[251] If a public official is found guilty, the city is prohibited from paying the expenses.[252]

Some cities also have ordinances and/or charter provisions that address the payment of legal defense costs and indemnification of city officials.

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[247] *See, e.g.*, TEX. CIV. PRAC. & REM. CODE §§ 102.004 ("A local government may provide legal counsel to represent a defendant for whom the local government may pay damages under this chapter."), 108.002 (discussing a public servant's liability limitation and referencing a city's authority to indemnify the public servant).

[248] *See, e.g.*, Tex. Att'y Gen. Op. Nos. JC-0294 (2000), H-887 (1976); *see also* Tex. Att'y Gen. Op. No. KP-0040 (concluding that it is unlikely that a public interest is served in paying legal expenses associated with a challenge to an elected official's qualifications for office).

[249] *See* Tex. Att'y Gen. Op. Nos. KP-0037 (2015), JC-0294 (2000) at 1 ("[A] governmental body may not decide to pay the legal expenses incurred by a public officer or employee in defending against a criminal prosecution until it knows the outcome of the prosecution.").

[250] Tex. Att'y Gen. Op. No. JC-0294 (2000) at 6 (opining that previous cases concluding that public funds could not be used to defend a public officer in a criminal prosecution would likely not be followed today); *see also* Tex. Att'y Gen. Op. No. KP-0016 n.4 (explaining that JC-0294 "should not be read as precluding the payment of attorney's fees for services rendered in a criminal matter that concludes favorably at the grand jury stage", i.e., before charges are filed).

[251] Tex. Att'y Gen. Op. Nos. KP-0016 (2015) at 3, JC-0294 (2000) at 1, 6 (citing *City of Del Rio v. Lowe*, 111 S.W.2d 1208 (Tex. Civ. App.—San Antonio 1937), *rev'd on other grounds*, 122 S.W.2d 1919 (Tex. 1938)).

[252] *Id*. at 1, 9.