

# Texas Home Rule Charters

*Terrell Blodgett*



Second Edition (2010)

Updated by

*Kelly McBride and Scott Houston*

Published by the Texas Municipal League

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# About the author

Terrell Blodgett, in more than six decades of public service, has been a city manager, administrative assistant to a Texas governor, a private consultant to state and local officials nationwide, and an endowed professor in urban management.

After receiving his master's degree in public administration from Syracuse University in Syracuse, New York, his first job was as a research assistant in the Bureau of Municipal Research at The University of Texas at Austin. He began his local government career as personnel director and later assistant city manager for the City of Austin. He served as city manager of Waco and Garland, Texas before returning to Austin as an administrative assistant for urban affairs to Governor John Connally for whom he coordinated the activation in Texas of such new federal government programs as the "War on Poverty," law enforcement assistance, and highway safety.

For 13 years, Blodgett directed governmental consulting in a nine-state southwest area for Peat, Marwick (now KPMG). He organized and directed management studies at local and state levels, including organizational analyses of several governors' and mayors' offices.

Upon his early retirement from Peat, Marwick in 1982, he was appointed as the first Mike Hogg Professor in Urban Management at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin. His course topics included

both local and state government administration. He organized the school's first course in the management of nonprofit organizations, which is attended by graduate students and executives in nonprofits.

While at the LBJ School, he also conducted more than a dozen studies and assignments for the State of Texas, including a 1983 study for then Governor William Clements which called attention to the safety and fire hazard conditions in the 100-year-old state capitol. His recommendations were among the factors that led to the \$185-million restoration and expansion of the capitol, which was completed in 1994. In 1991, he served as Executive Director of Governor Ann Richards' Task Force on Revenue.

Blodgett's honors for his public service include a Distinguished Service Award from the International City/County Management Association and serving as chairman of the National Civic League in 1986 and 1987. The League is the home of the 60-year-old All America Cities competition and publisher of the widely used model city charter. He is an Honorary Life Director of the League, and a Fellow of the National Academy of Public Administration.



## Local self-government is the cornerstone of democratic government.

Texas leads the nation in adherence to the concept and practice of local self-government. Credit for this is shared by the Texas Legislature and the 351 cities guided by a local constitution, identified nationwide as a home rule charter.

Broadly speaking, “home rule” is a grant of a degree of local autonomy to local governments by constitution or statute. Nationwide, 48 states have granted their cities such status by one of these methods. Texas cities have enjoyed the privileges of constitutional home rule (preferred over statutory home rule) since 1912.

Although adoption of home rule charters has been one of the most important developments in Texas municipal government in the twentieth century, only five comprehensive reports had addressed the subject until the original version of this book was published in 1994.

Interest in adoption of new charters and the revision of older documents appear now to be at an unprecedented high. Only 24 of the 375 Texas cities over 5,000 in population have not adopted home rule status. First-time charters have been approved in Horseshoe Bay, Iowa Park, Lucas, Pittsburg, and Willis in just the past eighteen months.

In response to this interest, the Texas Municipal League (TML), the professional and educational organization representing Texas cities for nearly a century, offers this in-depth review of the status of home rule charters in Texas today.

The first edition of this document was written in 1994 by a nationally known expert in home rule charters, Professor Terrell Blodgett, the Mike Hogg Professor in Urban Management at the Lyndon B. Johnson School of Public Affairs at The University of Texas at Austin. Professor Blodgett served as chairman of the Model City Charter Revision Committee for the National Civic League (formerly the National Municipal League) when it published the seventh edition of the Model City Charter in 1989. He has consulted with numerous charter commissions and civic groups interested in charter reform in Texas, Ohio, and New York. Texas cities have no greater friend than Terrell Blodgett.

It was a distinct honor and pleasure for the TML staff to update his original report. This updated version of Professor Blodgett’s original work is largely a product of the TML legal staff led by Mr. Scott Houston, the League’s director of legal services. We are proud of this document’s significant content. Through the efforts of TML and the gracious assistance of city officials, the information in this report is based on a 73 percent response rate to our 2008 survey.

The TML legal department is contacted frequently by charter commissions looking for guidance. We hope this document will enable us to be of even more assistance to our member cities as they draft new home rule charters or undertake periodic reviews of their basic constitutional document.

**Frank Sturzl**  
Executive Director  
Texas Municipal League  
January 2010

**(Editor's Note - The following is Terrell Blodgett's original preface to the 1994 version of the book.)**

The production of this monograph has been a labor of love for me. I have had a long-time interest in the structure of government, particularly at the local level. It was my privilege to author the second of the five reports referred to in the Foreword by Mr. Sturzl. The first three of those reports all came from the Bureau of Municipal Research/Institute of Public Affairs at the University of Texas at Austin. Dr. Wilfred Webb wrote the first report, Municipal Home Rule Charters in Texas, in 1947. My monograph, Municipal Home Rule Charter Elections in Texas, in 1950, examined charter activity covering only a three-year period, 1947-50. The most comprehensive of the reports was City and County Home Rule in Texas, written by Dr. John P. Keith in 1951.

Nothing else was published for over 25 years; thus, the 1978 report, Home Rule Charters in Texas Cities, written by Dr. Del Taebel and Bruce Stapleton, Institute of Urban Studies, The University of Texas at Arlington, filled a significant void. Dr. Taebel expanded and updated that report entitled A Citizen's Guide to Home Rule Charters in Texas Cities.

We have used information from all five of these earlier reports and express our appreciation to the other four authors for their significant contributions to the history and practice of municipal home rule in Texas.

This current effort retraces the highlights of that history, but concentrates on reporting the current practices of the 290 home rule cities — such matters as length of city council terms; term limits; appointment powers of city managers; fiscal year provisions; and actual use of initiative, referendum, and recall provisions in city charters.

We also, for the first time in one place, list all of the major statutory provisions that limit home rule. Although the Texas Legislature has not imposed major restrictions on the home rule authority of Texas cities, it has nevertheless enacted a number of laws that limit authority formerly residing in the cities.

This report originated with a request from the Texas Municipal League to the state's 290 home rule cities. (Editor's note: 351 in 2008). TML asked those cities to send a copy of their charters and to complete and return a two-page questionnaire relating to charter provisions. Upon receipt of the material from the cities, I reviewed each charter and completed a three-page worksheet that covered virtually every subject found in any charter. I then contacted each city, by telephone or facsimile, to obtain additional information I needed. The League data processing staff entered the information from

both the two-page and the three-page questionnaires and summarized the figures.

No attempt has been made in this monograph to set forth a model Texas city charter or to discuss extensively the duties and responsibilities of charter commissions—for new or amended charters. Those are subjects of separate publications.

I hope the discussion and tabulation of existing provisions in the charters will be useful to city councils and charter commissions as they consider the necessity and desirability of making basic changes in their constitutional authority.

Although there were hundreds of laws — state, local, and national — that govern the conduct of city officials, they have by no means resulted in 290 city charters that read exactly alike. There is a freedom of spirit and unique character in each city that makes it different from the others. Maybe it is a heritage of the pioneer spirit that brought early Texans to the frontier. Whatever its source, it is reflected so obviously in charters that we are sharing samples of it with you in the boxed quotes scattered through this publication. All but two are from charters and usually it is the only one of its kind in all of the charters. All these quotes remind us that a city is a group of human beings: funny, serious, opinionated, optimistic, apathetic, perplexed, jointly struggling to understand their personal problems and those of their immediate environment—the city. That reminder saves scholars and the pontificators from viewing the city only as a cold and rigidly structured “entity” that is more responsive to the law, the courts, and the federal bureaucracy than to the people.

I wish to express my deep appreciation to Frank Sturzl, Executive Director of the League, and to his staff for their tremendous assistance and for all the courtesies they extended. I am particularly beholden to Ms. Susan Horton, General Counsel, and her staff for carefully reviewing the legal aspects of this monograph. Without their highly competent legal advice, this document would not have been possible. Mr. Richard Cantrell and his staff, Randy Overman and Anita Brown, patiently and accurately took the three-page worksheet and input the data so that the mass might be handled more quickly. I also wish to thank Mr. Ben Torres and his highly capable printing team that turned the final copy into the printed monograph. I am indebted to Ms. Barbara Ray for the overall appearance of the publication. I also wish to express special appreciation to Ms. Rose Hurst and Mr. Harold Sostand of the League staff with whom we worked more closely and whose courtesies and un-failing help are gratefully acknowledged. Ms. Debbie Warden entered the first draft in her computer and Ms. Gail Bunce then later skillfully converted the manuscript and graphics to clean, camera-ready copy for the League printing department.

# Preface

My research was assisted considerably by the helpfulness of Ms. Linda Stout of the Texas Secretary of State's Office and by the staffs of the State Legislative Reference Library and the Archives Division of the Texas State Library. My thanks go to all of these individuals.

I also express a deep sense of gratitude to William N. Cassella, Jr., Executive Director of the National Municipal League for 16 years, who was the "author" of the latest edition of the Model City Charter, who is the "supreme authority" on city charters, and who has taught me the beauty of structure and process.

Finally, I thank my wife, Dorothy—communications consultant, writer and lecturer, and co-author with Jean Daniel and the late former governor, Price Daniel, Sr., of *The Texas Governor's Mansion: A History of the House and Its Occupants*—for her personal support and professional assistance.

## 2010 Preface

**(Editor's note: the following was prepared by Kelly McBride and Scott Houston)**

The 1994 version of this document served as an outstanding guide to home rule in Texas for more than a decade. It is often referred to as the "go-to" publication for information about home rule. Because of Terrell Blodgett's outstanding work on the original, our task was simply to update the data and various substantive sections of the document to ensure that it remains up-to-date.

This second version provides cities that are contemplating home rule, and cities that are considering changes to their existing charter, a fresh look at what other cities are doing, and why. Mr. Blodgett's attention to detail has provided a solid foundation from which we built the second edition. Three hundred fifty-one cities were surveyed for this update, with an astounding 73 percent response rate.

The second edition was prepared by Kelly McBride and Scott Houston, with the support of the Texas Municipal League's (TML) legal department staff. Mrs. McBride served as a legal intern with TML while pursuing her Juris Doctorate from St. Mary's University School of Law. She earned her Bachelor's of Arts in 1989 and her Master's of Public Administration in 1991, both from the University of Dayton, Ohio. She brought over 10 years of municipal management experience to this project, serving as assistant city manager, economic develop-

ment director, and city manager for three Ohio cities. Scott Houston graduated from Texas A&M University with a degree in political science. After studying law in Austria and Argentina, he received his law degree from St. Mary's University School of Law in San Antonio. Scott is presently serving as director of legal services with TML and general counsel to the Texas City Attorneys Association. In addition, he has served as an adjunct professor of political science at Texas State University, and recently received the American Bar Association's "Up and Coming Young Lawyer Award." Other members of the TML legal department staff, including Tiffany Ducummon, Laura Mueller, Katie Fleming, Bill Longley and Lauren Crawford deserve special kudos for their outstanding support.

In addition, Charlie Zech with the municipal law firm of Denton, Navarro, Rocha & Bernal, P.C. provided research support for this project. Mr. Zech did so through his applied research project for the department of political science at Texas State University as a part of the requirements for the completion of his M.P.A. in 2008. John McDonald, currently serving as the director of community development for the City of Bellaire, Texas, also provided valuable research support for a similar M.P.A. project for Texas State University.

A special thank you should go to the law firm of Denton, Navarro, Rocha & Bernal, P.C. for their countless hours of donated staff support for this project.

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# 1 Concept and history of local self-government

## Legal status of municipal corporations

“The word municipal is derived from the Roman *municipium*, which means a free city capable of governing its local affairs, even though subordinate to the sovereignty of Rome. In early England, the term was applied to self-governing cities and towns; hence, from its origin, the word municipal connoted local self-government.” So begins the book **The Law of Local Government Operations** by the renowned authority on municipal government, Charles S. Rhyne.<sup>1</sup>

In colonial America, a number of municipal corporations originated in a grant of power from the King of England. Following the American Revolution, this power of the crown passed to state legislatures. “In three instances, New York, Pennsylvania and Maryland, the first constitutions expressly recognized the transfer of power to the legislature. The inevitable result was that democratic principle and legal theory disagree on the issue of self-rule. Democratic doctrine says the government closest to the people governs best. The prevailing legal theory has been that in the absence of constitutional protection, municipal governments are totally dependent upon, and subservient to, the will of the legislature.”<sup>2</sup> That view was expressed by Judge J. F. Dillon in 1886 in a case before the Iowa Supreme Court: “The true view is this: Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature.”<sup>3</sup> This doctrine was affirmed by the U.S. Supreme Court in a later case.<sup>4</sup> Since the early 1900’s, the Texas courts have followed the rule set by Judge Dillon. The rule was clarified by the Texas Supreme Court in 1926 when it stated, “Municipal Corporations (including home rule cities) are created for the exercise of certain functions of government in so far as their character is governmental, they are agencies of the state and subject to state control.” *Yett v. Cook*, 115 Tex. 205 (Tex. 1926). This idea, that cities are subdivisions of the state, has been reaffirmed throughout the twentieth century and most recently by the Texas Supreme Court in 2004. *Texas Dept. of Trans. v. City of Sunset Valley*, 146 S.W.3d 637 (Tex. 2004). Texas cities exist to perform duties for the state as well as to fulfill needs and desires of local residents, but always at the will of the state. This doctrine has restricted local powers rather severely as we will see in greater detail in chapter three.

Such complete legislative supremacy caused no real harm when cities were small and their needs limited, but as cities grew, the rurally-dominated legislative bodies were increasingly unable to cope with city problems.

To trace how the state of Texas has dealt with these questions, we now turn to a brief review of the development of home rule in Texas.

## Origin of city government in Texas

The history of Texas municipalities as corporate entities begins with the establishment of the Republic of Texas in 1836. While Texas was under the jurisdiction of Spain and Mexico, the term “municipality” was applied to a local government unit that included the surrounding rural regions as well as the town proper. There never was any distinction between the government of the town and the outlying districts. With the birth of the Republic, this changed, and the territory of the municipality became the county, and the urban regions began to be incorporated. The first congress incorporated some eighteen cities and towns, and before the end of the Republic, there were 53 municipal corporations.<sup>5</sup>

All of them were established by special congressional acts; in several cases, multiple communities were incorporated by one act. These early special acts were articles of incorporation and municipal charters rolled into one document; some were very brief and merely stated that a certain community was being incorporated by the special act. Gradually, they began to resemble more closely charters as we know them, with provisions for the governing body, qualifications for office, powers of the city council, and—occasionally—fire and street duty and taxation. Some even reflected the beginning glimmer of home rule. For example, the charter granted by the congress in 1837 to San Augustine provided that the board of aldermen could pass any ordinance for the benefit of its inhabitants, as long as it did not conflict with the laws or constitution of the Republic.<sup>6</sup>

## Special legislative charters and general law

The two most important developments during statehood and prior to Civil War (1845-61) were the passage of a law in 1858 that provided general rules for the incorporation of small cities and towns and the first provision for local ratification in a charter written by the legislature. In 1846, the legislature granted a special charter to New Braunfels, subject to that charter being ratified by the local voters at a special election.<sup>7</sup> During this sixteen-year period (1845-61), terms of office longer than one year began to be written into the legislative charters and some cities were given responsibility for local education. Although school districts were made separate entities later, the charters of such cities as Temple, Bryan, and others continued to have provisions for city hall control of local schools for several years after the change. Some charters still have this obsolete provision.

Civil War and Reconstruction chaos wiped out all the local government gains. There were no municipal incorporations from 1862 to 1866. An 1870 legislative act provided that the governor appoint the mayor and board of aldermen of each incorporated city in the state. After the citizenry regained control of state government in 1874, this act was rescinded, and in 1874 cities were allowed to amend their legislative charters by action of the board of aldermen and their citizens.<sup>8</sup>

The Constitution of 1876 provided that cities under 10,000 population could be chartered only under general laws; cities over 10,000 would continue to be subject to the special laws of the legislature. This seemed to work for a few years. But cities over 10,000, most in need of self-government because of individual requirements, chafed under the special law provisions. This situation worsened when the constitution was amended in 1909 to lower the population requirement to 5,000 population.

The legislature finally realized its capacity to debate and resolve issues of statewide importance was being usurped disproportionately by the attention it gave to city charters. One legislative official complained in 1911 that these local bills made up more than one-half of the legislative workload. A count revealed this estimate was high. Actually, about 25 percent of all bills applied to municipal charters, but the point was made. When there were only a few cities over 5,000 in population, the legislature could afford to take the time to pass special legislation just for them. But by 1910, the cities were growing and each one presented unique circumstances.

By 1910, San Antonio and Dallas were near 100,000 in population; Houston and Fort Worth were well over 50,000; and a total of 40 cities in the state each had more than 5,000 population. "It was in a mood of reform that the Legislature listened to a few advocates of home rule expound the virtues of that method of handling the relations between the state and its subunits."<sup>9</sup>

## Home rule charters

The time to act in Texas had finally arrived. Other states had already crossed that threshold. In 1875, Missouri was the first state to grant its cities home rule powers by constitutional amendment. Texas had struggled through an attempt to make special legislative charters work; it also tried to formulate general laws that would apply to both small and large cities. Neither was successful. The state finally embraced the third method of municipal governance, home rule.

Texas voters in 1912 adopted the Home Rule Amendment to the state constitution and the legislature followed in the regular session in 1913 with the necessary enabling act. The constitutional amendment, Article XI, Section 5, provides that any city over 5,000 may adopt a home rule charter, subject to the requirements that the legislature might establish. Such a charter may not contain any provision that is inconsistent with the state constitution or the statutes. Further, home rule cities are limited to a property tax rate of \$2.50 per \$100 valuation and their charters cannot be amended

more often than every two years. The Home Rule Enabling Act is no longer in the statutes. The powers listed in that Act have been relocated in other laws and codes as the legislature has codified the laws relating to local government.

Like the home rule provisions in other state constitutions and statutes, Texas' Home Rule Amendment is generally considered to have three major objectives:

- (1) to create a favorable climate for more direct governing of cities by their citizens,
- (2) to secure adequate powers so that municipalities could meet increased demands for services, and
- (3) to avoid interference in local government by the state legislature.<sup>10</sup>

These are noteworthy goals, but early writers were not sure they would ever be accomplished. John Keith felt compelled to take one full chapter of his monograph to review extensively the criticisms of public officials and others that the wording of almost every phrase and sentence in the amendment is ambiguous.<sup>11</sup> Constitutional authority George D. Braden, however, feels that the section is one of the more intelligibly drafted of any in the constitution<sup>12</sup> and there is no talk today of trying to improve on the wording of the amendment.

What Braden does point out, however is that "home rule is not unconditionally and fully guaranteed to Texas cities."<sup>13</sup> Braden argues the position generally taken by municipal attorneys today that the section as interpreted by the courts guarantees only that cities may act without affirmative permission of the legislature.

Cities are resigned to the fact that charters must not conflict with the state constitution or statutes enacted prior to adoption of a charter, and that a state general law affecting cities passed tomorrow supersedes a city charter provision enacted today or yesterday. Similarly, cities also realize that although Article III, Section 56, of the state constitution forbids local laws regulating the affairs of cities, such laws are passed occasionally by using the device of population-bracket bills. These are laws with provisions that are applicable only to certain cities based on population. For home rule to be effective, cities must zealously guard concepts of the amendment and the court cases that keep it viable.

## Developments in charter adoptions since 1912

All the criticisms and concerns enumerated above were unknown to city officials in 1912. They just knew that the citizens of Texas had spoken and had told the legislature that they wanted their cities to have more freedom and local autonomy. "Before the Legislature passed an enabling act on the home rule amendment, twenty-four cities had drafted their own charters or amendments to their special legislative char-

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ters.”<sup>14</sup> By 1920, sixty-five cities had taken advantage of the home rule privilege. And except for the depression era of the 1930s, the movement has steadily continued.

**A Model Charter for Texas Cities** was prepared by Dr. Herman G. James, Director of the Bureau of Municipal Research and Reference of The University of Texas, in February 1914. Its provision for a competent chief administrator selected by and responsible to the city governing body foreshadowed an increasing interest in a form of government new to the state: the council-manager plan.<sup>15</sup> Other influences on early charters were those of cities that had reacted quickly to the home rule provision. The adoption by Amarillo in 1913 of a charter provided a model for other cities in the state. At one time, at least one-fourth of the charters then being written reflected both the arrangement and language of the Amarillo Charter.

The home rule amendment did not immediately stop the legislature from granting charters and amendments by special law. The same legislature that passed the Home Rule Enabling Act amended three charters.<sup>16</sup> Other charters were amended or granted from then until a court decision in 1920 held such action unconstitutional.<sup>17</sup> Special law cities have since completely disappeared.

## Home rule charter cities today

Today, 351 Texas cities have home rule charters. The Texas Municipal League directory lists only 24 cities with populations over 5,000 that have not adopted charters—about seven percent. Of the 351 home rule cities, 21 cities have now dropped below 5,000 population but retain their charter. A constitutional amendment, actively sought by TML and adopted by voters in 1991, assures those cities that they have retained full home rule powers and may amend their charters although their populations may not now meet the minimum set out in the original Home Rule Amendment to the Texas Constitution.

## Charter adoptions, 1836-2009

Appendix C is an alphabetical listing of all 351 home rule charter cities. The chart provides special dates regarding each city including:

- date of first special legislative charter,
- date of first home rule charter,
- date of current home rule charter, and
- date of latest charter amendment.

This information was obtained from the Texas Secretary of State's records, the archives of the Texas State Library and the cities themselves.



## 2 Advantages of home rule status<sup>18</sup>

# 2

Since 1912, Texas cities have belonged to one of two categories from a legal standpoint—home rule or general law.

In brief, home rule cities are larger cities—cities over 5,000 whose citizens have adopted home rule charters. 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 cities 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 or preempted by the state, the city generally can proceed.

The second category, general law, is composed of smaller cities, most of which are less than 5,000 population. All general law cities operate according to specific state statutes prescribing their powers and duties. General law cities are restricted 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, it may not be taken.

A recent example of this distinction involves registered sex offender residency restrictions. A 2007 attorney general opinion (GA-052) addressed a fast-growing trend among cities in Texas and nationwide: ordinances that prohibit convicted sex offenders from living within a certain distance of schools, churches, or the homes of children. The opinion concluded that home rule cities' residency restriction are not preempted by state law and are thus valid. The opinion also concluded, however, that general law cities do not have express authority under current state law to adopt or enforce such an ordinance.

Throughout this publication, we will be discussing matters that have legal implications. We have written this document primarily for elected policymakers, appointed administrators, and potential charter commission members. We urge those individuals to take questions they may have to their city attorney and to consult with that individual prior to taking any action based on information in this publication. Your city attorney really can be your best friend if you are a local government official.

### The home rule concept

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 limitation on their powers.** (Emphasis added.)<sup>19</sup>

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. Of course, legislative preemption is becoming more and more commonplace.

### 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 organizations

In contrast to counties, general law cities, and special districts (whose organizations are fixed by state law), the governmental structure of a home rule city is left entirely to the discretion of local voters. Subject to compliance with the federal Voting Rights Act, the citizens 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 districts 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 the members of the council, or chosen by some other method.

The citizens 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

The inherent power to unilaterally annex adjoining areas is 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.

There is no state law prohibiting home rule cities from annexing adjoining territories; therefore, annexation can be exercised as an inherent home rule power. The only requirement is that the city charter authorize the city council to exercise such power. Of course, the Municipal Annexation Act provides complex procedures that must be followed. It also has various limitations regarding when, where, and how home rule cities annex.

The power of unilateral annexation is important for several reasons. First, it enables a city to guide the development of the city and the surrounding area. Second, it permits a city to maintain a strong economic base by extending its boundaries to bring in taxable properties and other resources required to finance essential municipal services.

Dramatic evidence of the importance of unilateral annexation exists in other states where cities do not have that power. One source summed it up as follows:

Liberal state annexation policies in certain parts of the South (e.g., Jacksonville) and West (e.g., Houston) have permitted cities in those regions to share the benefits of growth in surrounding areas. If San Antonio, Texas, for example, had the same boundaries that it had in 1945, it would contain more poverty and unemployment than Newark, New Jersey.<sup>20</sup>

According to U.S. Census statistics, Texas’ larger cities are among the fastest-growing in the U.S. These same figures also show, however, that many of these same cities actually would have lost population during the past two decades if they had not expanded through annexation.

## Initiative, referendum, and recall

Initiative, referendum, and recall are inherent home rule powers that are reserved for exclusive use by local voters in order 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; they are not available to voters at any other level of Texas government, including the state.

Initiative is a procedure under which local voters directly propose or initiate legislation. Citizen 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 that the council refuses to enact.

Referendum is a procedure under which local voters

can repeal unpopular existing ordinances the council refuses to rescind by its own action.

Recall is a process by which local voters can oust members of the city council before the expiration of their terms.

All three of these powers are discussed in detail in Chapter 15 of this book.

## Charter amendments

In addition to initiative and referendum, direct law-making 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(s) 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 extensive, they remain subject to all the limitations imposed by state and federal law. For example, the paragraph above on amending a charter is a good example. State law prescribes that five percent or 20,000 voters, whichever is less, must sign a charter amendment petition. A city could provide in its charter that a petition signed by four percent or 19,000 voters, whichever is less, would force the city council to call such an election, but a city could not make it more stringent for voters to initiate such action. A charter provision requiring six percent or more signatures would not be binding and could not be enforced by the governing body of the city. Recently, more and more legislation has passed that restricts the powers of home rule cities.

## Cities over 5,000 population that have not adopted home rule charters

Despite the advantages of home rule cited above, citizens in 24 cities that meet the population criterion have elected not to adopt a home rule charter. In 1994, the League asked officials in many of those cities to comment on the reasons their city had chosen not to adopt a charter.

The responses were as follows:

- citizens are not aware of advantages of home rule;
- a charter commission had never been authorized;
- a charter had never been considered;
- city has no appreciable extra-territorial jurisdiction (ETJ);
- issue was considered, but no one ever took action;
- discussion being held now to possibly elect a commission;

# Advantages of home rule status

- very conservative community, and citizens feel less government is best;
- three elections were held for charter commissions (1959, 1969, 1977), but all failed;
- a charter would give “city hall too much control.”

From the responses, it would appear that many of the 24 communities were affected by voter distrust in government. A recent example of a failed charter election took place in the City of Willis. In 2005, the election failed 33 to 69. However, in 2008, the citizens voted to approve essentially the same document in a 72 to 18 vote.

In the next chapter, we will examine in much more detail the areas in which home rule cities are free to act and those in which state law has now preempted home rule authority.



# 3 State preemption of local home rule

3

As pointed out in previous chapters, constitutional home rule in Texas gives cities opportunities to reflect their own cultures, traditions, and individual preferences. But even in 1912, there were some limitations on home rule powers; e.g., a maximum tax rate. In subsequent years, the legislature has enacted other general laws preempting such areas as methods and dates of elections, conflict of interest for city councilmembers, and others. This chapter will review, in brief, how state law circumscribes home rule authority today. Detailed discussion of state limitations can be

found in the chapters in this report that cover particular functional areas.

In the figure covering the following several pages, in the right-hand column, the notation “charter may provide...” is not meant to imply that all these options should be placed into a charter. Several subjects are certainly candidates for inclusion in an ordinance rather than the charter. Examples of this might include pay of the city council, creation of certain boards and commissions, certain procedures regarding passage of ordinances, and others.

**Figure 3-1: State preemption of home rule provision  
July 2009**

Subject Area	Applicable State Law (LGC is the Local Government Code, GC is the Government Code, Chapter or Section)	The Charter May Provide: (Chapter references are to chapters in this report)
<b>A. Basic municipal structure</b>		
1. Form of government	Silent	Any one of three forms of government: (1) mayor-council, which may range from strong mayor to weak mayor (2) council-manager (3) commission
<b>B. Governing body</b>		
1. Size of governing body	Silent	A city may have as few as three members of the governing body; there is no maximum.
2. Terms of office of governing body.	Texas Constitution provides maximum of four-year term for city officials. Article XI, Section 11.	Charter may provide for one-, two-, three-, or four-year terms. It may also provide for concurrent or staggered terms.
3. Term limits	Silent	Charter may provide for term limits.
4. Method of city council election	Silent	Subject to the federal Voting Rights Act, charter may provide for at large, at-large by place, single-member district, cumulative or a combination of the above.

Subject Area	Applicable State Law (LGC is the Local Government Code, GC is the Government Code, Chapter or Section)	The Charter May Provide: (Chapter references are to chapters in this report)
5. Election by majority or plurality	Texas Constitution (Article XI, Section 11) provides that for any term of office more than two years, vote must be by majority. Section 275.003 of the Election Code provides that in any city over 200,000 in population, members of the governing body must be elected by majority vote.	In cities of less than 200,000 population, charter may provide for either majority or plurality if council is elected for one- or two-year terms.
6. Selection of mayor	Silent	Charter may choose to elect the mayor by direct vote of the people or have the position filled by the council choosing one of its own members after all members of the governing body have first been elected as councilmembers.
7. Selection of administrative personnel	Silent	Charter may allow the voters to elect, the city council to appoint, or the city manager (if the city has one) to appoint administrative officials such as the city secretary, municipal court judge, city attorney, and others.
8. Creation of boards and commissions	Some requirements on planning and zoning commissions (See Chapter 211, LGC). State law also regulates establishment of some other boards; e.g., housing authorities, zoning boards of adjustment, and others.	Charter may establish any number of advisory boards to assist the city council in the governance of the city.
9. Compensation of the governing body	Silent, except for cities with a population greater than 1.9 million. Salary of mayor, city council, and controller is controlled by provisions Section 141.005 of LGC.	Charter may provide that the governing body shall not be paid at all, may establish any amount of salary citizens feel is appropriate, or may provide that the governing body shall set its own pay.
10. Filling vacancies on Governing body	Texas Constitution (Article XI, Section 11) provides that vacancy on council must be filled by election if term of office for that council is more than two years.	Charter may provide for filling vacancies by either appointment of governing body or election by citizens, <u>if</u> the council is elected for one- or two-year terms.

Subject Area	Applicable State Law (LGC is the Local Government Code, GC is the Government Code, Chapter or Section)	The Charter May Provide: (Chapter references are to chapters in this report)
11. Qualifications for governing body	Basic qualifications for elected public official set out in Texas Election Code, Section 141.001.	Charter can require candidates to be up to 21 years old, rather than 18, can require residence of up to 12 months rather than 6 months set out in Election Code, and can require candidate to be qualified voter (Election Code is silent). City cannot disqualify candidate for failure to pay property taxes.
12. Election dates for governing body	Elections for members of governing body must be held on one of two uniform election dates provided by Election Code, Section 41.001.	Run-off elections and elections to settle a tie vote may be held on date other than a uniform election date. Also, election to fill a vacancy required under the Constitution may be held on date other than a uniform election date.
13. Governing body as judge of the qualifications of its own members	Silent	Charter may provide that governing body may be the judge of the qualifications of its own members and may empower governing body to remove a member for lack of attendance at city council meetings or misconduct in office, defined in various ways.
14. Meetings of governing body – openness and frequency of meetings	All meetings must be open to the public except as allowed by the Texas Open Meetings Act. Silent on frequency of meetings.	Charter prevails if it has more restrictive provisions for open meetings than state law. Charter may provide for frequency of meetings.
15. Passage and publication of ordinances	For ordinances carrying a penalty, city may publish caption of ordinance in lieu of charter requirement that text of ordinance be published. If charter does not provide for method of publication, full text or caption with penalty indicated may be published at least twice in official newspaper. (See Section 52.013, LGC).	Subject to requirements in second column, charter may provide for exact procedures governing body must take for passage and publication of ordinances.

Subject Area	Applicable State Law (LGC is the Local Government Code, GC is the Government Code, Chapter of Section)	The Charter May Provide: (Chapter references are to chapters in this report)
16. Codification of ordinances	Ordinance adopting a code of municipal ordinances must be published in a newspaper (See Section 53.002, LGC).	Subject to requirement in second column, charter may provide for codification of ordinances. (See Chapter 10).
17. Emergency succession	Presiding officer of governing body, designated as the emergency management director that reports to the governor. (See Section 418.1015, GC).	Charter may provide for line of succession for governance of city in event of emergency. (See Chapter 17).
18. Staff and benefits members of governing body	Silent	Charter may provide for whatever staff and benefits citizens feel council should have.

## C. Mayor

1. Powers of mayor (Mayor-council form)	Silent; see below.	Charter may provide for appointment and budgetary power to extent desired by charter drafters and voters.
2. Powers of mayor (any form of government)	Although there is no general statute setting forth power of mayor, there are some specific statutes, including the power to declare an emergency and power to appoint members of local housing authority.	Charter may provide that: –mayor does or does not have veto; –mayor has regular vote, or can vote only in case of tie; –mayor can call special meeting of council; and/or –in times of emergency, mayor can be given extraordinary powers over city government operations.

## D. Expansion and contraction of city area

1. General purpose annexation	Several restrictions placed on cities by Chapter 43, LGC	Charter may provide for unilateral annexation by city
2. Limited purpose annexation	State law (Section 43.121, LGC) allows cities over 225,000 to annex land for limited purposes if such is authorized in their charter. Law has certain restrictions.	Charter may provide for limited purpose annexation.
3. Disannexation	State law provides for procedures for disannexation for failure to provide services (See Section 43.141, LGC). State law allows charter to set out procedure for voluntary disannexation by city (See Section 43.142, LGC).	Charter may provide for voluntary disannexation of territory by city.



Subject Area	Applicable State Law (LGC is the Local Government Code, GC is the Government Code, Chapter or Section)	The Charter May Provide: (Chapter references are to chapters in this report)
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## E. Administrative organization

1. City manager/city administrator	Silent	Charter may provide for mandatory or optional appointment of city manager by city council; may make residence requirements, provide or not provide for public hearing for city manager on discharge; may provide that individual must post bond; may prescribe duties. (See Chapter 12).
2. Municipal court	State law establishes a municipal court in every municipality in the state. The law also establishes the specific jurisdiction for the court and provides that home rule cities in their charters may provide for the method of selection of the judge. State law now controls most of the matters establishing municipal courts of record. (See Chapters 29 and 30, GC).	State law heavily preemptive. (See Chapter 13).

## F. Municipal finance

1. Ad valorem (property tax)	State Property Tax Code controls three of the four basic procedures for administering the property tax. Appraisal of property, handling protests regarding value of property, and assessment of taxes (preparation of the tax roll) are now all handled by appraisal districts.	Charters may provide for the fourth tax function, the collection of current and delinquent taxes.
2. Other revenues	State law controls all or a significant part of the following sources: city sales tax, street rentals, fines, license and permit fees, hotel-motel tax, taxes on alcoholic beverages, and and occupation taxes.	Charter may provide for user fees, federal grants, special assessments, and such miscellaneous sources as income from sale of city property.
3. Annual operating budget	Uniform Budget Law (Chapter 102 LGC) sets out basic requirements city budgets must meet.	Charter may provide for additional requirements. (See Chapter 14).
4. Annual audit	Texas cities must comply with the requirements of Section 103.001 et seq., LGC, which require an annual audit of the city's financial affairs.	Charter may provide for additional requirements. (See Chapter 14).

Subject Area	Applicable State Law (LGC is the Local Government Code, GC is the Government Code, Chapter or Section)	The Charter May Provide: (Chapter references are to chapters in this report)
5. Internal auditor	Silent	Charter may address this position.
6. Depository	State law makes certain requirements regarding city depository. (See Chapter 105, LGC).	Charter may allow the governing body to select a depository for city funds.
7. Purchasing	State law requires a competitive procurement for most expenditures over \$50,000. State law allows the city council to override charter provisions of lesser amounts by adopting an ordinance. (See Chapter 252, LGC).	Charter may provide for lower limit on requiring bids. (See Chapter 14).
8. Public works contracts	LGC Chapter 252 applies to all purchases; certain provisions of LGC Chapter 271 address public works contracts. City must comply with both.	Charter may stipulate certain requirements but they must be consistent with state law.

## G. Issuance of debt

1. Short-term borrowing	Silent	Charter may allow governing body to borrow money, to be repaid in the same fiscal year, without a vote of the citizenry.
2. Certificates of Obligation (C.O.)	Chapter 271, LGC regulates purposes of and length of maturity of C.O.s.	Charter may provide for governing body to issue C.O.'s for a wide variety of purposes for as long as 40 years without a vote of the citizenry.
3. General Obligation (G.O.) Tax Bonds	State law directs most of the procedures concerned with issuing G.O. bonds. (See Chapters 1501-1510, GC).	Charter may provide for governing body to issue debt to pay for facilities upon favorable vote of the citizenry.
4. Revenue bonds	These may be issued under state law, without a vote of the people. <u>Corpus Christi v. Flato</u> , 83 S.W.2d 433 (Tex. Ct. App. -San Antonio, 1935 Writ dism'd).	Charter may provide for this type of bond, secured by revenues from an income-producing facility, without a vote of the people. (See Chapter 14).

Subject Area	Applicable State Law (LGC is the Local Government Code, GC is the Government Code, Chapter of Section)	The Charter May Provide: (Chapter references are to chapters in this report)
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## H. Elections other than those for governing body and charter amendments

1. In General	Chapter 41, Texas Election Code, sets forth uniform election dates.	Exceptions to the uniform election dates for run-off elections for city council.
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## I. Initiative, Referendum, and Recall

1. In General	Silent	Charter may provide for all, some, or none of these direct legislation methods. (See Chapter 15).
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## J. Franchises

1. In General	Several state laws set forth regulatory restrictions on utility franchises, rate, and services.	City's powers are limited by several state laws. (See Chapter 16 ).
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## K. Personnel functions, civil service, merit system, city employees

1. Municipal fire and police	Beginning in 1947, Texas Legislature has enacted laws relating to fire and police officers.	Some cities have defeated and some have enacted optional portions of fire and police legislation.
2. Residency of city employees	Section 150.021 of LGC prohibits city from requiring city employees to live within city limits. See next column for exceptions to this law.	City, by charter or otherwise, may require members of governing body and department heads appointed by mayor or governing body to be residents. May also set reasonable time within which employees who reside outside the city must respond to a civil emergency.
3. Right of certain municipal employees to purchase continued health insurance coverage at retirement.	Chapter 174, LGC, requires some cities to provide this coverage under certain conditions.	City charter may address health insurance for retirees consistent with state law.

## L. Planning and Zoning

1. Zoning	The legislature has provided detailed provisions for the exercise, by home rule cities, of the zoning power. The statutes include procedures for the zoning commission, composition and duties of the zoning board of adjustment and a wide spectrum of other requirements.	Within broad parameters, city may provide in charter for zoning commission and mandate it to recommend a ordinance to the governing body. Charter may provide for continuous update of that ordinance.
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Subject Area	Applicable State Law (LGC is the Local Government Code, GC is the Government Code, Chapter or Section)	The Charter May Provide: (Chapter references are to chapters in this report)
4. City actions that benefit mayors and councilmembers	Chapters 171 and 176 of the LGC requires the public disclosure of conflicts between the public interest and councilmembers' private interests.	Charter may address this area. State law provides that provisions of Chapter 171 and 176 are cumulative; that is, both state law and charter restrictions would apply.
5. Nepotism	This is addressed in Section 573.041 of the Texas Government Code.	Charter may provide for stricter bounds of nepotism than state law. Charter may also apply nepotism provision to city manager or city department heads whom state law does not address.
6. Political activities	There are constitutional, statutory, and case law restrictions on an employee's political activity, but also on the city's right to prohibit some activities. Situations must be handled on a case-by-case basis.	Cities have some authority to regulate in some manner political activities of their employees as long as it is a reasonable restriction on an employee's right to become a candidate for office. (See Chapter 17).

## Charter language in cases of state preemption

There are four different ways in which a city can address the question of state preemption when drafting a new charter or charter amendments. All four of these methods are being used by city charters today with no particular consistency of approach.

The four alternatives are:

(1) Charter is silent. The charter omits any reference whatsoever to subject areas already preempted by state law. For example, a number of charters make no reference to the oath of office, incompatibility, and other similar state-preempted areas.

(2) Charter lists subject and immediately incorporates state law by reference. Examples of this include references to open meetings and open record acts, purchasing, issuance of long-term debt, and other items.

(3) Charter repeats state law. Examples of this include charters that cite the state open meetings law and list the exceptions that are allowed by that law. Other examples of this method include repeating the law of nepotism and dual office holding.

(4) Charter has even stronger or more detailed provi-

sion than state law on given subject. Two examples of this method are the following: Regarding separation of powers, it is not unusual for a charter to not only prohibit a current councilmember from serving as city manager but also to prohibit former councilmembers from serving as city manager for a period of time. In fact, two city charters prohibit former mayors and councilmembers from ever being appointed as city manager. Next, the state law regarding adoption of the annual operating budget is fairly general and many cities have much more detailed requirements than the state sets out.

## What is the proper way to handle state preemption?

There is no "proper" way to treat the matter of state preemption of certain areas of concern. An argument could be made for utilizing two or more of the methods listed above, depending on the topic. Cities should always have extra copies of charters on hand so that individual citizens have access to them. We would expect that charters would be easier to access and read than state statutes. Several city officials and urban experts argue against repeating state law in the charter just to have it in there. But it might be prudent and "customer-friendly" to develop a fifth method of handling

such laws. The charter language might just have a brief statement such as:

Open Meetings. City council meetings shall be conducted in accordance with applicable state law. (See Appendix \_\_\_ for recitation of state law.)

The appendix to the charter could contain the text of all applicable state laws. Two advantages to this approach: (1) an appendix would not have to be adopted by the citizens as a charter amendment; and (2) the appendix could be printed separately as often as desired to keep up to date with changing state law. By putting the detailed state law in the appendix, a citizen is given a more complete picture of the legal environment in which the city operates.

## **Subjects on which state statutes and charter are both silent**

A subject related to the question of state preemption is the handling of subjects when state statutes and the charter are both silent. One area, for example, is that of compensation of city councilmembers. As noted above, there is no state statute speaking to the question of the amount of compensation for the governing body in home rule cities. If a given charter is also silent on this question, municipal attorneys have generally reasoned that city councils can establish compensation for themselves by ordinance. This is an area in which prudent action by the council would seem to be advantageous. If the council gets “greedy” and establishes what the citizenry considers unreasonable compensation, the council might well be faced with a charter amendment election that would not only establish a pay level, but might also invoke a level of compensation much lower than presently enjoyed by members of the governing body.

Presumably under the theory of “home rule,” if state law and the charter are both silent, the city, by ordinance enacted by the city council, could undertake a wide range of actions.

Having discussed the concept and history of home rule and the restrictions of state law upon charters, we now turn to a brief description of procedures for adopting a new charter and amending an existing charter. This chapter content is primarily for neophytes in city government, but it seems prudent to repeat some basic information because a few Texas cities have misread some of the requirements in the Constitution and/or statutes. As an example: One city adopted charter amendments in three successive years, despite the constitutional requirement that charters be altered or amended no more often than once every two years. Another city interpreted the statute on amending the charter to permit amendment by ordinance; the councilmembers used this interpretation to give themselves a pay raise by an ordinance. A charter can be amended only by the voters, of course.

## Establishing the population of the city (first charter)

Before the governing body takes any action in regard to a charter commission, it must determine that its city is over 5,000 inhabitants and hence eligible under the constitution to adopt a home rule charter. If the preceding U.S. Census recorded a population of at least 5,001, the city qualifies. The city council can state this fact in its ordinance calling for a vote on framing a new charter, in accordance with Section 9.002 (d) (discussed in more detail later). (See Appendix D, which includes Texas Local Government Code, Sections 9.002 and 9.003, spelling out requirements for adoption of a new charter).

If the last official census recorded less than 5,001 inhabitants, the city council must make a good faith finding that the city has grown to 5,001 or more. To do this, cities generally have used an unofficial census conducted by civil volunteers, or have used utility connections with a multiplier. Cities should consult with legal counsel prior to making the finding. Improper evidence has led some cities into legal trouble on the issue. For example, in *City of Granite Shoals v. Ted Winder*, 280 S.W.3d 550 (Tex. App. – Austin 2009), a city councilmember testified that the city simply multiplied the number of utility connections by three (a number allegedly selected at random). The court concluded possible bad faith because the city did not use demographics or census data to determine the multiplier. After establishing by one of these or other reasonable means that the city has more than 5,000 inhabitants, the council is ready to consider the question of electing or appointing a charter commission to frame a charter for the city.

## Adopting the city's first charter

Section 9.002 of the Local Government Code provides two different methods of selecting a charter commission to draft a first-time charter. One way is for the governing body to provide for an election that gives the voters an opportunity to elect a charter commission to draft a charter, and at that same election, to choose the members of that charter commission. That same Section 9.002 provides that the charter commission may be chosen in another way. This method will be discussed later.

## Elected charter commission

To begin the elected charter commission process, the governing body must adopt an ordinance by a vote of not less than two-thirds of its membership to submit this question to a vote of its citizenry: "Shall a commission be chosen to frame a new charter?" If the governing body does not pass such an ordinance voluntarily, it may be required to do so if presented with a petition signed by at least ten percent of the qualified voters of the municipality.

The elected commission approach is not the only way to choose a commission, but it may still be the best way in that it gives the voters an opportunity to indicate whether they really want to proceed with the drafting of a charter.

Section 9.002 (b) reads: "The election ordinance shall provide for the election to be held on the date of the municipality's next general election scheduled after the 30<sup>th</sup> day but on or before the 90<sup>th</sup> day after the ordinance is adopted. However, if no general election is scheduled during that period that allows sufficient time to comply with other requirements of the law, the election shall be ordered for the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law and that occurs after the 30<sup>th</sup> day after the date the ordinance is adopted and published in a newspaper in the municipality."

Section (c) provides that the same election shall provide for the election from the city at large of a charter commission to draft a charter if a majority of the qualified voters voting on the question of choosing a charter commission approve the question. This sentence has generally been interpreted as requiring the two questions of framing a new charter and selecting the members of the charter commission to be asked separately, though they may be on the same ballot. The commission must consist of at least 15 members, but if it has more than 15 members, it may not have more than one member for each 3,000 residents of the city. The ballot may not contain any party designation.



## Alternative to elected commission

Section 9.002 (d) provides for an alternative way of choosing a charter commission for a first-time charter. The alternative way has been used more frequently in recent years. To reduce the opportunity for misinterpretation, it is best to quote this subsection directly:

(d) The provisions of Subsections (a), (b), and (c) regarding the selection of a charter commission to do not apply to the first charter election in a municipality if:

- (1) (a) the governing body of the municipality selects a charter commission;
- (b) a charter commission is selected at a mass meeting; or
- (c) the mayor of the municipality appoints a charter commission; and
- (2) the charter commission has proceeded with the formation of a charter for the municipality.

## Adoption of a new charter (not the first charter)

There is no question regarding the selection of a charter commission when a city that previously has adopted a charter decides to completely rewrite the document and adopt a new charter. The provisions of 9.002 (a) through (c) must be followed requiring an elected charter commission.

The definition of a “completely new” charter has not been litigated. Cities have adopted numerous amendments to an existing charter, including changing the form of government and/or the election of the governing body, as well as many other changes, and have done so under the statutes covering “charter amendments,” not the requirements for a new charter. The record for number of amendments at one election appears to be 81, submitted by one Texas city at a 2006 election, with 80 amendments being approved by voters. If such an election is not contested by a citizen, there appears to be no upper limit to the changes that can be made by amendment.

## Preparing for the charter commission election

Several different ordinances must be passed, ballots must be prepared, and other specific steps must be taken to hold and then report the results of the charter commission election. Because these requirements can change from year to year, samples of those documents are not included here but may be obtained from the Texas Municipal League by contacting the TML Legal Department.

## Guidelines for the charter commission

If a majority of those voting at the charter commission election favor creating a charter commission, the 15 or more members of that body can proceed with drafting a proposed charter. A charter commission is a very unusual governmental body. Most cities will not have such a group more than a few times in a 100-year period. Many of the individuals involved in the work will be serving on a governmental body for the only time in their lives. Because of the Commission’s unusual nature, the National Civic League has published a Guide for Charter Commissions to accompany its Model City Charter (see Bibliography). Both publications can be ordered from the National Civic League through its Web site at [www.ncl.org/publications](http://www.ncl.org/publications).

### OVER 30 - DON'T APPLY!

We submit herewith the original copy of a proposed Home Rule Charter for the City of \_\_\_\_\_ drafted by the Charter Commission elected by the people on April 5, \_\_\_\_.

We urge that the Council, having taken the initiative in recommending the Charter Commission for this purpose, endorse this proposed Charter unanimously to the citizens of \_\_\_\_\_ for adoption.

We recommend the following steps for the Charter:

1. Send to City Attorney for legality.
2. Hire young lady to retype with enough copies for City Council.
3. Have Council approved printing of Charter.
4. Return to Charter Commission to take to printer in form they have planned to use for readability.
5. Mail to citizens of \_\_\_\_\_.
6. Call election for February 17, \_\_\_\_.

## Preclearance under the Voting Rights Act of 1965

The city must obtain “preclearance” of the charter election from the U.S. Attorney General’s Office. Section 5 of the federal Voting Rights Act prohibits the enforcement of any voting qualification or procedure with respect to voting rights unless it is approved by the U.S. Department of Justice or by the U.S. District Court of the District of Columbia. The simpler process for gaining approval is to submit the proposed changes to the U.S. Attorney General’s Office. The approval process is designed to ensure that the proposed changes in the election process will not have the effect of denying or

# Adoption and amendment of home rule charters

abridging the right to vote “on account of race or color or membership in a language minority group.” 42 U.S.C. Section 1973c. If you have any questions about the preclearance process, it may be helpful to visit the U.S. Department of Justice Web site at:

[www.usdoj.gov/crt/voting/sec\\_5/guidelines.php](http://www.usdoj.gov/crt/voting/sec_5/guidelines.php).

Additional questions may be answered by speaking with a Civil Rights Analyst at the U.S. Attorney General's Office by calling (202) 307-2767.

Preclearance submission may now be submitted electronically through the following Web site address:

[www.usdoj.gov/crt/voting/sec\\_5/making.php](http://www.usdoj.gov/crt/voting/sec_5/making.php)

Preclearance submissions may be submitted by regular mail to the following address:

Chief, Voting Section  
Civil Rights Division  
Room 7254 - NWB  
Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

Preclearance submissions may be submitted by overnight express mail to the following address:

Chief, Voting Section  
Civil Rights Division  
Room 7254 - NWB  
Department of Justice  
1800 G St., NW  
Washington, D.C. 20006

## Submitting the new charter to voters

At the completion of its work, the charter commission notifies the governing body and submits its proposed charter to that body and to the citizens of the city. The governing body has no authority to change any of the work of the elected commission (or the appointed commission if it is operating under the provisions of Section 9.002 (d)). To emphasize the point, we repeat that in the case of a NEW charter, the governing body has no authority to change any of the provisions of the proposed document.

Section 9.003 prescribes the election data for consideration of the charter, and the governing body must set the election in accordance with these provisions.

This same section provides that a copy of the proposed charter shall be mailed to each registered voter of the city at least 30 days before the election.

The section also states that the charter shall be prepared by the commission so that each subject within it may be voted on separately—to the extent practicable. As a matter

of practice, no charter to our memory has been submitted in any way except as a complete document with the voters asked to vote “for” or “against” the document as a whole. This requires voters to accept the parts they dislike or to oppose them along with the parts they favor.

Such a “one-vote” submission may appear to be somewhat unfair to the voters. However, it is virtually impossible to separate sections of the charter and then make provisions in the document for alternatives. Because of this difficulty, no court, to our knowledge, has ever turned down a charter adoption because the document was submitted to the citizens as “all or none.”

## Charter adoption: results and voter turnout

A total of 61 cities have adopted first-time charters since the publication of this document in 1994. These 61 first-time charters adopted in the past 15 years are a reflection of the tremendous growth of the state, particularly in the metropolitan areas.

## Charter amendments

Charter amendment elections are held much more frequently than elections for new charters. Some cities have had numerous amendment elections over the past 50 years while others have been content to stick with the original document. Very few communities have their original charter in place. Most have found it necessary to modify the original document with amendments to provide for the best administration of their cities. It appears the city with the oldest charter in Texas with no amendments is the City of Hearne, being adopted in 1964. Other communities have older charters and have not amended their charters for decades, including the City of Stamford which adopted its charter in 1918 with the last amendment occurring in 1955, and the City of Gorman which adopted its charter in 1920 and last amended it in 1960.

When a city holds a charter amendment election and adopts one or more amendments, it must wait a full two years before holding another such election. Section 41.0041 of the Texas Election Code allows a few days leeway in holding some elections which require a certain waiting period, but this law does not apply to charter amendment elections since they are controlled by the constitution.

## Procedure for amendment election

Charter amendment elections are precipitated in one of two ways: (1) the governing body on its own motion may submit one or more amendments to the electorate, or (2) the governing body must submit a proposed charter amendment to the voters for their approval at an election if the submission is supported by a petition signed by a number of qualified vot-

# Adoption and amendment of home rule charters

ers equal to at least five percent of the number of qualified voters of the municipality, or 20,000, whichever is the smaller. (See Appendix D for complete wording of statutory requirements.)\*

Charter amendment elections usually result from the first procedure above. In most cases, this is preceded by a charter revision commission appointed by the governing body. State statutes do not address charter revision bodies. The commission may be any number of individuals, may meet for as short or long a time as the governing body allows, and usually is given a specific charge by the governing body to look at one or more specific charter provisions that the governing body thinks may need to be changed.

A significant difference between the elected first charter commission and the appointed charter revision commission is that in the latter case, the governing body has no obligation to accept any of the recommendations of the appointed revision commission for changes in the current charter. As a matter of practical politics, however, governing bodies generally give strong weight to the findings of the commission, even though it is not unusual to find some deviation from the recommendations when the election is actually called.

## Preclearance under the Voting Rights Act of 1965

Charter amendment elections must be precleared by the U.S. Attorney General's Office. See section under Adoption of New Charters for procedure.

## The charter amendment election

Requirements for ordering the amendment election and publishing required notices are all contained in Section 9.004, LGC. Although the notice in the newspaper is required to be a "substantial copy" of the proposed amendment, most cities include actual charter language to be changed in that notice, and this procedure is recommended to give voters full knowledge of what they are voting on.

Section 9.004 also states that any "amendment may not contain more than one subject." This requirement has troubled city officials through the years, but has generally been resolved through logical interpretation of the term "one subject." For example, if a city is changing the form of government to a council-manager form, most cities have included in one amendment the provisions for appointment of the manager and all related language, even though such language may appear in several different articles of the charter. Similarly, when cities have desired to eliminate sections that are in conflict with state law, the general practice has been to consider the "conflict with state law" as the one subject, and cite various sections in the charter affected, but all under one amendment to the charter. Neither of these practices has been challenged to our knowledge.

## Approval of amendment(s) by the voters

If the voters of the city approve one or more amendments, the governing body must enter an order in the records of the city (minutes of a council meeting) declaring the adoption of the charter amendment(s).

In addition, as soon as practicable, the mayor or chief executive officer of the city must certify to the Secretary of State an authenticated copy of the amendment(s) under the city's seal showing the approval by the voters of the city.

The work of elected charter commissions and appointed charter revision commissions has provided some very interesting and diverse charters in Texas. Charters range from eight or ten pages to as many as 70 pages—the latter on legal size paper, incidentally. Short charters are not always the best because they may leave out provisions that should be included. It is true that short charters are preferred—simplicity and flexibility with a minimum of detail. This is the recommendation of the Model City Charter of the National Civic League (NCL), now in its eighth edition. Many Texas cities pattern their new charters at least roughly along the lines of the NCL model. A copy of this publication can be ordered from NCL at [www.ncl.org/publications](http://www.ncl.org/publications).

The NCL model charter has provided a degree of standardization in charter formulation and has resulted in a number of common elements among home rule charters in Texas.<sup>21</sup> As the basic legal document of cities, most charters begin by specifying the corporate name, reciting the form of government under which the city intends to function, and setting forth the boundaries of the city. To establish the boundaries, some cities have utilized three or four pages to set out by metes and bounds the exact city limits even though that description probably is outdated by the time the charter is printed. Most cities now simplify with a brief paragraph that states that the boundaries shall be enacted by ordinance and may be changed as the city annexes by amendment to the basic ordinance. Usually, the charter provides that the official maps of the city shall be maintained in an office in city hall and that changes must be filed with the county clerk. The three items recited above generally constitute Article I of many charters.

Article II is most frequently a statement of the powers of the city. This can vary from a one-page statement to several pages comprising as much as one-half of the total charter. The lengthy sections on powers may be a result of the home rule amendment legislation originally enacted in 1913. The legislature at the time listed 34 different powers that home rule cities would have.

Despite the listing by the legislature in 1913, most municipal attorneys now feel that the statement of powers can and should be a brief, all-encompassing statement.

The full discussion of city powers is the subject of Chapter 7.

Following the listing of powers in Article II, many Texas charters follow the order of major subjects addressed in the NCL model charter.

This would include major articles on:

- the city council
- the city manager (in a council-manager charter)
- departments, offices, and agencies
- financial procedures
- elections

Many other Texas charters, however, include major articles on:

- initiative, referendum, and recall
- franchises
- municipal planning and zoning

The NCL model charter concludes with three final articles covering general provisions, charter amendments, and transition separability provisions. Almost all Texas charters close with the same three articles as the model charter.



The first decision most charter commissions make in developing a new charter is what form of government the fledgling home rule city will have.

## Status of forms of government in the U.S. today

The International City Managers Association publishes the *Municipal Yearbook* annually with figures on the number of U.S. cities operating under each of the different forms of government. The latest survey of this type was published in 2009 and produced the following results.

**Figure 6-1: Forms of government**

Form of Government	All Cities	Cities Under 10,000	10,000 to 50,000	50,000 to 250,000	Over 250,000
Mayor-Council	3,145	1,967	942	197	39
Council-manager	3,534	1,661	1,463	383	27
Commission	143	72	62	7	2
Town meeting	340	233	107	0	-
Rep. Town Meeting	63	17	41	5	-
Total all cities	7,225	3,950	2,615	592	68

In the 1994 edition of this book, among all cities and towns, the mayor-council form of government was the most popular of any listed. Compared to the 2009 numbers, there has been a 37 percent increase in communities utilizing the council-manager form of government, while there has been an 18 percent decrease in those cities operating under a mayor-council system. Among cities having populations from 10,000-50,000 and 50,000-250,000, the council-manager plan is the leader.

The mayor-council form predominates among the older northeastern cities and in older cities of the Midwest and south. The council-manager plan is most popular in California, Texas, Michigan, Illinois, and Maine.

The commission plan is favored by only about two percent of the cities reporting in this survey. "The very small percentages of cities which have identified themselves as having a commission form of government in this study have, by charter, mandated the hiring of a city manager. To that extent, they are not a 'true' commission form of government but rather operate as a council-manager form of government." Zech, Charles E., "An Analysis of Texas Home Rule Charters" (2008), Texas State University *Applied Research Projects*, Paper 280, p. 44.

## Brief history of forms of government in Texas

In the early days, all Texas cities were variations of the mayor-council form of government. This changed in 1900 when Galveston's mayor-council government collapsed during the disastrous storm and tidal wave. A group of citizens persuaded the legislature to grant the city a new charter, providing for a government by five commissioners, three appointed by the governor and two elected by the citizenry. Each member of the municipal governing body—the city commission—simultaneously served as commissioners and heads of the city's administrative departments, exercising day-to-day supervisory authority over a particular department. A court decision in 1903 ruled all five commissioners should be locally elected. The plan spread like wildfire. Houston adopted it in 1905, and five more cities adopted it in each of the legislative years of 1907, 1909, and 1911. By 1915, there were at least 39 home rule cities in the state, the large majority choosing the commission plan.<sup>22</sup>

By then, however, the stage had been taken by another reform movement – the council-manager plan. Begun in Virginia, South Carolina, or California—depending on the version of the story you like—this plan was advertised as being patterned after business. Stockholders (the voters) elect a board (a city council) and that body appoints a chief executive officer (a city manager). Amarillo kept the commission plan only a few short years and in 1913 jumped to the council-manager plan, with Taylor, Terrell, and Denton following the next year. A short but steadily growing list of cities changed from commission or the mayor-council form to council-manager each year from 1913 to 1932. Today, Texas has more council-manager cities than any state in the union except California. The commission plan reached its zenith in the early 1900s and then fell rapidly out of favor. Today, Texas does not have a single city with the commission form. In the entire nation, Portland, Oregon, is the only major city with that form of government.

The mayor-council form of government, the original form in the colonies, continues to make a strong showing particularly in the largest cities of the nation and in the very small cities and towns. Forty-four percent of the 7,225 U.S. cities and towns with populations of 2,500 residents are governed by a mayor-council system; with six of the nation's ten largest cities using the mayor-council form. However, for the ten largest cities in Texas, only Houston utilizes the mayor-council form of government. In Texas, Houston and Pasadena are the major cities with this form of government. Houston, for a period of five years in the 1940s, changed to the council-manager plan, but reverted to mayor-council in 1947.

It should be noted that the mayor-council form of government is sometimes defined as two different forms: the “strong” mayor and the “weak” mayor forms. The ultimate in a “strong” mayor form would probably be Denver, Colorado, where the mayor of that city/county is authorized to:

- sign contracts up to \$500,000 without any notice to or confirmation by the city council;
- prepare the annual operating budget, which can be changed only by a two-thirds vote of the 13-member city council
- appoint and remove some 50 department heads, including county judges and board and commission members, all without approval or confirmation by the city council; and
- select the outside auditor to conduct the annual audit of city operations.

Certainly, no Texas mayor claims this level of authority. On the other hand, a “weak” mayor form usually means several of the following are in the charter:

- the mayor has no veto; the mayor’s appointments of department heads and boards and commissions must be confirmed by city council vote;
- the mayor has a vote in the council chamber only in case of a council tie vote; and
- the mayor’s budget authority is circumscribed.

## Major determinants of the form of government

With these choices available, how do new charter cities in Texas make their choice? Undoubtedly, the total number of cities in the state and in the U.S. with each type of government influences the decision of charter makers. But the two most important determinants of this decision are probably: (1) the form of government of the city’s neighboring cities—particularly larger ones, and (2) the form of government the city has been operating under as a general law city.

There is no question that the form of government of neighboring cities—particularly larger cities in the area—influences the choice of form of government for new home rule cities. It is no accident that the area around Houston (mayor-council) has more cities with this form of government than might otherwise be expected. A few cities undoubtedly influenced by Houston’s choice include Pasadena, Texas City, League City, and Hitchcock. Conversely, the Dallas/Fort Worth metroplex has virtually no mayor-council cities. Here, the influence of those two large council-manager cities certainly has been felt through the years.

The second determinant—the general law plan currently operative—is also a factor in choice of the form of government for the new home rule city.

Those who write a city’s first-time charter are obviously very familiar with the current organization and practices of the city as it is then operating as a general law city.

The charter writers undoubtedly decide that they would like to duplicate some of the current practices while happily discarding other general law requirements and procedures. The two most influential practices of general law cities that appear to be carried over to home rule charters might well be: (1) the six-member city council with the mayor as the sixth member voting only in case of a tie, and (2) the position of city administrator which more than 300 general law cities have established by ordinance. Of the home rule cities governed by a six-member council, it is somewhat common for the mayor to vote only in case of a tie. This arrangement has been known to cause some problems as we shall see when we address the role of the mayor in Chapter 8. The experience of the general law city with a city administrator will likely be the factor that determines whether the charter commission recommends a council-manager or a mayor-council form for the new home rule city.

## Charter revision to change the form of government

Regardless of their size, cities with existing charters may also change the form of government if they so choose. Texas cities have been extremely reluctant to exercise this option in the last 60 years; only four major cities have made such a change during that time. Houston, mentioned earlier, changed briefly and reverted back to mayor-council in 1947. San Antonio (1951), Laredo (1981), and more recently El Paso (2004), abandoned the mayor-council form for the council-manager plan.

Following the 2007 election year, charters were adopted by the cities of Buda, Celina, Hondo, Los Fresnos, Roma, and Windcrest. The 2008 election produced additional charter cities in Iowa Park, Lucas, and Willis. Horseshoe Bay, Pittsburg, and South Padre Island approved home rule charters in 2009. The count for each form of government is as follows:

	1994	2008
Council-Manager:	87%	89%
Mayor-Council:	13%	9%
Commission:	0%	2%*

The count above is accurate, but at the same time, does not tell the whole story. The council-manager plan has changed from the original structure of the plan, which called for: (1) a mayor who was selected from among the council after all winners had been seated as councilmembers, (2) a non-paid governing body, and (3) at-large elections. Although a few cities still adhere to these criteria, most council-manager cities have long ago changed to electing the mayor at-large, with some or all of the councilmembers elected by districts. Pay for the mayor and council is a significant change, and the dollar figure keeps rising every year.

The great majority of council-manager cities contain all the basic elements of the plan: selection of a profes-



# Form of government

sional administrator, prohibitions against council interference with the city manager's appointments and day-to-day operations, and charging the city manager with responsibility for budget preparation. Some cities, however, have at best a weak manager plan. Evidence of this type charter is council appointment of various department heads, including at times the police chief, fire chief, city engineer, and others. The Temple charter calls for council appointment of a finance director and the Sweetwater charter for the appointment of a city comptroller.

\*"The very small percentages of cities which have identified themselves as having a commission form of government in this study have, by charter, mandated the hiring of a city manager. To that extent, they are not a 'true' commission form of government but rather operate as a council-manager form of government." Zech, Charles E., "An Analysis of Texas Home Rule Charters" (2008), Texas State University *Applied Research Projects*, Paper 280, p. 44.



## Introduction

The purpose of the home rule amendment to the Texas Constitution was to free cities over 5,000 inhabitants from going to the legislature each session for authorization to take care of some problem at home.

Perhaps the enabling act spelling out 34 specific powers left charter drafters unsure whether the constitutional amendment would be upheld to be as broad as intended. Whatever the reason, cities that are supposed to have any power not prohibited to them still have charters that devote 20-25 pages doing what amendment writers in 1912 were trying to avoid—spelling out powers in endless detail.

Not one but dozens of charters take from one-fourth to one-half of the total charter to spell out the powers of the city. These charters spend several pages on the details of the power of the city to maintain peace and order, to regulate streets, to levy assessments; to spell out the powers of eminent domain and annexation, the power to maintain a library, hospital, parks and playgrounds and other city facilities; and finally, to provide and supervise the municipal court.

Several of the powers spelled out in some of the more detailed sections have been preempted by the legislature. These include assessments for street improvements, much regulation of public utilities, and the basic operating practices of a municipal court.

The preemptions of these specific powers above is reason enough not to try to spell out in excruciating detail every conceivable situation that may occur to a charter drafter. In this day of rapid societal change, the old adage “to include does not intend to do so, but by its very nature excludes everything not specifically included” can come back to haunt us.

## Inherent powers of a city<sup>23</sup>

Chapter 2 discussed briefly the concept of inherent powers possessed by a city and used four examples of such powers—municipal organization; annexation; initiative, referendum, and recall; and charter amendments—to illustrate the advantages of home rule over general law. There are numerous other examples of powers that Texas home rule cities enjoy. These powers are cited in some detail here not to encourage cities to spell out these powers in a charter, but to portray the wide variety of powers possessed by a home rule city. All these can be encompassed in broad statements that the DeLeon charter, described later in this chapter, illustrates quite well.

## The police power

The council has the power to regulate a wide range of local activities in order to promote the general welfare of the city's residents. This is known as the city's “police power,” and it encompasses all governmental powers exercised for the public good.

More particularly, the police power is defined as the city's authority to preserve and promote the health, safety, morals, and welfare of local citizens. It is based on the premise of the supremacy of the rights of the general public over individual rights. Some of the more common methods by which municipal 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 prevent animals from running at large. The council also can declare certain activities to be public nuisances and penalize persons who create them. The courts have held the city's authority to protect the health of the public to be generally broader than other municipal police powers.

The regulation of dogs and other animals, the regulation of unwholesome business practices, and the regulation of slaughter houses 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 inspect and license restaurants and other food service establishments.

Additionally, the city council 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 (Chapter 211, Local Government Code). The city council also has the authority to prescribe standards for the construction of buildings within the city, regulate the condition of buildings, and condemn unsafe buildings (Chapter 214, Local Government Code).

While home rule cities still have broad powers, the Texas legislature often passes laws that preempt city authority. This practice is usually directed at the activities of one or a few cities, but has become a troubling practice because it can affect all cities.

## IS YOUR “VELOCIPEDE” FRIGHTENING HORSES?

Sec. 7. To prohibit, restrain and regulate the rolling of hoops, the flying of kites, the use of velocipedes or other amusement or practice tending to annoy persons passing upon the streets or sidewalks, or to frighten horses or teams.

## Planning and subdivision controls

The city council has the power to spend municipal 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 (Chapters 211, 212, 213, Local Government Code).

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 assure the orderly development of outlying areas.

## Annexation

If permitted under the charter, the council can exercise its annexation powers to bring adjoining unincorporated areas into the city without the consent of the residents in those areas (Chapter 43, Local Government Code). Since state law controls many aspects of annexation by a home rule city, it is prudent for a city council to bring its city attorney into any discussion of annexation.

## 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 the posting of signposts, handbills, and similar items on streets, sidewalks, and other grounds; (7) regulate traffic and sales on streets, sidewalks, and other public spaces; and (8) control weedy lots and junked vehicles.

## 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, market houses, transit systems, electric and gas systems, streets, bridges, culverts, sidewalks, street lights, and many other kinds of facilities.

## Legislative restatement of broad powers and case law

In codifying the statutes pertaining to local government in 1987, the legislature tried to restate the law to make it perfectly clear that home rule cities have “full power of local self-government.” In fact, that phrase is quoted from the Local Government Code (Section 51.072, paragraph (a)). Paragraph (b) of that same section states: “The grant of powers to the municipality by this code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government.”

In addition, the cases excerpted in the LGC, following Section 5.072, reiterate over and over again the rulings of courts that have consistently upheld a city’s broad powers.

## The powers article in DeLeon charter

Barney Knight, former city attorney of Temple and Austin, and now representing various small cities through his private practice, redrafted the “powers” section of the City of DeLeon’s charter several years ago. Mr. Knight spent considerable time researching and wording that statement of powers to take advantage of every power authorized by the Constitution and statutes, while still being brief. That wording in the DeLeon charter, of which Mr. Knight and the city are justly proud, is as follows:

### Figure 7-1: Article III - Municipal Powers

**SECTION 1.** The said City of DeLeon shall have power to ordain and establish such acts, laws, rules, regulations, resolutions, and ordinances, not inconsistent with the Constitution and laws of Texas and of this Charter, as shall be needful for the government, interests, health, welfare and good order of said City and its inhabitants. Under the name of the City of DeLeon it shall be known in law and have succession and be capable of contracting and being contracted with, suing and being

sued, impleading and being impleaded, answering and being answered unto, in all courts and tribunals, and in all amounts whatsoever, subject to the laws of the State of Texas, or which shall hereafter be passed.

The City of DeLeon shall have the power to take, hold, lease, grant, purchase and convey such real property or mixed property or estate, situated within, or without, the limits thereof, as the purpose of said corporation may require and shall have and use a corporate seal, and change and renew the same at pleasure.

**SECTION 2. Rights Reserved** - All suits, taxes, penalties, fines, forfeiture, and all other rights, claims and demands, of every kind and character, which have accrued under the laws in favor of said city, heretofore in force governing the same, shall belong to and vest in said city and shall not abate by reason of the adoption of this Charter, and shall be prosecuted and collected for the use and benefit of said City of DeLeon and shall not be in any manner affected by the taking effect of this charter; but as to all of such rights, the laws under which they shall have accrued shall be deemed to be in full force and effect.

**SECTION 3. Local Self-Government** - The City of DeLeon shall possess and may exercise the full power of local self-government. It may hold, by gift, deed, devise, or otherwise, any character of property, including any charitable or trust fund, and subject to and within the limits of superior law may act in perpetual succession as a body politic.

**SECTION 4.** For greater certainty, the following are hereby especially enumerated and referred to as being among the other powers which are hereby conferred upon and which may be exercised by the City of DeLeon, to-wit:

A. All of the powers conferred upon cities and towns by Title 22 of the Revised Civil Statutes of Texas, 1911, except as may hereafter be denied,

limited or extended, are hereby conferred upon the City of DeLeon as fully and completely as if such powers were herein separately enumerated.

B. All powers, privileges and immunities conferred upon cities of more than five thousand inhabitants, by Section 4 of Chapter 147, Acts of the 33<sup>rd</sup> Legislature, General Laws Regular Session, at Page 310 to 316, entitled, "An Act Authorizing Cities Having More Than Five Thousand Inhabitants, by a Majority Vote of the Qualified Voters of said City, at an Election Held for the Purpose to Adopt and Amend their Charters, etc; and such powers are hereby conferred upon the City of DeLeon as fully and completely as if each of said mentioned powers were herein separately enumerated; but enumeration of special powers herein, or in the Statutes referred to, shall not be held or construed to preclude the city from exercising all powers of local government not inhibited by the Constitution and Laws of the State of Texas, or by special limitations in this Charter contained, the purpose of this Charter being to enlarge upon the power extended by the general laws of cities incorporated thereunder, and to secure to the City of DeLeon, all the powers conferred by the Constitution and Laws of this State upon cities having more than five thousand inhabitants.

## The model charter

Perhaps one day in the twenty-first century case law will be so well established that a powers statement could be shortened even further to read as the NCL model city charter suggests:

**Figure 7-2: Article I - Powers of the City**

### **Section 1.01. Powers of the City.**

The city shall have all powers possible for a city to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in this charter.

### **Section 1.02. Construction.**

The powers of the city under this charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power granted in this article.

### **Section 1.03. Intergovernmental Relations.**

The city may participate by contract or otherwise with any governmental entity of this state or any other state or states or the United States in the performance of any activity which one or more of such entities has the authority to undertake.

## Federal Voting Rights Act

There is one cautionary note in this discussion of powers. The city council needs to continually be aware of the requirements of the federal Voting Rights Act, for it not only restricts the city's freedom in city council elections, but also must be taken into account before annexing land.

Under that Act, federal approval is required for:

- the relocation of a municipal election polling place or changes in any precinct boundary line;
- the annexation of territory that affects local voting patterns to any degree whatsoever;
- a change in the method of electing city councilmembers (for example, a change from at-large elections to elections by wards, or vice versa); and
- a change in the terms of elected municipal officials or a change in the method of selecting any official (for instance, providing that an official whose office is presently appointive will in the future be elective, or vice versa).

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

Under the Act, prior to final implementation of any annexation, any change of polling place, change in the term of any municipal elected official, or any other "change affecting voting," the city must do one of the following: (1) obtain a declaratory judgment from the U.S. District Court for the District of Columbia that the proposed change will not result in the denial or abridgement of the right of any person to vote because of his or her race or color; or (2) submit the proposed change to the U.S. Attorney General. If, within a specified time, the Attorney General fails to object to the proposed change on the basis that it will have the effect of abridging or denying any person's voting rights on account of race or color, the change can be implemented.

Of note is the 2009 U.S. Supreme Court decision in the case of *Northwest Austin Municipal Utility District v. Holder*, 129 S.Ct. 2504 (2009), which concluded that a political subdivision may apply to federal court in Washington, D.C., to "bailout" (be exempted) from the Act's requirements. In any event, the city council should seek the counsel of an attorney whenever it contemplates any action that might result in a "change affecting voting." Failure to comply with the requirements of the Act can subject city officials to civil and criminal penalties and can mean that any "change affecting voting" will always be subject to challenge.

"The Mayor" is one of the most prestigious political positions in American politics. From that position, individuals have advanced to governor, United States senator, presidential cabinet member, and other less prominent posts. Although some would say the position does not carry the power it once did, U.S. presidents still listen to mayors.

As the political head of a city, the mayor is expected to provide the leadership necessary to keep it moving forward. Except under the council-manager form of government, the mayor is the city's chief executive officer. Virtually all charters recognize the person in that position as the ceremonial and governmental head of the city. In addition, the mayor is usually designated the city's chief executive in times of disaster and emergencies. Several Texas charters delegate extraordinary powers to the mayor in emergency situations. Most of the day-to-day powers and responsibilities of the mayor are spelled out in the city charter or in ordinances. Very few mayoral powers are prescribed by state law.

The mayor's most important duty is to furnish the political and community leadership to build and maintain a healthy and viable city. This is often achieved through working with a city council and the city administration for a goal-oriented legislative and budgetary program to meet the needs of the citizenry. As presiding officer of the city council, the mayor can exercise a considerable amount of influence through the power of recognizing councilmembers for motions or statements, ruling on questions of procedure, and in some cities, vetoing actions of the city council.

Historically, the mayor's real powers have fluctuated, depending on the form of government utilized and the complexity of problems faced.

## The mayor in American history

Certainly the mayor was the key figure in early American cities. In early times in Texas, as throughout the nation, cities were governed by the mayor-council form of government, and many mayors wielded extensive powers through appointments and patronage. He—and they were all males for a long time—was the undisputed chief executive officer of the city. This did not change with the advent of the commission form of government in 1900, but did begin to change with the initiation of the council-manager movement in the early 1900s. Richard Childs, one of the founders of the council-manager plan, was adamant about calling the person in the position "chairman," not mayor. He insisted that individuals run for the city council and then select one of their own as chairman. Childs and other early proponents of the council-manager plan believed the strength of the plan was in the policy and political leadership of the council as a whole, not in a

single individual.

But as cities throughout the country grew, many citizens felt the need for a single, strong political leader in the person of "the mayor" to keep their city in the forefront of economic development and prosperity.

Thus, the "strong" mayor plan flourished in many cities and produced such leaders as Ivan Allen, Sr., and later Ivan Allen, Jr., in Atlanta; Louie Welch in Houston; and Richard Lee in New Haven. They and others were hailed for their political and community leadership.

Those mayors "ruled" from charter strength. But a different type of mayor evolved in the larger cities under the council-manager plan – a "facilitative" mayor. With none of the appointment, budgetary, or executive power of the men mentioned above, mayors such as Eric Jonsson in Dallas and Henry Cisneros in San Antonio led their cities by sheer personal magnetism and intellect, facilitating local successes through the joint action of the total city council and professional administrators.

Today, mayors in both forms of government are relying to a great extent, not on the formal authority of the office, but on personal informal authority as the "elected spokesperson for the community. They work with all segments of the city and the region to initiate, expand, and improve governmental services." Neal Peirce, in his book, Citistates, says it this way:

In virtually every city there is a cry for leadership – for someone to take a strong hand to organize the town for the future. Yet an individual who tries to take too prominent a role or steps on toes of any interest group suddenly finds himself or herself under fire, oftentimes in the local press . . . None of that means we need leaders any less . . . A central civic challenge for today's citistates is thus to nurture, encourage, and advance a replacement generation of civic entrepreneurs. Some will surely be from businesses large and small. But others need to be from universities, citizens groups, minority communities, and especially the expanding professions of the new service economy, from law to medicine—to accounting.

Peirce acknowledges inherent problems in civic efforts: major corporate officials too occupied with global survival to participate, lack of media support, racial groups suspicious of less than a fair share, too many plans never implemented. He concludes, however, that the problems underscore the importance of the goal.

Nevertheless, the absence of effective leadership, a citistate totally adrift, is a more frightening prospect. The nurturing of new leaders and the creation of metropolitan partnerships that open a way for those leaders to play important region-wide roles are two of the most critical challenges for American citistates in the 1990s.<sup>24</sup>

Distinct differences in mayors’ positions

There remain, however, distinctive differences between the charter authority and duties of a mayor leading a mayor-council city and a mayor leading a council-manager city.

A comparison of key elements of the mayor’s role in the three largest cities in Texas pinpoints the differences.

Figure 8-1: Differences in mayor’s positions			
Factor	Houston (Mayor-Council) Pop. - 2,208,000	Dallas (Council-Manager) Pop. - 1,240,000	San Antonio (Council-Manager) Pop. - 1,328,000
Pay	\$14,583/month	\$5,000/month	\$366/month
Appointment of city’s Department heads	Appoints, subject to City Council approval	No individual decision authority in this area*	No individual decision authority in this area*
Annual budget	Prepares for City Council approval	No individual decision authority in this area	No individual decision authority in this area

\*The City Council, with mayor voting, does appoint the city manager, city attorney, city secretary, and city auditor.

It seems obvious from the comparison in figure 8-1 that an examination of the mayor’s role demands two separate tabulations for the two forms of government. It would be useless to report that the average salary of the mayors in the three largest cities in Texas was something like \$6,649 per month. Yet, some national and state publications in the past have combined mayors of all cities into one summary tabulation.<sup>25</sup>

Charter language regarding the mayor

The pay and responsibility table displays the differences between the mayor’s position in Houston, Dallas, and San Antonio reflecting the content of the “Mayor” articles in their respective charters.

The Houston charter, and similarly the mayor-council charters of Pasadena, Bay City, and others, devote a specific article to the mayor. These articles cover such areas as the definition of the mayor’s position, general powers of the mayor, privilege of vote and veto, authority for removal of appointive officers and employees, and compensation of the

mayor. Mayor-council charters thus address the mayor as the elected head of the city and the chief executive officer. For the latter role, the provisions are similar to the city manager sections in a council-manager charter.

The Dallas charter, and many other council-manager charters, devote one section (one paragraph) to the mayor exclusively. Other sections cover the responsibilities of the mayor as a member of the entire city council.

Selection of the mayor

Mayors of all mayor-council cities in Texas are elected at-large by the voters. Although this is the practice in the great majority of council-manager cities, mayors in six percent of council-manager cities are elected as councilmembers and then selected by their colleagues as the city’s mayor.

Selection of the mayor by the council is reported in some 35 percent of council-manager cities nationwide. The Texas number at six percent is down from the nine percent of the cities in Texas reporting this method in 1994.

Compensation of the mayor

Salary of the mayor is addressed in two different ways by Texas charters. The table below shows these provisions and the number of charters, by form of government, that utilize each of these methods:

Figure 8-2: Setting the salary of the mayor				
	Mayor-Council charters		Council-Manager charters	
	1994	2008	1994	2008
Council sets pay*	46%	38%	55%	38%
Charter sets specific salary or salary range	54%	62%	45%	62%

\*These figures include charters that specifically state the city council shall set its own compensation and charters that are silent on this subject. Where a charter is silent, Section 141.004 of the Local Government Code provides that a governing body of a home rule city may establish a level of compensation for itself.



Salary is an area in which the difference between the two forms of government is very apparent, particularly in the larger cities. The average pay of the mayors in mayor-council cities is \$861.68 per month. This is virtually meaningless, however, since that figure includes not only Houston and Pasadena, but also DeLeon (pop. 2,400) and Olney (pop. 3,300) as well as a host of other smaller cities. It is important to note that 45 percent of mayors in mayor-council cities receive no compensation at all. It is more enlightening to note that the salary of mayors in cities over 50,000 using the mayor-council form of government ranges from \$14,583 on the high end (Houston) to \$50 per month on the low end (San Angelo), with an average salary of \$5,277.

Overall, the average mayoral pay of the council-manager cities is \$159 per month. The average pay for the three largest council-manager cities – Dallas, San Antonio, and Austin – is \$3,677.88. If the San Antonio mayor's salary at \$4,020 per year were omitted, the average of the other two would be \$5,333 per month.

Mayors in council-manager cities not only receive less in salary, but also the difference between the mayor's salary and the councilmembers' salary is usually small.

## Vote in council meetings

Mayor-council charters do not give mayors the unrestricted right to vote as those in council-manager cities generally do. Among the mayor-council cities, 40 percent allow mayors to have a regular vote in council meetings, while 55 percent allow the mayor to vote only in case of a tie by the council, and the remaining 5 percent allow for no vote at all. In council-manager cities, 65 percent have a regular vote, while 35 percent of the mayors vote only in case of tie. Again, these figures are not unlike national survey figures.

Deciding when a mayor votes has caused at least two Texas council-manager cities a lot of grief. Several cities have retained in their home rule charters a provision of the Type A general law municipality. State law provides that if a Type A city is not divided into wards (and many smaller home rule cities are not), the governing body shall always consist of a mayor and five councilmembers, and the mayor shall vote only in case of a tie. The two cities in question had retained this council number and the mayor's restricted vote provision when they adopted home rule charters. The city councils fired their city managers over the protest of the mayor in each city. Both mayors cited provisions in their charters that purported to give the mayors voting power in the event of a vote on dismissing the city manager. The district court in one county upheld one council's dismissal of the manager, ruling the mayor could not vote. A district court in an adjoining county reversed the council decision of the second city and reinstated the manager! The difficulty in both charters came from trying to delineate the cases in which the mayor might have a vote, other than on a tie vote by the council. Both cities have since gone to an odd number on the council and given the mayor a "regular" vote. Because of the problems of these two cities

and the difficulty of wording a charter clearly, several charter consultants recommend that councils be composed of an odd number of individuals and that mayors be given a "regular" vote just as any other councilmember—on all matters. Urban experts offer other reasons for allowing the mayor to vote on all issues. They concur that a mayor's leadership role can be enhanced by the power to vote, particularly on such critical policy issues as appointment and removal of a city manager or chief administrative officer and on bond issues, tax rates, and the adoption of the annual budget.

## Veto

The veto power of the mayor is generally another distinguishing mark of the difference between the two forms of government. Veto provisions in mayor-council charters are much more common than in council-manager charters—nationwide and in Texas. Of those communities with mayor-council charters in Texas, 32 percent provide for a mayoral veto of council actions. Usually these vetoes can be overcome only by a two-thirds or more vote of the council. But in a few cases, the council can simply reconsider the action. If it votes the action again by a majority vote, the mayor has no authority to veto the item a second time.

Only nine percent of council-manager cities provide for a mayoral veto. The denial of the veto is a reiteration of the historic background of the council-manager plan, which saw the strength of the city in a body of policymakers, not in a single individual.

## Budget role

The mayor in 25 percent of mayor-council cities prepares the budget and submits it to the city council. In some small mayor-council cities, the charter says the council shall prepare a budget.

Budget formulation and submission is one of the chief differences between the two forms of government. Only three percent of the cities under the council-manager plan provide for the mayor to prepare the budget. In the council-manager plan, the charter directs the city manager to prepare the budget for the council as a whole. Increasingly, managers are asking their city councils to give them early policy guidance on the council's priorities for the coming year. The mayor obviously can play a lead role in this priority-setting, but councilmembers are often fond of pointing out that in adoption of the final budget, the mayor has only one vote—just as the other councilmembers do. Although it is very rare, mayors are outvoted on budget matters as they are sometimes outvoted on other items in council-manager cities.

The Texas practice in both types of government parallels the national experience.

## Appointment of city department heads

Mayors in mayor-council cities are generally given charter authority to appoint city department heads, subject to confirmation by the city council. No Texas mayor has the freedom of appointment possessed by the Denver, Colorado, mayor who can appoint approximately 50 department heads without approval. In Texas, the appointments by the mayor generally include the city attorney, city judge, city secretary, and such department heads as the police and fire chief, director of the departments of public works and utilities, and directors of such departments as parks and recreation and libraries. These appointments take only a majority vote of the council to approve; a handful of charters provide that the council also shall have a voice in dismissal of these same executives.

The classic council-manager charter does not provide for council confirmation of the city manager's appointments, but in 25 percent of council-manager cities in Texas, these appointments are subject to council approval. Here again, the mayor has only one vote in this process. A small number of council-manager cities provide for council confirmation of only one or two key departments heads—most often the police chief (39 percent), the finance director (20 percent), as well as the fire chief (five percent). Typically, the city attorney, city secretary, and the municipal court judge are appointed by city council. Several charters allow for the city manager to make these selections; however, they often require these appointments to be approved by city council.

## Appointment of boards and commissions

The typical mayor-council charter in Texas provides for mayoral appointment of boards and commissions, subject to the approval of the governing body. These appointments are normally made by the council as a whole in council-manager cities, although there appears to be the beginning of a trend in these cities to give the mayor the lead role and allow him/her to make such appointments subject to council agreement. In some Texas cities representing both forms of government, the council, but not the mayor, may remove board members.

## Mayor's staff

Mayor-council charters are more likely to discuss staff than council-manager charters. Several of those charters provide for a chief administrative officer.

No council-manager charters in Texas authorize the mayor to have any staff. The small staffs that some council-manager mayors have are simply authorized in the annual budget.

## Elements of the mayor's position that are relatively the same in the two forms of government

### 1. Terms of office

Terms of office are generally the same in both forms of government. Some individual cases are noteworthy. Pasadena elects its mayor for four years and its council for two years, lending additional prestige and unspoken authority to the position of mayor. Dallas also adopted a four-year term for mayor and kept the council terms at two years. Lubbock, Del Rio, and Bellaire, all council-manager cities, took the opposite route – the mayor serves for two years whereas city councilmembers serve for four.

### 2. Filling vacancies

Methods of filling mayor vacancies are not generally determined by the form of government. The most common method of filling a mayor's vacancy created by death, resignation, or removal is council action to replace the individual from its own members. Some charters call for the mayor pro tem to automatically step into the job.

### 3. The mayor as member of council in mayor-council cities

A few mayors are not a part of the city council. This feature of an entirely separate executive is more often found in larger cities and in other parts of the country. Typically, the mayor is a member of the council in council-manager cities in the state; although, as pointed out earlier, the position is sometimes not given a full vote. In addition, in some of these council-manager cities, the presence of the mayor cannot be counted as part of the quorum.

## Concluding thoughts on the position of mayor in the two forms of government

As pointed out in Chapter 6 and developed in more detail here, there are major charter differences in compensation, voting, veto power, budget role, and appointment powers of the mayor in the two major forms of government in Texas and nationwide. Mayors in council-manager cities have always understood their leadership must come from their powers of persuasion. Over time, mayors in mayor-council cities have seen governance, particularly in larger cities, become so complex and fragmented that they, too, no longer have the power they once did. They also must exercise the power of persuasion to move their city forward – perceptively and unstintingly promoting cooperation that minimizes debilitating conflict.<sup>26</sup>

As the governing body of the city, councils are the focus of a separate article in virtually all charters. This article sets forth the basic requirements for election and organization of the council and covers a wide range of other subjects, all relating to the structure and operation of the council.

The city council is such a key ingredient of well-functioning city governments that this book devotes two chapters to it. Some of the topics could be covered in either chapter. They are divided with a goal of improving clarity.

The first chapter emphasizes the role of councilmembers as individuals: election, terms of office, term limits, compensation, benefits and staff, and personal liability.

The second chapter examines the council as a legislative body: powers and duties, conduct of council meetings, absence from those meetings, and filling vacancies.

Since the methods of electing councilmembers and setting term limits continue to be two of the most controversial subjects in city government, they are discussed first.

## Council elections through the years

The governing body of towns incorporated during the Republic of Texas was the Board of Aldermen. The terminology derives from Old English, “older man,” who assisted the Anglo-Saxon king in governing a subunit of the kingdom. Colonists probably brought the term to Texas.

The term “alderman” is used today by some general law cities. Other general law cities use the term “Board of Commissioners” for the governing body. Almost all home rule cities have abandoned both terms and use “City Council.” A very few cities cling to a portion of their general law heritage and call the governing body the “City Commission” or “Board of Commissioners.”

In the Republic, aldermen were usually elected from wards. Election of aldermen by wards continued into this century until the reform movement’s advocacy of election-at-large to escape the “evils” of ward politics. Over the last quarter century, the trend has reversed somewhat to election by wards. Now, however, proponents have changed the term to “districts” to avoid the negative connotation of wards. In fact, the Austin City Council in 1994 coined the term “neighborhood election districts,” but the voters still rejected a single-member district plan for the fifth time.

## Methods of council election

The two methods of electing the municipal governing body are “at-large” and by “district.” Each method has subdivisions, but they are variations of the two basic methods. The two basic methods also can be mixed to provide still another configuration—the “mixed systems” form.

Our review of the use of current election methods shows no apparent relationship between a city’s size or form of government (mayor-council or council-manager) and the election method used.

## At-large and at-large-by-place

**At-large** – All candidates are placed on the ballot and those receiving the most votes citywide are elected to office. Generally, these individuals are elected by plurality (the largest number of votes regardless of the percentage of the total vote). A typical example: three council positions are vacant and there are five candidates. If a plurality is specified, the top three vote-getters are elected whether any one of them receives more than 50 percent of the total vote. Occasionally, a city requires a candidate under the plurality measure to receive a minimum number of votes. Corpus Christi’s charter states that “If fewer than three candidates for at large city council positions receive a plurality of at least twelve percent each of the total votes cast for all at large city council candidates, there shall be held on the second Saturday following any such election a runoff election” and provides additional details for how the runoff will be conducted. In Ennis, commissioners (city council) are elected by plurality, but an individual must get 35 percent of the votes cast or face a runoff with the next highest person on the ballot.

If a majority vote is specified, a candidate must receive more than 50 percent of the total votes cast. If vote totals do not produce a winner, the two top candidates must have a runoff election.

**At-large-by-place** – This does not refer to a geographical area; rather, each council seat is designated a position or a place number: Place 1, Place 2, and so on. Candidates must run for a specific place and the race is between candidates filing for that same place. The majority vote requirement has been stated in charters as a rule, but cities accused of discriminating in the election method may find they must change to a plurality requirement, since this is believed to offer minorities a better opportunity to be elected in the “place” method of election.

Minority groups have been critical of both types of at-large elections. The federal government has often agreed and mandated through the courts and the Justice Department that many cities in Texas convert from at-large to single-member district elections. The conversion began in the late 1970s and continues to spread to medium and smaller cities.

The specific arguments proponents use for single-member district systems include:

- provides direct representation by a single councilmember;
- makes voting easier and assures greater accountability from those elected;
- reduces campaign costs; and
- gives less affluent and minority areas of the city representation.

Proponents of at-large elections cite the following as advantages of this method of election:

- promotes community-wide council vision;
- fosters unity rather than divisiveness;
- provides voters a “voice” in election of all members rather than just one;
- eliminates restriction by districts, allowing election of any qualified person; and
- avoids ward politics and political machines.

## Cumulative voting

Examination of another election method of at-large voting is important. This method includes cumulative, limited, and bullet voting. Cumulative voting represents an alternative to the single-member district form of representation that characterizes government on all levels in Texas and the United States. Cumulative voting systems allow voters to cast as many votes as there are seats on a particular board or commission. Candidates must run for a specific seat (e.g., seat #5) as they do in single-member district representation. However, voters can use all their votes on a single candidate or distribute their votes among the contenders for several seats. Robert Brischetto and Richard Engstrom studied cumulative voting and noted that “Cumulative voting, in short, allows voters to do more than choose among candidates, it allows them to express the intensity of their preferences as well.” Cumulative Voting and Latino Representation: Exit Surveys in Fifteen Different Communities 78 Social Science Quarterly 973 (1997). Cumulative voting permits the voter to cast his or her votes in the traditional way, but it also permits “intensity voting.” For this reason, it is argued that it will increase voter interest and participation in the election.<sup>27</sup>

Two variations of cumulative voting are in use in some jurisdictions—limited voting and bullet voting. Under limited voting, a voter has fewer votes than the number of positions to be filled (e.g., two votes with three positions to be filled). A variant of limited voting is called bullet voting, in which voters can cast a single vote in a multiple-position election. With bullet voting, a minority candidate can be elected to office more easily than under the pure at-large system.

The recognized Texas expert on cumulative voting is Dr. Delbert Taebel, Professor of Urban Affairs and Political Science at The University of Texas at Arlington. Dr. Taebel

has written extensively on the general subject of alternative systems and is a frequent speaker to charter commissions and civic groups exploring election methods. Dr. Taebel and others argue that under any of these methods, the election outcome will more nearly reflect the major groups within a community without the rancor that sometimes accompanies single-member district systems. There is some evidence that ethnic minority groups are now supporting cumulative voting instead of suing cities to adopt single-member districts.

In May 1994, the City of Andrews, under threat of a lawsuit, adopted charter provisions to institute cumulative voting as its city council election method. The first city council election using cumulative voting occurred in May of 1995. An additional 16 small Texas communities, with populations ranging from 1,109 to 3,908, also adopted cumulative voting in response to lawsuits alleging voter dilution. Cities in Texas are not the only entities now utilizing cumulative voting. Thirty-two school districts and one hospital district have also adopted this form of voting in Texas. Cumulative voting is now used to elect local governing bodies, including cities, school boards and hospital districts, in 60 local governments in 5 states.

Prior to this, only two cities in the country experienced cumulative voting—Alamogordo, New Mexico, and Peoria, Illinois, also in response to lawsuits. Alamogordo, under a consent decree in 1987, agreed to use cumulative voting for at-large positions in elections in 1987, 1990, and 1994. In March of 1997, voters there approved an amendment to the city charter and began the process to dissolve the use of cumulative voting. The charter language provided that “For the March 1998 City election only, the Commission shall consist of three (3) Commissioners elected at-large and one Commissioner from each of four (4) districts, elected by the voters of that district in the March 1996 City election. A Commissioner representing a district shall be a resident of that district. Beginning with the March 2000 City election and continuing for all subsequent City elections, the Commission shall consist of one Commissioner from each of seven (7) districts, elected by the voters of that district. A Commissioner representing a district shall be a resident of that district.” Elections based on single member districts are still in place today.

Peoria held an election for its at-large council seats by cumulative voting in 1991. A lawsuit settlement in 1990 ordered the city to use cumulative voting. The court order is in effect permanently, so Peoria will use cumulative voting for its at-large elections every four years.

## Preferential voting

One non-traditional election method appeared in two charters. Gorman, in its original charter of 1920, called for councilmembers to be elected by preferential voting. Sweetwater adopted its first charter in 1947 and followed suit. Gorman may have influenced Sweetwater since the two cities are only about 100 miles apart. Under preferential vot-

# The city council - election and service

ing, a voter marks his/her first and second choices for as many candidates as there are places to be filled. If no candidate receives a majority (more than 50 percent of the vote), the election officials go back to each ballot and count second choices until enough candidates to fill the vacancies receive a majority vote. The Gorman charter states that second choices shall be counted, but does not designate a weight for them. The Sweetwater charter is more specific. It says a first choice counts as one vote, and a second choice counts as one-half vote.

The counting provision is now immaterial, because Gorman has not used the system in at least 40 years, and Sweetwater discontinued it in the early 1980s. Gorman now elects the council by majority vote; Sweetwater by plurality.

## Variations of district elections

The single-member district approach is the alternative system that such groups as the National Association for the Advancement of Colored People (NAACP) and the Mexican-American Legal Defense Fund (MALDEF) have advocated since the mid-70s in Texas. They have argued, successfully in most cases, that a city council elected completely by this method provides the greatest opportunity for ethnic minority representation.

**Single-member district** – The single-member district system divides the city into a specific number of geographical areas (wards or districts). For convenience, these districts are usually numbered: District 1, District 2, and so on. In a “pure” single-member district configuration, a candidate for District 1 must live in that district and is voted on only by voters in that particular district. The adjective “pure” also has been used by advocates to describe the election system for the entire city when all candidates, with the exception of the mayor, are elected from single-member districts. “Pure” single-member district examples are San Antonio, Fort Worth, and Lubbock.

A few Texas cities elect all members of the governing body by the single-member district system. The council then elects a mayor from its own membership at the first council meeting after the election. This variation of the system can cause the mayor substantial problems. A former mayor of Pasadena, California, which employs these procedures, once remarked that when he was elected mayor by his colleagues, he was confused when he had to vote on an issue in a council session. He did not know whether he was supposed to represent “the city as a whole” as its mayor or the district that elected him. This problem alone would appear to be a sound reason for trying to avoid this type of election method.

**Variations of single-member district** – A charter can require candidates to live in a district, but be voted on city-

wide for that seat. The reverse can be stipulated in the charter: a candidate can live anywhere in the city, can run for a seat in a district outside the area in which he lives, and stand for election only by voters in the district for which he filed. Both of these variations are in effect in a small number of Texas cities, and some of these cities received Justice Department sanction of these variations in earlier years.

**Mixed district** – A number of Texas cities have charters allowing election of some councilmembers by district, with the mayor and one or more other councilmembers elected at-large. Advocates of this system say it combines the advantages of both at-large representation and district or geographical representation. Opponents believe it is a halfway measure to placate advocates of both systems and, as a result of the split, accomplishes neither purpose.

**Mixed system and majority/plurality voting** – Mixed systems (single-member and at-large) are used in a number of cities. The majority/plurality vote is used in Brownfield and El Campo. In these cities, the mayor is elected by majority vote, two at-large councilmembers by plurality, and five district councilmembers by majority vote. Except for the mayor, this is the type majority/plurality election that is many times sought by plaintiff minority groups and approved by the Justice Department. Many times, the Justice Department requires the mayor to be elected by plurality. The reasoning behind the majority/plurality preference is that it is generally considered easier for a minority candidate to be elected by plurality than by a majority. Thus, the Justice Department has several times required both the mayor and at-large candidates to be elected by plurality. In contrast, in the single-member districts, presumably drawn to allow minority candidates to be elected in a minority district, the Justice Department has agreed to a majority vote.

## Unusual provisions

Several cities have unusual provisions regarding single-member districts. Port Arthur and Victoria both have single-member districts covering the whole city, but also have “super districts” that overlay on top of the basic districts. Voters have a vote for both a councilmember representing the basic district and one representing the super district.

Local landmarks are used to divide the city in a version of single-member districts by Abilene and Vernon. Abilene requires three councilmembers to live north of the Texas and Pacific Railway mainline, which cuts the city in half, and three other councilmembers to live south of the track. Gatesville uses its Main Street as the dividing line, electing three councilmembers from the area north of Main Street and three from the area south of Main Street. Vernon uses a dividing line that is described in the city charter. The citizens of Vernon elect two councilmembers from the east side of the line and two from west of the line. Both cities elect a mayor and the remaining councilmembers citywide.

Some cities allow the city council to increase the number of wards periodically, such as the City of Woodway. Others, such as the City of Sherman, provide for additional councilmembers as the population increases. Currently, Sherman’s Charter provides for seven councilmembers. When the population reaches 75,000, two additional council seats will be added, bringing the total number of councilmembers to 9. The Jacksonville charter provides for a 5-member city council but authorizes future city councils to increase the number to seven and later to nine without a citizen vote of approval. Neither option has been used as of 2009.

Charters are not always clear about whether candidates must live in the district from which they are elected or whether the vote is by district or at-large for councilmembers. An example of excellent wording, which has been included in city charters is as follows: “(Council)members shall be residents of and elected by qualified voters of single-member geographical districts of the city.”

Redistricting commissions

Charter experts generally recommend that city councilmembers themselves not draw district lines. This advice has fallen on deaf ears. All but Dallas and Laredo simply state that the city council shall redraw lines when necessary and usually specify a certain period of time within which they must examine the lines. These two cities each provide for appointment of a redistricting commission. The Dallas commission has 15 members, and the Laredo commission has 16. But both commissions are advisory. The city council is the final judge of the lines.

Survey results of council election methods

The at-large-by-place system is still the most popular in the Texas home rule cities, but by a significantly smaller margin than in previous years.

Figure 9-1: Method of council election*	
At-large:	13%
At-large-by-place:	45%
Single-member district:	26%
Combination at-large and single-member district:	16%

\*This chart uses 1994 data, but other aspects of the recent survey indicate that the numbers are essentially the same.

Mayor and council elections

As a part of the questionnaire sent to city officials, each respondent was asked to enter the dates and voter turnout of the last two mayor and council elections. If neither

of those two were contested, the official was asked to go back to an election in which there were at least two candidates and to enter that race also. Our objective was to verify the premise that contested races have much higher turnout than uncontested races. Not all cities completed this portion of the questionnaire, but we were able to list 262 contested elections over the past two elections and 139 elections in which no one had any opponent.

Overall, voter turnout was not something to be proud of. In the 262 contested races, only 13.24 percent of the registered voters bothered to show up; that comes to 7.68 percent of the total population reported by the cities.

	Percentage of Registered Voters Voting			
	High Reported		Low Reported	
	1994	2008	1994	2008
Cities under 10,000	64.7%	80.9%	3.9%	2.45%
Cities 10,000 - 50,000	48.2%	43.3%	1.9%	2.60%
Cities over 50,000	48.2%	21.5%	7.6%	4.60%

As might be expected, the votes cast in non-contested races were abysmally low. The average for the 101 races was 10.6 percent of the registered voters, or about 5.5 percent of the reported population.

Most cities, regardless of the election system used, have tried to schedule the terms of office in order for at least one citywide race (or alternatively, all district elections) to come up each time there is an election, in order to encourage a higher turnout. This is not possible in every city; hence, the figures above are somewhat lower than they would be if we used only elections in which every voter in the city had a race in which he/she had a vote.

Terms of office

Although Texas charters overwhelmingly call for staggered two-year terms for mayors and councilmembers, it would nevertheless be pertinent to discuss, at least briefly, the generally cited advantages of two, three, and four-year terms, and of staggered versus concurrent terms.

**Two-year term:** The principal advantage of the two-year term is that it requires councilmembers to submit themselves frequently to the voters. It also permits citizens to serve as councilmembers for short periods of time.

The disadvantage of two-year terms is that they require an almost constant campaign readiness for those members who wish to extend their council service, or for potential opponents. For new members, two years is a short time to become acquainted with the in-

tricacies of city government and to learn about the problems of city agencies and programs or those parts of the city with which they may have had no prior experience.

**Three-year term:** A three-year term's principal advantage is that it lengthens the period of service before facing the voters, giving a member time to compile a record and giving a new member time to become proficient in the job. The three-year term also clearly differentiates council service from other public offices. It is a long enough time to accomplish something, but too short to feel like there is a lease on the position.

The principal disadvantage of the three-year term is that one of every two municipal elections will fall in a state or national election year. It could necessitate a separate election, producing some voter confusion. There is also some prospect that the partisanship of state and national elections would be carried over into city elections.

**Four-year term:** Most observers of governments tend to feel that four-year terms encourage those elected to them to invest more time in working on substantive and larger problems of government, rather than thinking about campaign strategy, and to become more proficient in policy issues.

Longer terms can, however, work to increase the insulation of elected officials from the electorate; although, the many arenas for direct contact with constituents in city government appear to make this a far less severe problem than it is for members of Congress or state legislatures.<sup>28</sup>

**Staggered terms:** More than 95 percent of Texas charters call for staggered terms. Charter drafters in Texas have obviously felt that it is desirable to have some continuing experience on the city council and avoid a wholesale turnover of city councilmembers. Staggered terms do tend to provide some stability on the council. On the other hand, they also thwart the will of the people to make a major change of direction. For example, with a five-member council and two-year staggered terms, three members would come up for election one year and two the next. If the council had taken or failed to take a stand on a major issue before the election year when two members were running, the vote for the

two incumbents or for two newcomers would not necessarily change the stance taken by the council prior to election.

## Term limits

Perhaps no legislative issue in many years has evolved with such gathering momentum as term limits. Originally proposed for members of the U.S. Congress and, in some states, for state-elected officials, term limits have now come to the local level. Actually, they may have started at the local level in Texas. The citizens of the North Texas city of Paris placed a two-term (four-year) limit on their city council when they adopted their first home rule charter in 1948. A few other cities adopted such provisions in the 1970s, but the real movement did not start until the late 1980s. Today, 41 percent of Texas home rule cities have limits on the number of consecutive years their mayors and city councilmembers may serve; the form of government or size of the city appears to have very little influence on voter adoption of term limits.

Arguments rage back and forth over the merits of the "term limits" movement. Opponents generally include political scientists and so-called "urban experts" who insist that voters have the ability to terminate any elected official's career by merely turning him/her out at the polls. Proponents of term limits maintain that advantages of incumbency, both in campaign finance and in name recognition, deter or block the termination vote. They argue that term limits are necessary to bring "government back to the people." Along with a widespread distrust, or at least suspicion of government, this "back to the people" plea accounts for term limit elections passing across the country with generally wide margins. Whatever the merits, term limits appear to be here to stay; thus, this book will examine the charter provisions in Texas cities and analyze the trend to 2008.

One of the obstacles to analyzing this movement is the wide variation in charter terminology. It is impossible to ascertain in a few cities whether the limits apply to combined service of one person as a mayor and councilmember or whether the two offices are meant to be considered separately. An equally formidable obstacle is the absence of any case law history and the resulting proliferation of different interpretations.

Term limits in charters are expressed in one of two ways. One way is to have separate limits for the mayor and members of the council. A typical charter with this type limit is Friendswood. That charter states: "The mayor and councilmembers shall be elected to serve for three-year terms as provided below, but no person shall be elected to serve in the capacity of councilmember for more than three consecutive three-year terms, nor shall any person be elected to serve in the capacity of mayor for more than three consecutive three-year terms."

The other way to express limits is to count service as mayor and service as a councilmember together. The charter of the City of Rockport is very straightforward. It states: “No person shall serve more than ten consecutive years on the City Council.” The statement to look for here to assure that the mayor is included in the definition of “City Council” is this additional statement found in the Rockport charter: “The legislative and governing body of the City shall consist of a Mayor and four Councilmen and shall be known as the City Council of Rockport.”

Separate limits on years of service

A total of 36 cities have separate limits for mayors and councilmembers. The most popular limit for these cities is six years for each of the offices. This includes cities that have a three-term limit on two-year terms, as well as cities that have a two-term limit on three-year terms. The full breakdown by limit in years is as follows:

Figure 9-3: Term limits in years when limits are separately applied\*

Cities in which the mayor has separate limits	Limit in years	Cities in which councilmembers have separate limits
9 <sup>a</sup>	4	7
18	6	18
9	8	10 <sup>b</sup>
2	9	2
Total Cities: 38		37

<sup>a</sup>Jacksonville and Waco have limits on mayors, but not on the council.  
<sup>b</sup>Pearland has limits on councilmembers, but not on the mayor.

\*This chart uses 1994 data, but other aspects of the recent survey indicate that the numbers are essentially the same.

The chart above considers limits in one of the two positions – mayor or councilmember. In this type of language, a councilmember could serve his/her limit of, say, six years, and then run and be elected as mayor and serve another six years. Assuming both posts carry six-year limits, one individual could legally serve 12 years.

It should be noted that these limits have been constrained in six cities by imposing “combination” limits. For example, in Graham, although the mayor and councilmembers have six-years limits individually, the charter limits any combined service in those two positions to ten years, not twelve years.

The following chart portrays the maximum number of consecutive/successive years a person could serve as council member or mayor under the separate limits category:

Figure 9-4: Maximum years service when limits separately applied\*

Limit on years of service	Number of cities
6	1
8	9
10	1
12	15
16	8
18	2
Total cities:	36

\*This chart uses 1994 data, but other aspects of the recent survey indicate that the numbers are essentially the same.

Counting service years together

Thirty cities combine mayoral and councilmember service into a single-term limit. The Rockport charter is an example: only “ten consecutive years” on the council. When examining these charter provisions, we find the following term limits:

Figure 9-5: Term limits in years when service applied together\*

Limit on years of service as member of city council, including mayor	Number of cities
4	2
6	19
8	3
9	1
10	3 (five two-year terms)
12	2
Total cities:	30

\*This chart uses 1994 data, but other aspects of the recent survey indicate that the numbers are essentially the same.

Charter language on term limits

Since “model” language has not evolved on this subject, current charter language varies widely. Many charters simply place a limit on “consecutive” or “successive” terms, leaving unanswered the question whether a person appointed or elected to a partial term loses some of the time that might otherwise be allowed. Occasionally, a charter will clearly state that “a portion of a term” does not count as a term of office



# The city council - election and service

for purposes of a limit. Some charters use the word “full term” or “regular term.” These are generally interpreted to mean that if a person comes into a partial term, the partial time will not count toward the limit.

Several cities require a person to “sit out” one year or one term before running for office again (one city requires that an individual must sit out 30 months). Whether this means that in the other cities a person reaching his/her maximum can never come back is unknown. Two cities do state that the term limit is for the “lifetime” of the individual.

Finally, a charter should make it clear whether the limits apply to current councilmembers. Several charters spell this out. Most do not at the present time.

In summary, the term limit movement is still relatively young. If a city does not have this kind of provision in

its charter and desires to have a charter amendment election, officials are urged to carefully review with the city attorney the language to be used in order to avoid some of the ambiguities identified. In May 1994, Austin adopted a charter amendment limiting terms of office, but did provide that if an incumbent councilmember, when his/her limit of terms have been reached, can get a petition signed by five percent of the qualified voters in the city, his/her name shall go back on the ballot. Houston adopted such an amendment in 1991, had several councilmembers qualify under the petition route in the 1993 election, and decided at a January 15, 1994 election to rescind the petition by-pass. Thus, Houston’s term limits have no exception to them.

## AGAINST THE GRAIN

Although the trend is strong for adopting term limits, Port Neches in 1983 and Sachse in 1990 adopted charter amendments rescinding the term limits then in existence in their charters. And Schertz, in 1994, defeated two different charter amendments that would have set limits on councilmembers.

## Qualifications for office

Early Texas city charters included a detailed and lengthy list of qualifications for the prospective mayor or city councilmember. The first officeholders and voters had to be white, male, and citizens of the Republic. Several cities also had property and residence requirements. The original Galveston charter in 1840 required the mayor to own \$1,000 worth of property. A number of charters still require ownership of property within the city and no indebtedness to the city, plus three years residence in the city before filing as a candidate. Arguably unenforceable, these provisions in current charters are historical reminders of practices before state law and court cases established the controlling criteria for qualifications of all public officials.

For more than 30 years, state law has set forth requirements to run for public office in Texas and these requirements apply to candidates for the governing bodies of Texas home rule cities. In addition, federal court cases have held that a city may not require an officeholder to be an owner of property and may not refuse to seat a councilmember for being delinquent in taxes to the city.

The Election Code criteria are set out in Section 141.001. Under that section, a candidate must:

- (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) have been a resident of Texas for at least 12 months as of the deadline for filing for the office,
- (4) have resided in the city for at least six months as of the deadline for filing for the office,
- (5) not have been convicted of a felony for which he or she has not been pardoned or otherwise released from the resulting disabilities, and
- (6) not have been found mentally incompetent by a final judgment of the court.

## Exceptions for home rule cities

The Election Code authorized home rule cities to make two exceptions: (1) the charter can require council candidates to be up to 21 years of age, rather than 18, upon the commencement of the term to be filled at the election; and (2) the charter can require candidates to be residents of the city for up to 12 months, rather than six months, as of the deadline for filing for office.

Virtually every charter in the state says a candidate must be a qualified voter. This is not required by state law, but a home rule city may include this requirement in its charter.

Despite the provisions in the Election Code, some cities still amend their charters to add requirements that are not enforceable. In earlier days, charter writers might have been accused of placing unenforceable qualifications in the charter in an attempt to discourage citizens who might otherwise consider filing for office. It is believed that today’s charter writers are simply not aware of the state law limitations that supersede any charter language.

One disqualification for office that some charters have addressed is dual office-holding. There are two distinct legal barriers to holding more than one public office at the same time: (1) the Texas constitutional prohibition against dual office-holding; and (2) the common law doctrine of incompatibility.

All three of these barriers are too complex to discuss in detail in this publication. Any mayor or councilmember contemplating elective or appointive office in another

governmental entity would be well advised to consult with the city attorney before making any definitive moves.

Some charters provide that city employees must resign before they can run for the city council in their own city. Provisions of this type have been struck down by the courts for city employees covered under the state fire and police civil service law.<sup>29</sup>

## WANTED: ONE BRAVE CITY MANAGER

“Any person having the qualifications set for councilmember under Section 4.02 in this charter shall have the right to file an application to have his name placed on the official ballot as a candidate for any one elective office. Such application shall be made in writing and shall include name, address, date of birth, and personal signature of each candidate. Such application shall be accompanied by his loyalty affidavit, as prescribed by Section 141.031(k) Texas Election Code; his signed affidavit indicating willingness to submit himself for substance abuse testing, within thirty (30) days, after elected and when randomly selected by the city manager, throughout the duration of his term of office.”

## Financial disclosure

The Colleyville, Friendswood, and San Marcos charters each have provisions that candidates must file financial disclosure statements with the city secretary before any election in which they are a candidate. Chapter 145 of the Local Government Code, enacted in 2003, now mandates financial disclosure for certain candidates and officials in cities over 100,000 in population.

## Filing requirements

The Election Code is very specific in regard to a candidate filing for a place on the governing body of a city.

- (b) If a city charter prescribes the requirements that a candidate's application must satisfy for the candidate's name to be placed on the ballot, Section 141.031(4)(L) also applies to the application.\* The other provisions of Section 141.031 do not apply.
- (c) If a city charter requires candidates to pay a filing fee, the amount of the fee and an alternative procedure to payment of the fee shall be prescribed by the charter or by ordinance under charter authorization. However, if an ordinance prescribing an alternative procedure to payment of a filing fee is adopted before the effective date of this code without charter authorization, the ordinance, as it exists on the effective date of this code, continues in effect until the adoption of a charter provision prescribing an alternative procedure or authorizing prescription of an alternative procedure by ordinance.
- (d) For any petition required or authorized to be filed in connection with a candidate's application for a place on the ballot for an office of a home rule city, the minimum number of signatures that must appear on the petition is the greater of: (1) 25, or (2) one-half of one percent of the total vote received in the territory from which the office is elected by all candidates for mayor in the most recent mayoral general election.
- (e) If the city charter of a home rule city with a population of more than 1.8 million, that holds nonpartisan elections for its offices, requires both a petition and a \$50 fee to be filed for a candidate's name to be placed on the ballot, those requirements supersede this section.

\*Section 141.031(4)(L) referred to above requires a statement that the candidate is aware of the nepotism law, Section 573.041 of the Government Code, et seq.

**Figure 9-6: Filing requirements for city council (Section 143.005)**

- (a) A city charter may prescribe requirements in connection with a candidate's application for a place on the ballot for an office of a home rule city. This section does not authorize a city charter requirement in connection with the timely filing of an application, and any charter requirement related to an application's timely filing is superseded by Section 143.007 and other applicable filing provisions prescribed by the code.

## Compensation for city council

Salaries of city councils have received a great deal of attention, particularly in the larger Texas cities. The first question is to decide whether compensation should be established in the charter or by ordinance. Although some charters address the matter of compensation for councilmembers, there are a number of charters that are completely silent on the matter. Where this is the case, the Local Government Code, Section 141.004, authorizes councils to establish a salary for themselves by ordinance.

## Fringe benefits for city council

Weatherford (a council-manager city) and Bay City (a mayor-council city) are examples of cities that give specific

consideration to fringe benefits for councilmembers in their charters. The Weatherford charter says the mayor and council “shall be entitled to employee benefits, which may be paid for by the City of Weatherford.” The only fringe benefit involved currently is health insurance, and the mayor and council are covered under the same con-

### GIVE THAT CITY EMPLOYEE A RAISE!

City Charter of the City of \_\_\_\_\_: Article III, Section 3.04: “The total salary paid during any year to the entire (7 member) city council shall not exceed the annual compensation of the lowest paid permanent full-time city employee.”

tract in effect for the city’s full-time employees. The Bay City charter authorizes the council when it adopts the budget to “offer the mayor any fringe benefits available to other full-time employees including but not limited to health insurance and retirement.” In a later section, the charter says councilmembers “shall be offered any group health insurance available to full-time city employees.” Since the Bay City mayor is a full-time position, the person in that position is furnished health insurance, as are other full-time employees, and is covered under the city’s retirement system. City councilmembers are entitled to apply for the health insurance plan covering full-time city employees but must pay the premium themselves.

The Weatherford provision has been in the charter since a charter amendment was adopted in 1983. The Bay City provision is a part of the city’s first charter, adopted in 1989. Voter attitudes toward public officials today may be the reason other cities have not considered fringe benefits. Charter writers may suspect the topic would receive a cool reception. In the past, it was assumed that councilmembers had fringe benefits from their “regular jobs,” and that most would serve their city only a few years. (The movement toward

term limits in some cities could mandate a short term of service.) However, fueled by political or economic trends, the issue of fringe benefits for elected officials will continue to draw attention in the future.

## Council staff

The use of council staff was not surveyed since it is not covered in any city charter. Staff members, employed and supervised solely by councilmembers, usually are authorized in annual operating budgets; many times there is no basis by ordinance or resolution for these positions.

## Personal liability of councilmembers

Under the Texas Tort Claims Act, city governments may be liable for damages resulting from the actions of councilmembers and other city officials. However, this Act does not speak to the issue of individual and personal liability of mayors and councilmembers. Federal courts have usually held that councilmembers are not personally liable for torts resulting from official actions, so long as they are made in good faith. However, the federal courts in the 1970s began to narrow the boundaries of immunity from personal liability of local officials for their official acts.

Generally speaking, Texas courts have held that councilmembers are not personally liable for torts resulting from “discretionary” acts, but are liable for torts resulting from “ministerial” acts. A discussion of these legal definitions and rulings is beyond the scope of this book. Their implications, however, are important now and for the future.

At least three charters in the state address this problem with an attempt to set forth “indemnification” or “hold harmless” clauses to protect their councilmembers. Longview and Missouri City have specific clauses that presumably shift the financial burden of claims from the individual councilmember to the city. Garland’s charter mandates that the city provide liability insurance coverage for its officials. Under Miscellaneous Provisions, the Charter states, “The City shall provide liability coverage to all officials and officers in a minimum of 5 million dollars to provide protection...”

Because of the complex nature of this subject, individual officeholders are encouraged to consult their city attorney about the appropriateness of a charter provision or an ordinance to address personal liability. An excellent brief discussion of this subject is contained in TML’s Handbook for Mayors and Councilmembers. (See Bibliography.)



Councilmembers are the city's legislators, and their primary duty is policymaking. This demands constant alertness to citizen needs, responsive program planning for current and changing needs, and continuing evaluation of the quality of service provided by city administrators.

A councilmember, like elected members of any policymaking body, has a number of roles—working with fellow members; voting on all issues unless there is a conflict of interest; and pursuing personal community initiatives (often enumerated during the campaign) through motions, resolutions, and ordinances.

## Orientation for the job

A new councilmember must read the city charter carefully before assuming office. He or she should read it before announcing for office.

To help inform the candidates, many cities provide pre-election orientation and/or expanded post-election sessions and tours.

## Organizational meeting

Only one item of business is a “must” for the first post-election council meeting: taking the oath of office.

The oath of office mandated for all public officials is in the Texas Constitution, Article XVI, § 1 (Appendix G). Elected councilmembers and appointed officials are administered the same oath.

A second item of business is often taken up at the first meeting and that is the election of a mayor pro tem. This individual performs the duties of the mayor in the mayor's absence. The mayor pro tem is selected by a majority vote of the council. The term can be for the length of the councilmember's term, or as in several cities, rotated periodically. In some larger cities, a deputy mayor pro tem is elected to distribute the ceremonial duties a little further.

## Powers and duties of the council

Because the councilmember's powers and duties derived from charter provisions dictate what can and cannot be done in council meetings, powers will be reviewed before the council meeting process.

Most city charters distinguish between the powers of the city as a whole and the powers of the city council. The charters of the cities of Killeen, Muleshoe, and Richland Hills provide a fairly typical recitation of council powers in a council-manager city. The following listing is a combination of powers found in the charters of one or more of these cities.

### AGE HAS ITS REWARD

#### “SECTION 3.05—Mayor Pro-Tem:

The City Council, at its first meeting after each annual City election, shall elect one of its members Mayor Pro-Tem, and he shall perform all the duties of the mayor in the absence or disability of the Mayor. In the event the City Council, for any reason, fails to elect a Mayor Pro-Tem at its first meeting after an annual City election, then the councilmember with the longest period of service on the City Council shall automatically become Mayor Pro-Tem. In the event two or more members of the council are tied for the longest period of service, the eldest of such members shall serve as Mayor Pro-Tem. (as amended 4-2-83)”

## REQUIRED HOMEWORK FOR THE NEW COUNCIL

“Shall, within twelve (12) weeks of said councilmember's election, affirmatively swear that he has read the 'Book of City Ordinances,' 'The Constitution of the State of Texas with Amendments,' all articles pertaining to home rule cities contained in 'Title 28 of the revised Civil Statutes of the State of Texas of 1925,' as now or hereafter amended, and all of the articles, sections, and paragraphs of the 'Charter of the City' as now or hereafter amended.”

Figure 10-1: Sample powers of the city council article

All powers of the City and the determination of all matters of policy shall be vested in the City Council. Except where in conflict with and otherwise expressly provided by this charter, the city council shall have all powers authorized to be exercised by the city council by Chapter 4 of Title 28, Vernon's Annotated Civil Statutes (ed. note: now the Local Government Code), and acts amendatory thereof and supplementary thereto, now or hereafter enacted. Without limitation of the foregoing and among other powers that may be exercised by the council, the following are hereby enumerated for greater certainty:

- (1) Appoint and remove the city manager.
- (2) Establish other administrative departments and distribute the work of divisions.
- (3) Adopt the budget of the city.
- (4) Authorize the issuance of bonds by a bond ordinance.
- (5) Inquire into the conduct of any office, department, or agency of the city and make investigation as to municipal affairs.
- (6) Appoint all commissions, boards, committees, task forces, and/or appointed groups to assist the Council in the performance of its duties and responsibilities; such powers subject to the restrictions of the Charter and the laws of the State of Texas.
- (7) Fix the salaries and compensation for the non-elective City officers and employees.
- (8) Adopt and modify the zoning plan and the building code of the city.
- (9) Compromise and settle any and all claims and lawsuits of every kind and character in favor of or against the City.
- (10) Adopt plats.
- (11) Adopt and modify the official map of the city.

## Appointments

In council-manager cities, three officials, in addition to the city manager, are usually appointed by the city council: the city secretary, city attorney, and judge of the municipal court. Some charters discuss these offices in the city council article, but most either have separate articles on each of these officials or cover them, as we will, in a combined fashion in an article on “Departments, Offices, and Agencies.” (See Chapter 13.)

Several charters also have a provision in the council article for appointment of boards and commissions. In fact, a few charters employ considerable detail naming the boards and commissions that the council is authorized to appoint, listing basic procedures for board operation, and stating member qualifications and board composition. (See Chapter 13.)

Finally, in addition to the powers and duties found in this article, the city council’s authority is frequently referred to in other articles of the charter, including particular articles on franchises; issuance of debt; and initiative, referendum, and recall.

## City council meetings

The setting for most of the discussing and “cussing” of a city’s problems is the council meeting. It is important, and possibly a matter of self preservation, to know the basic “ground rules” for these sessions.

## Council meeting basics

The following is a listing of how various charters treat some of the basic matters regarding council meetings:

**Frequency of meetings** – Virtually every charter provides for a minimum number of sessions—once or twice a month or, in the case of larger cities, perhaps weekly. This study’s comparison of charter provisions and the information in the TML membership directory reveals that most city councils meet more often than the charter requires.

**Open meetings** – Council meetings are covered under the state Open Meetings Act. This state law supersedes any less restrictive charter provision. The Texas Supreme Court has ruled that if a city charter is more restrictive regarding open meetings than the state law, then the charter prevails. State law allows exceptions to the Open Meetings Act for discussion of certain enumerated subjects. However, a city’s wording that: “All meetings of the council shall be open to the public,” without any qualification, means literally what it says. If a city with this wording is challenged, it has no defense in citing the exceptions to the law. A more restrictive charter rule supersedes the state act! The preferable charter wording is, “All meetings of the council shall be open to the public except as allowed by state law.”

**Quorum** – The minimum number of attending councilmembers required to take action is usually spelled out. For the council to take official action, the charter’s quorum provision must be followed. City charters are divided on the

portion of the city council required to be present in order to enact ordinances, resolutions, and so on. Several cities specify a quorum of five, for example, when they have seven-member councils. But how many votes are required to take an action? Of the Texas charters that address this issue, 16 percent specify that it takes a “majority of the total council to take action on any matter.” That would be four for a seven-member council. Many other communities, 32 percent, allow action by a “majority of a quorum”.

### REGULAR AND CRISIS PRAYER?

“Section 12. Chaplain. The commission may make provisions for the attendance and service of a chaplain at each regular meeting and at any special meetings at which his services are desired.”

# The city council as a legislative body

The majority of cities, 52 percent, allow for action with only a “majority of those present.” For a seven-member council with a five-member quorum, that could be as few as three persons. Some charter observers insist it should take a majority of the total council to bind the city to an action. Others have no problem with three persons, using the example of a seven-member council, taking action on the part of the city.

**Agenda** – Very few charters address agenda preparation for council meetings. In council-manager cities, it is generally considered the responsibility of the manager, who honors requests for items from the mayor and council. Similarly, in a mayor-council city, the agenda subjects are usually considered to be those first listed by the mayor.

The City of Webster council-manager charter has a simple and common paragraph on the council agenda. It states:

Agenda - Items may be placed on the agenda by the mayor or by consensus of three councilmembers prior to the next agenda to be posted.

**Citizens to be heard** – A minority of charters have specific provisions for hearing from citizens during council meetings. Such time is provided by most cities, however; although neither stated nor guided by the charter. Typically, a city council will adopt rules regarding citizens to be heard. There are many issues to consider when developing this policy including whether a citizen will be required to sign-in prior to the meeting and indicate which topic they would like to speak about, when the citizen may speak, the length of time he may speak, etc. There are many more issues that councilmembers should review in developing the city’s policy and should consult with the city attorney to assure proper procedures are adopted.

**Rules of procedure generally** – Charters usually do not contain detailed council procedures. They are considered subject to change from council to council and thus are most likely found in a handbook of procedures adopted by resolution of the council.

## Consideration and passage of ordinances

Action by the city council on important policy or contractual issues is generally accomplished by ordinances or resolution. Some Texas city charters spell out in great detail the various requirements and procedures for adoption of ordinances; others have brief paragraphs referring to applicable state laws. Few charters address the purpose of resolutions or the procedures for adoption. It is important to understand

the distinction between ordinances and resolutions. The distinction is in subject matter, not terminology. An *ordinance* is more formal and authoritative than a resolution; it is a local law that usually regulates persons or property and usually relates to a matter of general and permanent nature. On the other hand, a *resolution* authorizes action on an accompanying document; for example, it is used to authorize the mayor or city manager to sign a contract for supplies or building construction. There are certain state statutes that prescribe subjects which must be enacted by ordinance.

The NCL model city charter has five sections within the article on the city council that discuss the passage and recording of ordinances. They are:

- action requiring an ordinance;
- ordinances in general (discusses form and procedures);
- emergency ordinances;
- codes of technical regulations; and
- authentication and recording, codification, and printing of ordinances.

Many Texas charters contain section titles similar to the model charter.

## Action requiring an ordinance

In addition to actions required by state law to be enacted by ordinance, many Texas charters require any basic changes in the administrative structure of the city, regulation of land use or development, and all matters relating to franchises to be enacted by ordinance. As in most matters regarding formal action by the council, the city attorney should be utilized by the council to guide the appropriate action.

## Form of the ordinance

State law does not prescribe the form of an ordinance, except to require an ordaining clause (Section 52.002 Local Government Code) and authorization for publication of either the complete text or the caption of every ordinance that establishes penalties for violations (Section 52.013 Local Government Code). A form has evolved through the years and is now used by most cities. This and other information regarding ordinances is in the Handbook for Mayors and Councilmembers, a publication of the Texas Municipal League.

Some charters have gone beyond state law in their requirement for publication, multiple readings, and other procedures designed to assure adequate notice to the citizens of key matters covered by ordinances.

## Emergency ordinances

A number of Texas charters contain procedures for the enactment of emergency ordinances. Such charters frequently follow the language in the NCL model charter; although in some instances, that wording is shortened.

**Figure 10-2: Emergency ordinances**

To meet a public emergency affecting life, health, property, or the public peace, the city council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in 5.07(b)\*. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least \_\_\_\_ members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to 5.07(b)\* shall automatically stand repealed as of the 61<sup>st</sup> day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

\*Section 5.07(b) is a section in the model dealing with emergency appropriation of money. Texas state law does not address the passage of emergency ordinances.

If the charter drafters in a particular city determine that one reading of an ordinance should be sufficient to enact it into law, then no provision for an emergency ordinance is necessary.

## Codes of technical regulations

A number of charters establish procedures to absolve the city from having to reprint, as part of an ordinance,

the voluminous technical regulations issued by recognized national or international professional organizations and instead adopt the codes by reference. Commentary from the National Civic League on home rule charters notes that codes, such as building and sanitary codes, are often detailed and lengthy, and that the NCL charter provision allows a city to simply adopt the code by reference in an ordinance. The NCL, as well as numerous cities across the country, recognize this charter provision minimizes burden and expense while at the same time preserves the essential safeguards required for adopting an ordinance. The San Juan charter contains a typical provision in this regard:

### SECTION 2.14 CODES OF TECHNICAL REGULATIONS:

The City Commission may adopt any standard code of technical regulations by reference thereto in an adopting ordinance and as provided elsewhere by this charter. The procedure and requirements governing such an ordinance shall be as prescribed for ordinances generally except that:

- (1) The requirements of governing law for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and
- (2) a copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the city secretary pursuant to subsection 2.15 (A).

Copies of any adopted code of technical regulations shall be made available by the city secretary for distribution or for purchase at a reasonable price.

## Authentication and recording, codification, and printing of ordinances

Charters generally instruct the city secretary to authenticate a properly enacted ordinance by signing and recording such ordinance in full in a properly indexed book reserved for this purpose. Many charters call for the mayor to sign all ordinances, but most also have a clause prohibiting invalidation for lack of a signature.

Chapter 53 of the Local Government Code authorizes codification of a city's ordinances, including the statement in Section 53.005 that a municipal code of ordinances has the force and effect of an ordinance regularly adopted in accordance with law.



## Summary statement regarding ordinances

Because of the wide variation in charter provisions regulating adoption of ordinances, this publication makes no attempt to conduct a physical count of each specific section in each charter. The use of the descriptive words “many charters” or “some charters” is admittedly very general but is an attempt to give some estimate of the occurrences of specific requirements found in Texas charters.

The complex nature of ordinances necessitates a very brief treatment here. Councilmembers and charter commission appointees can gain a deeper understanding and knowledge from the [Handbook for Mayors and Councilmembers](#) and from their city attorney.

## Prohibitions

This succinct heading, a common one in Texas charters, lists actions that the city council cannot take. Subsections B and C, quoted here from the Missouri City charter, are recognized as essential charter provisions to undergird a sound council-manager relationship. Councils are required in these subsections to deal with department heads and other employees solely through the city manager, except for information inquiries. If a councilmember is not satisfied with the manager’s response to an expressed concern about an employee, the next step is another conference with the manager, not contact with the employee behind the manager’s back. The Missouri City charter section on “Prohibitions” is specific and typical of other such charter statements.

**Figure 10-3: Prohibitions**

- A. *Holding Other Office:* Except where authorized by law, no Mayor or Councilmember shall hold any other City office or City employment during his term as Mayor or Councilmember, and no former Mayor or Councilmember shall hold any compensated appointive City office or City employment until the passage of one (1) year after the expiration of his term as Mayor or Councilmember.
- B. *Appointments and Removals:* Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any City administrative officer or employee whom the City Manager or any of his subordinates are empowered to appoint, but the Council may express its views and fully and freely discuss with the City Manager anything pertaining to any such officer or employee.

- C. *Interference with Administration:* Except for the purpose of inquiries and investigations under Section 3.17, the Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the Mayor nor a Councilmember may give orders publicly or privately to any such officer or employee.

The prohibition language quoted above is from a council-manager charter. Some mayor-council charters contain these same prohibitions against council interference with the mayoral appointments of department heads, but the section is not found nearly as frequently in mayor-council charters as in council-manager charters.

A few cities place language regarding political activities, acceptance of gifts, and other prohibitions in this section of the city council article, but most charters utilize the “General Provisions” article at the end of the charter to cover these and other miscellaneous topics (See Chapter 17).

## Investigations

A section on council investigations is found in virtually every charter regardless of form of government. This provision is not in conflict with the previous prohibitions, but is designed to give the council authority to make investigations into city operations when such action is necessary. This section is—and should be—used very sparingly. When it is necessary to invoke this section, it generally means there is something amiss in city operations. The Rosenberg charter contains a rather typical paragraph on this power:

### **Sec. 3.13. Investigation by the city council.**

The city council shall have power to inquire into the conduct of any office, department, agency, officer, or employee of the city and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. Failure to obey such subpoena or to produce books, papers, or other evidence as ordered under the provisions of this section shall constitute a misdemeanor.

## Annual audit

Under Sections 103.001-103.004 of the Local Government Code, every city is required to have an annual audit of its financial records and accounts. The audit can be performed either by a certified public accountant or a quali-

fied city employee, and must be made available for public inspection no later than 120 days after the close of the city's fiscal year. Although state law allows the audit to be conducted by a city employee, virtually all cities require an outside firm or individual who has no connection with the city whatsoever.

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.

The provision for the audit can sometimes be found in the finance article of the charter. There are charters that have no provisions for an annual audit. It could be argued this is irrelevant because state law controls. Most charter observers suggest, however, that this is a place where state law should be repeated in the charter or listed in an appendix, providing the citizen reading the charter with a greater sense of security.

A few cities have a limit on the numbers of consecutive years that one individual or firm can audit the city. Most cities leave it up to the governing body to decide whether to employ a different firm after a period of time. The Texas City charter is representative of what charters generally contain on the audit:

## **Sec. 13. Annual audit.**

As soon as practicable after the close of each fiscal year, an independent audit shall be made of all accounts of the city government and corporations established by the city. The certified public accountants, appointed by the commission, shall have no personal interest, directly or indirectly, in the financial affairs of the city or any of its officers. The scope of the audit shall require a limited review of city-owned property and the results shall be reported with each annual audited financial report. Upon completion of the annual audit, the combined balance sheet thereof shall be published in the official newspaper of the city within thirty (30) days of commission acceptance of such audit. Copies of all audits shall be placed on file with the city's public library, the director of finance and the city secretary.

## **Internal auditor**

Three large cities have provisions in the charter for council appointment of an internal auditor. In Dallas, the individual is appointed by council and "shall hold the office for a two year period" at which time council can make a determination whether to renew the individual for another two year term. In Austin, the auditor is appointed directly by the city council. The charter provision is brief and utilizes an or-

dinance to clarify the auditor's duties and relationships with the council, audit committee, and city manager. In Fort Worth, the charter was recently changed from the person being recommended by the city manager and appointed by the council to the auditor "shall be selected by the Council and shall be responsible to the Council."

## **Absences from council meetings**

Over 50 percent of charters have provisions for removing a councilmember who regularly misses council meetings. Most of them state "absence from three consecutive regular meetings" is grounds for removal. Of course, illness or other compelling reasons relieve the councilmember from this requirement, but excuses are expected to be filed ahead of time except in emergencies. The "absence" language comes from state law governing Type A general law cities.

Other charters include a variety of phrases regulating council attendance. The Alpine charter states that a member forfeits one-half monthly salary for each council meeting missed without excuse. Colleyville requires a minimum of 75 percent attendance during a year, and Mansfield requires 80 percent during a year. Others mandate a maximum number of meetings that can be missed in a six-month period.

Curious as to whether this requirement was enforced even when the charter states "the councilmember *shall* be removed from the council," (emphasis supplied), we contacted city officials of cities in which these provisions exist. Although the great majority of cities indicated councils were reluctant to enforce these provisions, even to the extent of granting excused absences "after the fact," we did find several cities that had followed through with removal action. Both Mercedes and The Colony have the "three consecutive regular meetings" phrase, and both cities have ousted councilmembers who failed to attend the requisite number of meetings. In one city, a councilmember was indicted for a felony and jailed. The member had not yet been convicted of the felony that would meet the requirements for disqualification under state law. However, the member was not able to attend meetings because of his incarceration, and the council took action under the absence phrase in the charter. The individual removed did not pursue the matter. Huntsville reported that a councilmember did resign from the council because of the same absence provision in its charter. A San Marcos official said the provision was in its charter now because of a previous problem before the provision was inserted. And finally, two other cities indicated that they had "come close" to invoking this charter provision, but had not to this date. It does appear that a statement on attendance is helpful in the charter; it gives the council some authority to urge regular attendance by members.

Vacancies on the council


Vacancies on the council can result from resignation, death, disability, recall, or failure of a councilmember 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, § 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 is automatically removed from the council if more than one year remains in his term at the time of such announcement.

Also, some city charters with two-year terms 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, he shall immediately forfeit his 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; i.e., regardless of whether a regular municipal election is imminent. The most popular provision for cities with two-year terms of office is for appointment by the council in the case of one vacancy, or special election in the case of two or more vacancies. An election to fill a vacancy must be on one of the uniform election dates specified in the Election Code, unless it is a vacancy required to be filled under the Texas Constitution.

Under Article XI, § 11, of the Texas Constitution, cities with three- or four-year terms *must* fill all vacancies by election of majority vote within 120 days of the vacancy. Finally, some cities with two-year terms require that all council vacancies must be filled by special election. Among these cities, the common practice is not to require special elections in cases where a regular municipal election is imminent; e.g., within 60 to 90 days of the time the vacancy occurred.



# I NOMINATE MY BROTHER-IN-LAW

“Section 2.06 Vacancies

A single vacancy in the Council shall be filled within thirty (30) days of the occurrence of the vacancy by a majority vote of the remaining members of the Council by selection of a person qualified for the position as described in this Charter. If the vacancy is caused by the resignation of a Councilmember who is in good standing, that Councilmember may submit a nominee for that position. This nominee must be accepted or rejected by the Council before other nominees can be considered. Once appointed, this appointee shall serve until the position can be filled at the next regular City election.”

Figure 10-4: Charter Requirements for Fulfillment of Vacancies

	Appointed	Elected	Provides for Either
1 Vacancy	36%	39%	25%
2 Vacancies	13%	67%	20%



The city election process traditionally has been the sounding board for public opinion. With their votes, citizens choose their leaders and endorse or reject such major decisions as issuance or assumption of bonds and sale of alcohol. Because of their importance, city council elections and other elections conducted by the city are discussed in a separate article in the NCL model city charter and most Texas charters.

That article in today's city charters is primarily a recitation of the specific requirements for municipal elections in the very detailed Texas Election Code. This code addresses voter qualifications and registration, election officers and observers, time and place of elections, supplies, the conduct of elections, absentee voting, laws pertaining to candidacy, regulation of political parties, elections to fill vacancies, recounts, election contests, and regulation of political funds and campaigns.

Although the qualifications for mayor and/or councilmember and the requirements for filing were discussed at length in Chapter 9, there are several additional areas of importance to city officials and charter commissioners that warrant special treatment here. They include:

- plurality/majority vote
- cumulative voting
- election dates (uniform and others)
- nonpartisan elections
- the elections article

## Plurality/majority/cumulative voting

Section 2.001 of the Election Code is captioned Plurality Vote Required and states: "Except as otherwise provided by law, to be elected to a public office, a candidate must receive more votes than any other candidate for the office." This is very clear – in an election for one place with three candidates, the winner need only poll more than either of the other two candidates, not more than the two of them combined (that would be a majority, of course). The key phrase above, however, is "unless otherwise provided by law." There are two, and possibly three, situations that qualify under this phrase. First, any public official elected for a term of more than two years is required to be elected by majority vote. This is found in the Texas Constitution, Article XVI, § 11. Second, Section 2.75 of the Election Code provides that in cities of over 200,000, election of city officials shall be by majority vote. Third, home rule charters have been recognized as "law" as the term is used in Section 2.001 of the Election Code. Until 1994, no other kind of election was being conducted except by majority or plurality. As noted earlier, however, the City of Andrews adopted a charter amendment in

May 1994 calling for election of its council by cumulative voting.

Charter drafters are cautioned to be very careful in their use of the two terms—majority and plurality. Several Texas charters somehow wound up calling for election of their city officials by both majority and plurality. In one city, the title of the section is "Election by Majority," but the text says, "The person receiving the highest vote..." In a recent court case, the district judge ruled that the majority vote language prevailed. In another city, one portion of the charter calls for "election by majority." A few pages later, it states that "election shall be by plurality." That city is utilizing majority vote until the charter can be corrected.

## Arguments for and against majority/plurality voting

Cities under 200,000 population that have two-year terms have a choice of electing city councils by majority vote or by plurality. To assist in this decision, the following is a brief list of some of the arguments made for each method of election. Arguments in favor of plurality and against majority elections:

- (1) The election is clear and simple. Voters have to go to the polls only once, and all voters in the city vote in the same election.
- (2) When a majority is required to elect, there are usually only a few races in which no candidate receives a majority of votes at the first election. This means that when the second runoff election is held, it is for only a few positions. When candidates run from single-member districts, the runoff election will be held in only a few districts. Little public attention gets focused on the runoff elections.
- (3) The Texas majority runoff system has been accused of discrimination against women and minorities. They run and win in the first election against a wide array of other candidates, but then can be overwhelmed by a unified opposition in the low-turnout runoff election. The Justice Department, with increasing frequency, looks for alternative voting methods that tend to increase the electoral clout of minorities. Cumulative voting, bullet voting, and single-shot voting each require a plurality system as a base.

Arguments in favor of majority and against plurality elections:

- (1) Members of the city council should represent a clear majority of the voters in their constituencies. Only a majority vote gives them a clear mandate to pursue a program and speak for the interests of their district or other constituency.
- (2) When there are multiple candidates, the issues can be diffused and voters can be uncertain of the merits of the respective candidates. In such elections, the narrowing of the race to the two strongest candidates sharpens the choice and removes the ambiguity from the electoral results.
- (3) The cost of a runoff election is small in comparison with the added stature clear majorities give to those who are ultimately elected by clear majorities. Runoff elections are also important in diverse constituencies because they force the two contenders to appeal to those who supported other candidates in the first election. This contributes to building coalitions that include people whose interests might be safely ignored if a candidate could win with a plurality of votes, because each candidate must make a concerted appeal to the largest voting bloc in the constituency.

## Election dates

The Texas Election Code prescribes certain days for holding municipal elections. City elections may be held only in May and November. Any municipal election held on a day other than one of those prescribed is void unless it is specifically authorized by the statute. The Texas Election Code reads as follows:

### § 41.001.UNIFORM ELECTION DATES.

(a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

- (1) the second Saturday in May; or
- (2) the first Tuesday after the first Monday

in November.

(b) Subsection (a) does not apply to:

- (1) a runoff election;
- (2) an election to resolve a tie vote;
- (3) an election held under an order of a court or other tribunal;
- (4) an emergency election ordered under

Section 41.0011;

(5) an expedited election to fill a vacancy in the legislature held under Section 203.013; or

(6) an election held under a statute that expressly provides that the requirement of Subsection (a) does not apply to the election.

(c) Except for an election under Subsection (a)

or Section 41.0011, an election may not be held within 30 days before or after the date of the general election for state and county officers, general primary election, or runoff primary election.

City council and charter amendment elections are not authorized on any day except the ones listed above.

Section 2.025 of the Election Code prescribes a time for runoff elections to help cities with majority elections where no candidate receives more than 50 percent of the vote at the first election. Section 2.025 provides home rule charter cities with some flexibility to set the runoff date later if a delay will allow a joint election to be held with another political subdivision.

Charters do not address the subject of joint elections, but cities are urged to explore this matter to save money and obtain a higher turnout of voters. Chapter 271 of the Election Code contains the basic statutory requirements concerning joint elections.

## Nonpartisan elections

Nonpartisan elections are such an integral part of municipal elections in Texas that they are taken for granted by city officials and citizens. Long-time municipal observers and many former mayors and city councilmembers believe that the nonpartisan election is one of the principal reasons for the outstanding reputation that Texas cities enjoy in the country. And nonpartisanship transcends the form of government. The two largest mayor-council cities—Houston and Pasadena—have nonpartisan elections. Similarly, Dallas, San Antonio, Austin, and Fort Worth, as council-manager cities, conduct their elections accordingly. The smaller cities using both forms of government follow suit. Arguments in favor of nonpartisan elections include:

- (1) Nonpartisan elections focus candidate and voter attention on city problems and their solutions. When city elections are held on a partisan basis, they tend to be overshadowed by state and national contests, preventing the candidates and voters from focusing on city issues.
- (2) Nonpartisan elections make it easier for councilmembers from a variety of backgrounds and ideologies to cooperate in resolving critical problems. Party politics are irrelevant to most issues, which are largely concerned with means rather than ends and which are not well-served by jockeying for partisan advantage to expand the scope of control over local offices or to enhance the chances of state and national party tickets.
- (3) Competition in council elections is frustrated rather than stimulated by party politics because many areas of the city are solidly in the grip of a single party, making it infeasible for good people of the other party to even consider running for council. Nonpartisan

elections make it much easier for voters to support an able candidate without concern for party affiliation.

Arguments in favor of partisan elections include:

- (1) Partisan elections help voters identify the general governmental philosophy of candidates for council.
- (2) Partisan elections make it easier to hold councilmembers accountable for the overall performance of the government as well as for their own individual performance in office.
- (3) Partisan elections stimulate competition for council positions, enhancing voter participation and choice among candidates and programs. Parties provide mechanisms for recruiting candidates for council and mayor, and a mechanism for financing campaigns.

Municipal officials and citizens in Texas have obviously given more weight to the arguments in favor of non-partisan elections. In summary, this is one election question that appears to be settled in Texas for a long time.

## The elections article

So what does the elections article in a city charter address? A representative sample of charters shows a fairly uniform coverage of certain key items in the election process. Most of the language adjusts the state law requirements to the city in question. Typical sections in the charter's election article look like this in a number of cities:

- Section 1 is titled "City elections" or "Calling and Regulating Elections." Language in this section might include authorizing the city council to call the elections, listing the date of the election, making provision for election judges, designating the hours and places of election, and stating the composition and method of election of the council.
- Section 2 relates to filing for office (covered in this document in Chapter 9).
- Section 3 relates to the official ballot and includes information on who draws up the ballot, how names are listed, and the deadline for printing the ballot.
- Section 4 relates to canvassing the results. This would contain the statements about delivering the ballot boxes to city hall, meeting of the city council to canvass the results, and other matters to complete the election process.
- Section 5 relates to runoff elections and a tie vote.
- Section 6 relates to election by plurality or majority. It includes a specific statement indicating how candidates are elected.

## Summary

In Chapter 3, we emphasized that state law supersedes home rule charters, and we listed options by which cities might deal with matters that the state heavily regulates. At that time, we suggested the possibility of repeating some state law language in a charter appendix—just to give the citizen a general idea of the process and procedures in a particular function. The elections article would seem to fit this suggestion, listing enough information for citizens to get a good idea of the process, but sparing them every detail of the subject in question.





City managers are a twentieth century American invention. This new form of city government developed in the early 1900s with the goal of applying private business principles to public management. This is why early city managers came from a business background, primarily engineering. In fact, when the Professional Association of City Managers was organized in 1914, it almost adopted a requirement that members be engineers.

Through the years, emphasis on the engineering aspects of the position was superseded by emphasis on broad administrative ability. Texas managers today are attorneys, finance specialists, and educated public administrators. As early as 1923, universities began offering special graduate level programs to prepare students for a career in city management. Today, these programs are offered nationwide.

In keeping with the trend toward specialized education, it is becoming more and more common for city managers in Texas to have master's degrees in "public affairs" or "public administration." This managerial background also is evident in very small cities where complex economic, social, and environmental problems are like those in larger cities. Citizens are demanding, in addition to business-oriented operation, a social awareness of their individual struggles with crime, education, and housing. Clean water and paved streets are no longer enough.

Texas cities are embracing the city manager educated in public administration as they earlier embraced the new council-manager form of government. From the adoption of the council-manager plan by Amarillo in 1913, the plan rapidly became the most popular method of city organization in the state. Conversions from the other two forms of government occur every year. Not just in Texas, but across the country as well as indicated in the ICMA's 2009 Municipal Yearbook.

Since this book was first published in 1994, over 60 additional communities have adopted the council-manager system as their preferred choice of local self-governance. One of the biggest changes occurred in 2004 when voters in El Paso amended their city charter to move from the mayor-council to the council-manager form of government.

As of 2008, 89% percent of Texas' home rule cities operate under the council-manager form of government. Several other cities operate under an "optional city manager" charter that provides that the City Council may (emphasis supplied) appoint a city manager.

The typical council-manager charter in Texas contains a separate article on the city manager and follows the language of the NCL model city charter in many respects. That article usually contains three subsections: appointment and removal of the manager, powers and duties, and other provisions.

## Appointment and removal of city manager

The charter of the City of Alpine has a clear-cut statement:

### Figure 12-1: Article VI City Administration

#### Section 4.01 City Manager

- (A) The Council shall, upon approval of a majority of the full City Council, appoint a City Manager who shall be the chief administrative and executive officer of the City, and shall be responsible to the Council for the administration of the affairs of the City.
- (B) The City Manager shall be chosen by the Council solely on the basis of executive and administrative training, experience, and ability.
- (C) The City Manager shall be appointed for an indefinite term and receive compensation as may be fixed by the Council.
- (D) No member of the Council shall, during the time for which he or she is elected, nor for one (1) year thereafter, be appointed City Manager.
- (E) The Council may by affirmative vote of a majority of the full City Council adopt a resolution removing the Manager from office. The action of the Council in removing the Manager shall be final; it being the intention of this Charter to vest all authority and fix all responsibility for such removal in the City Council.
- (F) The City manager may, by letter filed with the City Secretary and subject to approval by the City Council, designate a qualified City administrative officer to be Acting City Manager during the temporary absence or disability of the Manager. If the City Manager fails to make such designation or if the Council chooses to revoke such designation, the Council may appoint an Acting City Manager to serve during such time. The Council may remove an Acting City Manager at any time.

Our review of council-manager charters in Texas focused on several of the individual requirements and statements above. The following is an analysis of key provisions.

## Vote required for appointment

Appointment of the manager by majority vote of the entire membership of the council, not simply a majority of a quorum, assures undisputed support for the appointee. Since that wording would require four votes on a seven-member council, even if there were two vacancies on the council, some cities use the phrase: “by the vote of a majority of all Councilmembers qualified and serving.” Texas charters have not paid that much attention to the wording, as only a few of the charters require this type of “full” majority for appointment.

## Education/experience required

Most charters use wording similar to that in the Alpine charter, giving the city council some discretion in evaluating the education and experience that candidates bring to the job. The Laredo charter had one of the more restrictive statements on the qualifications of the manager requiring at least three years experience as a city manager or an assistant in another city. In the late 1990’s, the charter was amended to require even more restrictive qualifications and the charter now reads:

“The City Manager shall be appointed on the basis of executive and administrative qualifications. He/she shall have a Bachelor’s Degree and no less than seven years experience in municipal government, five of which must be supervisory managerial experience. A Master’s Degree in Public Administration is preferred. The City Manager need not be a resident of the City or State at the time of appointment, but must reside inside the City while in office.”

## Residence

Residence is addressed in the NCL model city charter and in the great majority of Texas charters. The Model states: “The manager need not be a resident of the city or state at the time of appointment but may reside outside the city while in office only with the approval of the council.” Texas charters generally do not include the exception quoted in the model charter above, but do allow some time for the manager to establish residence in the city after appointment. One charter states that residence must be established in four months; several others provide for six months. One charter requires residence be established within three years, prompting one cynic to remark that the city manager wouldn’t have to worry about this provision because he wouldn’t be around that long.

## Term of appointment

The great majority of charters follow the language found in subparagraph (c) of the Alpine charter. Terms of one to five years for the manager are found in a small number of charters. Appointment for an indefinite term is considered preferable, because contracting for a specified term reduces the discretion of the council to remove a manager.

Most charters are quiet on the subject of contracts for the manager, but there are some exceptions. One charter states that the manager will be appointed for a definite period, not to exceed two years. One charter says a contract may be extended to the manager for a period up to four years, another allows up to five years, and yet another provides for up to six years. At least one charter limits severance pay to six months. Reports have shown that a number of cities, particularly larger ones, have some form of employment agreement with the manager. The Texas City Management Association has prepared a model agreement (available at [www.tcma.org](http://www.tcma.org)) that many cities use as a starting document. Municipal attorneys generally agree the charter does not have to specifically give the council the authority to enter into these contracts with managers.

## Appointment of mayor or councilmember as manager

Tabulation was made of the charters with a provision prohibiting the appointment of the mayor or a city councilmember as city manager during their terms of office. A substantial number of charters have such language. Figures were tabulated for the question: “Former member of the city council is not eligible for appointment as city manager for (one), (two), (three) years after going off the council.”

**Figure 12-2: Years Before City Councilmembers Eligible to Serve as City Manager**

	1994	2008
1 Year	39%	34%
2 Years	15%	16%
3 Years	1%	1%
Not Addressed in Charter	45%	49%

Farmers Branch and San Antonio stipulate that a former mayor or councilmember shall never be eligible to serve as city manager.

## Appointment of mayor or city councilmember as acting manager following death, resignation, or removal of a manager

Most charters do not address this question, but several provide that a sitting mayor or councilmember cannot be appointed as an acting manager during the time the city is “between” managers. Several other cities have charter language that an advocate of the manager plan would consider to be undesirable. For example, one charter allows a member of the city council to be appointed acting manager upon a 5/7 vote of the council. Two charters allow the mayor or a councilmember to be appointed acting manager for no more than ninety days. Two others permit the mayor to act as city manager, in case of a vacancy, until an acting city manager can be appointed. Another charter provides that

the mayor or councilmember can serve as acting manager during a vacancy.

### DOES RELEASE SPELL RELIEF?

“Section 4.1 No person who has held an elective office of the City shall be eligible for appointment as city manager within one year of his release from such office.”

## Vote required for removal

The NCL model charter requires a majority vote of the “full council” to remove the manager. Many Texas cities agree with that requirement, as 64 percent of the council-manager charters have it. Thirty percent of cities require only a majority of a quorum. The remaining six percent have other specific requirements for the removal of a city manager. Exceptions include a charter that requires a 5/7 vote to fire the manager, another that requires a 4/5 vote, and another that requires a 2/3 vote unless a contract specifies otherwise. At least three charters prohibit the discharge of a city manager within 60 days after a council election if the manager has been in office for one year or longer, and then only with a 4/5 vote; another charter, in the same circumstances, requires a unanimous vote to discharge the manager.

## Public hearing before removal

While the NCL model charter requires a hearing, Texas cities are of differing minds. Cities requiring a public hearing for the manager before removal total approximately 40 percent; the other 60 percent do not provide for a hearing or the charter does not address this issue. Arguments are mounted on both sides of this issue, but the fact remains that cities are not of one mind.

## Acting manager

In order to remove any doubt as to the identity of the acting city manager, the manager is required, in most charters, to designate a city officer or employee to serve as acting city manager during the temporary absence or disability of the manager. The council is free, of course, to replace the acting manager if it is dissatisfied with performance, and the acting manager is not entitled to the protection of the removal procedures afforded the manager.

## Duties of the city manager

The next major subjects addressed in virtually every Texas council-manager charter are the duties, sometimes called the “powers and responsibilities,” of the city manager. A great many charters have adopted all or a great deal of the language of the NCL model city charter which states:

**Figure 12-3: Powers and duties of the city manager**

The city manager shall be the chief executive officer of the city, responsible to the council for the management of all city affairs placed in the manager's charge by or under this charter. The city manager shall:

- (1) Appoint and suspend or remove all city employees and appointive administrative officers provided for, by, or under this charter, except as otherwise provided by law, this charter or personnel rules adopted pursuant to this charter. The city manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency;
- (2) Direct and supervise the administration of all departments, offices, and agencies of the city, except as otherwise provided by this charter or by law;
- (3) Attend all city council meetings. The city manager shall have the right to take part in discussion but shall not vote;
- (4) See that all laws, provisions of this charter, and acts of the city council, subject to enforcement by the city manager or by officers subject to the manager's direction and supervision, are faithfully executed;
- (5) Prepare and submit the annual budget and capital program to the city council and implement the final budget approved by council to achieve the goals of the city;

- (6) Submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;
- (7) Make such other reports as the city council may require concerning operations;
- (8) Keep the city council fully advised as to the financial condition and future needs of the city;
- (9) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy;
- (10) Provide staff support services for the mayor and councilmembers; and
- (11) Assist the council to develop long term goals for the city and strategies to implement these goals;
- (12) Encourage and provide staff support for regional and intergovernmental cooperation;
- (13) Promote partnerships among council, staff, and citizens in developing public policy and building a sense of community; and
- (14) Perform such other duties as are specified in this charter or may be required by the city council.

## Appointment of department heads and other employees

The major differences between Texas charters and the NCL model is that 25 percent of Texas council-manager charters require council confirmation of department head appointments. This does mean that the majority of the charters follow the model and allow the manager to appoint these key individuals without reference to the council—at least formally. A few charters require the confirmation of one or two sensitive department heads, but not every department head. The most likely department heads to require confirmation by the council are the police chief (39 percent), finance director (20 percent), and fire chief (5 percent). The city attorney, city secretary and municipal court judge often require confirmation by council when the City Manager is provided authority for these appointments (See Chapter 13).

The great majority of charters do not require consultation with the council before removal of department heads. In a select few cities, the council, however, must confirm removal of these officials; in another, the charter requires consultation with the council prior to such removal.

## Preparation of budget

The NCL model charter provisions quoted above contain the standard provision found in most Texas charters. However, the Grand Prairie charter contains a more descriptive sentence in regard to the budget. Its charter mandates that the city manager shall: “prepare an annual budget designed to accomplish the goals and objectives established by the City Council, submit it to the City Council for approval and be responsible for its faithful administration after adoption.” Many charters contain more details in their articles on “finance and budget.” Those details will be covered in Chapter 14.

## Other duties

The Grand Prairie charter lists two additional duties of the city manager which, although not found in a majority of the charters, nevertheless are worth mentioning. One of these duties is to “see that all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchise or other franchise or contract are faithfully kept and performed; and, upon knowledge of any violation thereof, to call the same to the attention of the city attorney, whose duty it shall be to take such steps as may be necessary to enforce the same.”

The other duty says the manager shall “prepare the agenda of each meeting of the City Council in accordance with this Charter and the rules of procedure adopted by the City Council.” Agenda preparation is not mentioned in the great majority of council-manager charters; although, it is assumed by many to be the responsibility of the manager and not of the council. We did not specifically survey the location of this responsibility. In our review of the charters, we did find that a few charters make provision for consultation with the mayor on preparation of the agenda and some others that allow councilmembers to request items to be placed on the agenda. Without charter provisions, it can only be surmised that agenda preparation is worked out between the manager and the council and perhaps covered in city council procedures which can be changed from time to time.

## Other provisions in the article on city manager

A minority of charters have other provisions listed under this article. They include:

**Bonds** – A number of charters specify that the city manager shall be bonded; some specify the amount, while others leave that decision to the council. Most charters omit this provision, presumably covering it by ordinance or resolution to the council.

**Nepotism** – The state law on nepotism arguably covers city managers that act as “a final hiring authority.”

**Prohibitions against council interference** – This matter was discussed in Chapter 10 and is an essential part of a sound council-manager charter. A few charters place this paragraph under the article on the manager.

**Administrative departments and directors of departments** – These provisions are more commonly found in a separate charter article on “departmental organization” (or a similar title) and will be covered in the next chapter of this book.

**Investigations** – A few charters authorize the city manager to investigate the conduct of any office or department and to subpoena witnesses. As discussed in the previous chapter, authorization for the city council to conduct such investigations is found in the great majority of council-manager charters. The presence of such a provision enabling the manager to conduct such inquiries is fairly rare.

## “Weak” council-manager charters

A few cities in the state have council-manager charters that weaken and dilute the form of government by placing obstacles to the council and manager relationship, and confusing the lines of authority and responsibility. One council appoints a comptroller; another appoints a director of finance. These appointments, made independent of the city manager, can divide responsibility for certain functions and confuse the council about who is accountable.

One South Texas city charter states that the city council shall appoint and set the pay of the police and fire chief and the fire marshal. A central Texas city charter says if the manager and a supervisor differ over appointment of an employee, the city council shall resolve the issue. One North Texas community’s council, by a 4/5 vote, can require the city manager to remove a specified city employee. And one coastal city has a provision for councilmembers to act as liaison to certain departments of the city. None of these provisions provide for the clear line of authority necessary to create a good working relationship between the council and the manager.

Another potential problem for council-manager relations is the failure of past charter commissions and city councils to eliminate conflicting language when changing forms of government from mayor-council to council-manager. It is not unusual for a mayor-council charter to authorize the city council to remove any officer or employee of the city at its discretion. However, this provision in a council-manager charter is obviously confusing since all council-manager charters authorize the manager to hire and fire city employees. More than a dozen council-manager charters still provide that the council can fire employees, and at least two cities reported problems arising from these conflicting provisions.

## Optional council-manager charters

A council-manager charter is usually defined as one that establishes the city manager provision by use of the word “shall.” The key phrase is: “The city council shall appoint a city manager who...” The legal definition of “shall” means the city council is required to appoint a person to the office. It also means that only a charter amendment vote by the people can eliminate the position, not just a vote of the council. On the other hand, the word “may” in the legal sense allows a permissive act. The council may or may not appoint a city manager. It also may appoint and later drop the position at any time without any requirement of a charter amendment election.

Texas has a few cities in which appointment of a city manager is optional; these cities either state in their charter that the council “may appoint a manager” or use other language indicating that the manager position is not a firmly fixed one, but rather exists at the whim of the council. In addition, one charter states that the city council may designate the city secretary as city manager; it can, of course, also de-designate such nomination.

## Unusual council-manager charters

Four other cities with unusual charter provisions have been defined as council-manager cities. In two cities, the mayor chooses the city manager, but that individual’s appointment and removal must be approved by the council. Involvement of the council meets one of the key criteria for the form of government; the mayor cannot hire and fire the manager or administrator. Two other cities originally have optional language. Both charters have statements that the city council “may at such time as the financial condition of the City make it feasible, appoint a city manager...” This statement alone would tend to classify them as optional cities, but the charters have another provision that states that the position, once filled, can be terminated only by a petition of the voters, followed by a referendum vote to retain or abandon the system. Both cities filled these positions several years ago; thus, any abandonment can be accomplished only by a vote of the people—a charter amendment.

## Summary

Texas council-manager charters have generally followed good precedents: the NCL model charter or area charters that contain sound council-manager language. The national reputations of some of the Texas council-manager cities as role models attests to the fact that: (1) Texas cities have a solid legal and structural foundation; and (2) city councils and city managers are jointly and effectively delivering quality services to their citizens.



The title of this chapter is the same as that used in a number of Texas charters as well as in the NCL model city charter. However, the predominant title in Texas charters for the subject matter covered in this chapter is either “Administration” or “Administrative Departments.” In smaller cities, this charter article typically includes the city manager as well as other departments and offices. Other charters devote separate articles to each department or officer. This chapter will discuss the following:

- Creation of departments
- City attorney
- City secretary
- Municipal court judge
- Planning function
- Personnel and civil service
- Health function
- Other departments and officers
- Boards and commissions

## Creation of departments

The Marble Falls charter has a clear statement on the creation of administrative departments in a council-manager city:

### Section 4.02 Administrative Departments

There shall be such administrative departments as are established by this Charter and may be established by ordinance and, excepting as otherwise provided in this Charter, these administrative departments shall be under the direction of the City Manager.

The Council shall have power by ordinance to establish administrative departments or offices not herein provided by this Charter. The Council may discontinue, redesignate, or combine any of the departments and/or administrative offices. No changes shall be made by the Council in the organization of the administrative service of the City until the recommendations of the City Manager thereon shall have been heard by the Council.

The head of each department shall be a director who shall have departmental supervision and control. Two (2) or more departments may be headed by the same individual and

the City manager may head one (1) or more departments.

In most charters, three offices are specified by name: the city attorney, the city secretary, and the municipal court judge. An administrative code adopted by the council is the appropriate place for establishing the other departments or defining their departmental organization and operating rules and regulations. In fact, many aspects of the internal organization of departments or divisions should be governed by administrative order rather than by council action.

## City Attorney

Each city should have either a full-time or part-time legal officer, depending on the size of the city and the volume of legal problems. Many small towns contract with a legal firm or with an individual. Some city councils prefer to contract with a firm, while others prefer to have an attorney full-time on the city staff. Very small cities have little choice if they do not have enough work for a full-time employee. Some slightly larger cities have a full-time employee because they want their own lawyer immediately available. Other cities can afford and have enough work for a full-time employee but contract with a firm because of its variety of expertise.

Charters frequently provide that the city attorney, with council approval, can bring in special counsel when the need to do so for a particular court case or other problem arises.

The West University Place charter has a typical section on the city attorney:

The Council shall appoint an attorney, licensed by the State of Texas, to be the City Attorney. The City Attorney shall be entitled to compensation for services as established by the Council and shall serve at the pleasure of the Council. The City Attorney shall draft or approve as to legal form or file written objections to every ordinance proposed by the Council and shall review all contracts and other documents in which the City has an interest. The City Attorney, or other attorneys selected by the City Attorney with the approval of the Council, shall represent the City in all litigation. The City Attorney shall be the legal advisor to the City and counsel for the City and all its officers and departments in the conduct of City business.

## Survey Results

Our survey of the state's charters produced the following figures in regard to selection of the city attorney:

**Figure 13-1: Selection of City Attorney**

	1994	2008
By City Manager:	6%	2%
By City Manager with City Council Approval:	9%	8%
By City Council:	73%	72%
By City Council on recommendation of City Manager:	3%	8%
By Mayor with City Council Approval:	7%	9%
Other:	2%	1%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

The large figures for "appointment by the city council" are a little misleading since they include the contracts with firms or individuals entered into by the council. For cities over 50,000, the figures look like this:

	1994	2008
Appointed by city council – manager not involved:	64%	80%
Appointed by the city manager or manager involved:	36%	20%

The six largest cities in the state have an interesting mix of appointment methods. In Houston and El Paso, the mayor appoints the city attorney with approval of the city council; in Dallas, the appointment is by the council; in Fort Worth, the attorney is appointed by the city council on recommendation of the city manager; and in San Antonio and Austin, the city manager appoints the attorney, and no council confirmation is required. Various arguments are made for and against the council appointing the attorney. Some contend that legal questions are so crucial that the city council needs to be sure that the attorney's opinion is not "laundered" in any way by the manager before it gets to the council. On the other hand, having both the manager and the attorney report to the council can be divisive, particularly if the attorney has a disposition to mix some policy advice with legal advice. There is no single best answer to the question. Whatever the policy, the key is that all the players should be guided by an open, trusting relationship.

## City Secretary

The term "city secretary" is used intentionally here. Survey results showed this title to be heavily preferred by 90 percent of Texas cities over the title "city clerk." The city secretary, like the city attorney, is frequently the subject of a separate article in the charter. The establishment of this

position is also found in the city council article, and sometimes within the mayor or city manager section of the charter. Wherever it is, the job is a critical one.

Although a few charters do not establish this position, the overwhelming number do. Those charters also stipulate responsibilities for the city secretary. Several charters include lengthy detail, but the Hurst charter really says all that is necessary:

The city manager shall employ a city secretary and such assistant city secretaries as the city manager shall deem necessary. Such persons shall report to the city manager who shall establish their compensation and duties. The city secretary or an assistant city secretary shall give notice of the city council meetings, take the minutes of such meetings, authenticate ordinances and resolutions by his or her signature and shall index and keep such minutes, ordinances and resolutions.

Over the years, the duties of the city secretary/city clerk position have grown in scope in all cities, but particularly in small cities. In response to this expanded role, many members of the profession are members of the Texas Municipal Clerks Association (TMCA), which is a TML affiliate that is housed at The University of North Texas. To meet the professional responsibilities of the position, a certification program for city secretaries and clerks was established. According to the TMCA website, over 500 Texas Municipal Clerks have completed the extensive three-year certification program. TMCA also has several reference tools for all city officials, including the Texas Municipal Election Law Manual (4th Edition) written by Analeslie Mancy, the Texas Municipal Law and Procedures Manual (5th Edition) written by Alan Bojorquez and the Texas Municipal Clerks Handbook (8th Edition) written by the TMCA. More information on TMCA and the certification program can be found at <http://municlerks.unt.edu>.

## Survey results

Our survey of the state's charters produced the following figures in regard to selection of the city secretary:

**Figure 13-2: City Secretary/Clerk**

	1994	2008
By City Manager:	24%	28%
By City Manager with City Council Approval:	15%	20%
By City Council:	35%	33%
By City Council on recommendation of City Manager:	12%	11%
By Mayor with City Council Approval:	7%	6%
Other:	7%	2%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>



# Departments, offices, agencies, and boards

The majority for council appointment of the secretary is consistent with the widespread opinion of city officials that this position is one that “belongs” to the city council.

## HEAR HEAR - HERE!

“Sec. 5.04 City Secretary  
The council shall appoint a city secretary. The city secretary shall be provided an office in the city hall sufficient to maintain the records entrusted to the city secretary’s care and shall be entitled to a seat at the council table at all official meetings.”

Although state law has preempted the majority of matters that might otherwise be included in a city charter, a city does have some authority and flexibility remaining. The charter may:

- provide for the manner in which the judge is to be chosen—by appointment or election. If the judge is chosen by appointment, the appointing authority must be specified in the charter. If a municipal court of record is established, selection is handled differently.
- provide for the judge’s term of office. This can be for a specified number of years or “at the pleasure of the city council” or other appointing authority.
- provide for the appointment of associate judges and temporary judges.
- state whether the judge(s) must be an attorney.
- provide for a clerk of the court.

Texas charters formerly were very detailed regarding the court; today, this is unnecessary. The Mission charter as amended in 1987 contains the essence of what a charter might address. Several cities in the state devote only one paragraph to the court and the judge (see Paragraphs A and B of the Mission section below):

### Section 4.05 Municipal Court

A. There shall be established and maintained a court designated as a municipal court for the trial of misdemeanor offense, with all such powers and duties as are now or hereafter may be prescribed by the laws of the State of Texas relative to municipal courts.

B. The judge or judges of said court shall be a qualified voter or voters of the City of Mission, shall be appointed by the City Council,

## Judge of the municipal court

State law establishes a municipal court in every city in the state. It establishes the specified jurisdiction for the court and allows the home rule city charter to establish the method of selection of the judge.

shall hold his office at the pleasure of the City Council, shall receive such salary as may be fixed by the City Council, shall be under the administrative direction of the City Manager, and said judge shall not be an elected official. The City Secretary or an assistant City Secretary shall be ex officio clerk of said court.

C. The Clerk of said court and his deputy shall have the power to administer oaths and affidavits, make certificates, affix the seal of said court thereto; and generally do and perform any and all acts usual and necessary by the Clerk of courts in issuing process of said courts and conducting the business thereof.

D. The City Council by ordinance may provide for the appointment of one (1) or more judges to serve if the regular judge, the presiding judge, or an associate judge is temporarily unable to act.

E. Each judge of said court shall be a duly licensed attorney if some such suitable attorney is available and provided that this shall not be a disqualification of the person serving in such capacity at the time of the adoption of this Charter.

The phrase in Paragraph B above that the judge “shall be under the administrative direction of the city manager...” is an unusual, but not rare arrangement. Cities, large and small, regardless of form of government, seem to have continual problems with the reporting relationship of the judge and the clerk of the court. Mayors, city councils, and city managers want the court to be “administratively efficient,” but must tread softly since they are dealing with a separate and independent branch of city government. Judges are concerned with the “administration of justice” and usually do not have the time nor skill to worry about the “administration of the court” as a department of the city. Cities have tried a wide range of mechanisms to meet this challenge. It would be confining and inflexible if the city tried to dictate administrative arrangements in the charter. Hence, most of these “solutions” have been left to ordinance or administrative order.

## Survey results

Our survey of the state's charters produced the following figures in regard to selection of the municipal court judge:

**Figure 13-3: Municipal Court Judge**

	1994	2008
By City Manager with City Council Approval:	3%	6%
By City Council:	79%	74%
By City Council on recommendation of City Manager:	3%	7%
By Mayor with City Council Approval:	6%	8%
Elected:	5%	3%
Other:	4%	2%
TOTAL:	100%	100%

We tabulated the term of office for the judge. Fifty percent of the charters do not address the term of office for the judge. Of those charter that do specify the judge's term, the overwhelming choice (86 percent) was for the judge to serve at the "pleasure of the council." In the remaining cities, the judge served a specified numbers of years, anywhere from one to four years (six percent) or noted the term was stipulated in some other manner (eight percent), such as at the pleasure of the city manager.

## Influence of form of government on selection of officers above

Most of the cities that call for appointment by the city council of the city attorney, city secretary, and judge are council-manager cities. Most of the cities that call for appointment by the mayor with approval of the city council are mayor-council cities.

## Planning function

A number of Texas charters address the planning and zoning function. Some actually mandate a planning department and a director of planning. In the most recent survey, 34 percent of charters now require the establishment of a comprehensive master plan, up from 20 percent in 1994 that established a master planning process. Many charters do not mandate a comprehensive plan with the legal phrase, "the city council *shall* adopt a plan." Without this charge, the city council may, instead, reject all or part of the plan. Below is a typical section from one of the charters that exemplifies the loophole through which many a master plan falls:

**Section 4. The Master Plan.** The Master Plan for the overall physical development of the City shall contain the (Planning) commission's recommendations for growth, improvement and beautifi-

cation of the City. A copy of the Master Plan, or any part thereof, shall be forwarded to the City Manager who shall thereupon submit each plan or part thereof to the Council with the City Manager's recommendations thereon. The Council may adopt this plan as a whole or in part, and may adopt any amendment thereto, after at least one public hearing on the proposed action. The Council shall act on such plan, or part thereof, within sixty (60) days following its submission by the City Manager. If such plan, or part thereof, should be rejected by the Council, the Planning Commission may modify such plan, or part thereof, and again forward it to the City Manager for submission to the Council. All amendments to the Master Plan recommended by the Planning Commission shall be submitted in the same manner as that outlined above to the Council for approval, and all recommendations by the Council from any City Department affecting the Master Plan must be accompanied by a recommendation from the Planning Commission.

The quoted wording does not prohibit a council from adopting a master plan, generally considered a valuable asset to a city, and some of these cities have adopted a plan. No legal requirement, however, prompted their action. Under the wording above, the council could continue rejecting the plan forever. There is no clear-cut statement that "the council shall adopt a plan."

Once a master plan or comprehensive plan is adopted, a city may have language such as the following to put "teeth" into the plan. This is from the Mansfield charter:

### Section 10.4 Legal Effect Of The Masterplan

Upon adoption of a Master Plan by the Council, no subdivision, street, park, or any public way, ground or space, public building or structure, or public utility, whether publicly or privately owned, which is in conflict with the Master Plan shall be constructed or authorized by the City until and unless the location and extent thereof shall have been submitted to and approved by the (Planning) Commission. In case of disapproval, the Commission shall communicate its reasons to the Council, which shall have the power to overrule such disapproval, and upon such overruling, the Council shall have power to proceed. The widening, narrowing, relocating, vacating or change in the use of any street, alley, or public way or ground, or the sale of any public building or real property shall be subject to similar submission and approval by the Planning and Zoning Commission, and failure to approve may be similarly overruled by the Council.

The preparation and adoption of such a plan has been mandated by 38 percent of home rule cities, up from ten percent reported in the 1994 survey. The strongest lan-

# Departments, offices, agencies, and boards

guage is in the Georgetown charter. It not only requires adoption, but also supports adoption with specific reasons that a master plan is valuable. Excerpts from this charter include the following:

## Section 1.08. Comprehensive Plan

(1) Purpose and intent. It is the purpose and intent of this Article that the City Council establish comprehensive planning as a continuous and ongoing governmental function in order to promote and strengthen the existing role, processes and powers of the City of Georgetown to prepare, adopt and implement a comprehensive plan to guide, regulate, and manage the future development within the corporate limits and the extraterritorial jurisdiction of the City to assure the most appropriate and beneficial use of land, water, and other natural resources, consistent with the public interest.

(Note: Paragraph (1) above contains more preamble leading into Paragraph (2)).

(2) The Comprehensive Plan. The Council shall adopt by ordinance a revised comprehensive plan within two (2) years from the date the amended Charter is adopted, which shall constitute the master and general plan...

Paragraph (2) goes on to detail the contents of the plan followed by Paragraph (3) entitled, "Legal Effect of Comprehensive Plan."

## Planning and zoning commission

Virtually all city charters formally establish a Planning and Zoning Commission. The number of members on the Commission, their qualification and terms of office vary widely among cities, but the Corpus Christi charter is probably typical of the language on these bodies:

### Figure 13-4: Typical charter provision for planning commission

#### Section 2. Organization of Planning Commission

A planning commission is hereby established which shall consist of nine registered voters of the city. The members of the commission shall be appointed by the city council for staggered terms of three years. The commission shall elect a chairperson from among its membership each year at the first regular meeting in August and shall meet no less than once each month. Any vacancy in an unexpired term shall be filled by the city council for the remainder of the term.

#### Section 3. Powers and Duties of Planning Commission

(a) The planning commission shall:

(1) Review and make recommendations to the city council regarding the adoption and implementation of a comprehensive plan, any element or portion thereof, and any amendments thereto;

(2) Review and make recommendation to the city council on all proposals to adopt or amend land development regulations for the purpose of establishing consistency with the comprehensive plan;

(3) Monitor and oversee the effectiveness of the comprehensive plan, review and make recommendations to the council on any amendments to the plan, and forward to the council comprehensive updates to the plan at least once every five years;

(4) Review and make recommendations to the city council regarding zoning or requests for zoning changes in a manner to insure the consistency of any such zoning or changes in zoning with the adopted comprehensive plan;

(5) Exercise control over platting and subdividing land within the corporate limits and the extraterritorial jurisdiction of the city in a manner to insure the consistency of any such plats with the adopted comprehensive plan; and

(6) Review and make recommendation to the city council on the city's annual capital budget and any capital improvement bond program.

(b) The departments of the city government shall cooperate with the planning commission in furnishing it such information as is necessary in relation to its work.

(c) The commission shall be responsible to and act as an advisory body to the council and shall perform such additional duties and exercise such additional powers as may be prescribed by ordinance of the council.

## Personnel and civil service

City government's relationship to its own employees has undergone tremendous changes in the past half century. Emphasis formerly focused on little more than keeping employee records; that emphasis has shifted now to a broad human resources responsibility. Major activities for many cities include:

- sophisticated recruiting involving nationwide searches for some positions, including the employment of executive search firms to find not only city managers, but also department heads in medium to large cities.
- emphasis on diversifying the workforce including, in some cities, contacts with historic black colleges and working closely with such organizations as the local Urban League and other groups formed to help ethnic minorities find employment.
- risk management, including renewed emphasis on job safety and claims control.
- administration of a wide range of employee benefits, sometimes offered to employees on a “cafeteria” basis which complicates management of the package.
- employee assistance programs to assist employees.
- executive development and employee training programs offered at the work site and at distant locations.
- continued experimentation with job classification and pay plans to remain competitive in the marketplace.

Despite the major concerns of cities and employees with these and other functions of a human resources office, just 20 years ago the overwhelming number of charters were completely silent with regard to the personnel or human resources function. There has been a major shift with more and more charters addressing personnel functions. Of the Texas cities surveyed for this second edition, 35 percent of charters authorize a personnel department, while another 8 percent actually mandate this department. In addition, 43 percent of charters authorize personnel rules and another 15 percent mandate them. In light of this change, we want to review major state laws related to personnel.

## Fire and police civil service

In 1947, the state legislature required that cities over 10,000 in population, when petitioned as provided by law, call an election on adopting provisions of a State Fire and Police Civil Service Law enacted by the legislature that year. When adopted by the voters, the law mandates the establishment of a fire and police civil service commission and sets up specific standards for recruitment, testing, grievance, promoting, and just about every other aspect of the personnel relationship except for salary.

Cities fit the special civil service provisions for fire and police into their overall employee policies and procedures in different ways. For example, while the state law is considered particularly generous with vacation and sick leave for fire and police, some cities have adopted those provisions for other employees. Other cities feel they cannot afford to pro-

vide “equity” for non-fire and police personnel. North Richland Hills preempts the law by putting all employees under a charter-mandated civil service program that incorporates virtually all of the state fire and police law. That city’s civil service provisions in the charter account for almost one-half of the total charter.

## Charter mandated municipal civil service

Despite the drafting of a Model Civil Service Code in 1914<sup>30</sup>, only a few cities in the state have followed through with a civil service system in the charter for all employees. El Paso’s charter goes into detail ordinarily found in an ordinance. The El Paso civil service provisions, in fact, occupy exactly one-half of the total El Paso charter. Mesquite established civil service for all employees by charter amendment in 1966. Amarillo adopted a formal “merit system” in 1944. Five percent of home rule cities make a provision for a city-wide civil service system in their charters.

## Other fire and police charter provisions

There is a long history of cities writing sections into charters addressing fire and police protection. This practice has carried over to many of today’s charters without a compelling reason.

In addition to civil service provisions for police and fire, several city charters mandate staffing levels of these departments as well as minimum salary requirements. Mesquite in 1993 adopted a charter amendment mandating a commissioned police officer ratio of 1.5 officers per 1,000 population in the city. In 1990, Wichita Falls voters adopted a charter amendment mandating minimum police

## MAKE CITIZENS FILL THOSE POTHOLES

“Section 196. All citizens subject to call.

The city council shall have the power to cause all able-bodied male inhabitants above twenty-one (21) years of age and not over sixty (60) years of age, except ministers of the gospel in the active charge of their ministerial duties, members of the state militia, members of fire departments, invalids and other persons whom the council may exempt, to work on the streets of the city ... not exceeding five (5) days in any one year or furnish a substitute or a sum of money not exceeding one dollar (\$1.00) per day for each day summoned to work, to employ such substitute, and enforce the same by appropriate ordinances, with penalty for failure to obey such summons to work or furnish substitute or pay the amount herein mentioned, and the council may further provide a method of giving notices, collections and other rules and regulations relating thereto.”

# Departments, offices, agencies, and boards

levels for 1991, 1992, and 1993. The amendment stated that the city would have 180 commissioned police officers by October 1, 1993. In addition, the charter specifies the minimum wage for officers, sergeants, lieutenants and captains. In Corsicana, police officers in 1990 succeeded in securing a charter amendment that sets out seniority pay in detail. This was most recently updated when voters approved a charter amendment in 2005. Fire fighters attempted the same process in 1992, but were defeated at the polls. In 1994, Balch Springs voters approved two charter amendments: one mandating that the city maintain a police department of uniformed personnel (not counting investigative, administrative, and support personnel) at a ratio of not less than one officer per 1,000 population; and one mandating the same minimum ratio for fire personnel.

The police chief is the most likely operating department head to be directly appointed by the council and the only one who is elected in some cities. The cities of Brownwood, Coleman, and San Angelo all elect their police chiefs. The cities of Childress and Stamford amended their charters to change the position of police chief from an elected position

to an appointed one. Ennis and Groves still elect a city marshal instead of a police chief. In a select few communities, the chief is appointed by the council. In a few of these, the fire chief and fire marshal are also both appointed by the council.

## Other State laws effecting Fire and Police Departments

Over the years, the legislature has defined the maximum number of hours certain cities may require fire and police personnel to work; required a minimum pay level for city fire and police personnel, based on population ranges; mandated that cities pay fire and police personnel "salaries at the higher level" when fire and police personnel fill in temporarily for persons in positions above them; and told cities they had to begin to pay seniority pay to these employees.

## Health function

Health concerned the early charter writers in the Texas Legislature. The City of Houston as early as 1839 was empowered to enact ordinances and by-laws "to maintain cleanliness."<sup>31</sup> Galveston's 1866 charter introduced boards of health to the state.<sup>32</sup> That charter provided for a three-member health commission named by the council and the mayor. Along with the city physician, the commission ascertained that all public carriers entering the city reported any sick passenger. A later law made it very clear that a local health officer who did not comply with his duties could be removed by the state board of health.<sup>33</sup>

Justified fear of contagious diseases knew no city limit boundary and spurred centralization of the health function. Thus, from the beginning of the Republic, health was seen as a joint state-local function, directed and controlled by the state. The rapid spread of diseases in the 19th century also contributed to city-county cooperation. In most other functions, they acted and continue to act separately.

Older charters frequently addressed the city's responsibility for public health. At least two dozen of the first 100 charters mandated the city council to appoint a health officer and about half that number also

authorized a board of health. Some of the cities carefully detailed the powers of the city in that regard.

In the past several years, most charters have not addressed the health function. This is undoubtedly the result of significant state legislation in public health and expanded guidelines for organizing the functions at the local level.

Today, the Texas Health and Safety Code recognizes four distinct organizational arrangements at the local level, with the flexibility in some instances to fold two of the four into one entity. The Code first addresses a "local health unit" in Section 121.004. A local health unit is defined as a "division of municipal or county government that provides public health services but does not provide each service required of a local health department..." In Section 121.021, the law establishes the second type of health organization: a "health authority" which is an individual, not an organizational unit. "A health authority is a physician appointed under the provisions of this chapter to administer state and local laws relating to public health within the appointing body's jurisdiction." Section 121.031 defines the third entity that a

## KEEPER OF THE "CALABOOSE"

"Section 2. Sergeant-at-arms to the city commission.

The chief of police shall be an ex-officio Sergeant-at-arms to the city commission, and shall either in person or by deputy attend all meetings. He shall have charge of the city hall or commission chamber; and shall have same cleared, provide fuel, fire, and light at the expense of the city, for the commission when it meets, and perform such other duties in connection therewith as the commission shall direct.

He shall be the keeper of the city prison or "calaboose," shall keep the same in a clean, wholesome condition and keep all prisoners legally confined therein until discharged. He shall have charge of all prisoners while at work on the streets or other public works of the city."

## YESTERDAY'S "SANITATION ENGINEER"?

"Sec. 12. To employ a City Scavenger and to prescribe his duties and compensation, and to provide that the owner, or tenant, of any property shall pay to the City, or to the City Scavenger, reasonable charges for the removal of any refuse matter from closets or premises. And the failure of the owner or tenant to pay such charges shall subject him to the penalties prescribed by ordinance."

county or municipality may establish to be a local health department. The following section of the law provides minimum services that the department must offer to qualify and maintain a local health department. Finally, Section 121.041 provides for a public health district when two or more cities or two or more counties desire to enter together into an arrangement of this kind.

Texas charters have unlimited freedom to establish functions or departments. Several charters provide that the city may establish a library, a hospital, a cemetery, an airport or several of the above. The chart belows provides an overview of the top departments authorized or mandated by city charters.

**Figure 13-5: Departments Established by Charter**

Department	Authorized	Mandated	Not Addressed
Police	41%	27%	32%
Finance	39%	27%	34%
Planning	38%	11%	51%
Parks & Recreation	38%	7%	55%
Fire	35%	24%	41%
Personnel	35%	8%	57%
Legal	34%	30%	36%
Library	33%	5%	62%
Health	27%	9%	64%
Recreation	27%	4%	69%
Aviation	19%	5%	76%
Hospital	14%	4%	82%

A number of charters also address city utilities. Some contain strong language on independence of utilities, prompted perhaps by earlier action when some city council tried to “raid” the earnings of the utility or sell it off. Cities with electric utilities are particularly sensitive to the possibility of losing that source of revenue. In the mid-90s, the voters of Georgetown overwhelmingly adopted a charter amendment stating that prior to consideration of a sale of the city’s community-owned electric utility,

“the City Council shall hold a public hearing during which the City’s financial advisor shall be required to present a report to the City Council concerning the revenue that has been earned by the City’s community-owned electric utility through the City’s ownership thereof and containing an analysis of the revenue to be lost by the City through the proposed sale of the electric utility. Any proposed sale of the City’s community-owned electric utility would require two affirmative votes of the City Council, twelve months apart, to call a referendum election concerning the sale of the electric utility. The referendum must result in a favorable vote by a majority of the voters in that election in order for the electric utility to be sold.”

## Boards and commissions

According to our survey, 43 separate boards and commissions are established by Texas city charters. A significant increase from the 20 different boards and commission identified in 1994. Virtually all of those listed are advisory only, although the Board of Adjustment is a quasi-judicial board, and several utility boards are independent.

A few cities not only identify boards by name, but also set out requirements for membership, number of members, duties, and provisions for removal of a board member who does not attend or whom the council simply wants to replace because the member is not contributing to the work of the board. One city has a diversity statement in regard to appointments of boards, and several cities have specific provisions for councils to remove board members. The council can remove board members without specific authority in the charter, unless the board is established by state statute that provides for methods of removal. For example, a member of the Zoning Board of Adjustment can be removed only for cause on a written charge after a public hearing (Section 211.008, LGC). Additionally, any city policies or procedures concerning removal of board members would have to be addressed.

The charters vary significantly on the number and types of boards and commission that are provided for in the charters. Other boards and commissions identified in various charters include: Aging, Animals, Arts, Building Standards, Border Relations, Cemetery, Civic Events, Civil Service, Comprehensive Planning, Ethics, Health, Hospital, Housing, Personnel, Public Safety, Recycling, Streets, Technology, Traffic, and Veterans.

**Figure 13-6: Boards & Commissions Established by Charter**

Department	Authorized	Mandated
Planning & Zoning	19%	32%
Board of Adjustment	8%	19%
Parks & Recreation	8%	11%
Library	4%	3%
City Development	4%	1%
Airport	3%	0%
Equalization	2%	5%
Utilities	2%	1%

This chapter is about how charters address financial administration—revenues, budgets, taxes, bonds, purchasing—and how these matters are treated in city charters. Financial administration begins with collecting money to operate a city—from property taxes, utility charges, user fees, sales tax, and numerous other less important sources. It includes annual and capital budgeting to allocate these revenues, monitoring expenditures throughout the year, and accounting for them at the end of the year in a financial statement. Financial administration is also issuing bonds to pay for long-term improvements and purchasing day-to-day supplies. The subjects will be discussed in this order:

- Organization for financial administration
- Designation of the fiscal year
- The property tax
- Other revenues
- Operating budget, preparation and adoption
- Operating budget, execution and monitoring
- Capital budget
- Purchasing and contracts
- Municipal debt, short and long-term

All these subjects are addressed in virtually every city charter in the state, some at great length. State law has preempted some of them, particularly property tax administration, but by and large, cities have substantial, and in some cases, complete freedom to adopt charter provisions to fit their individual needs.

## Organization for financial administration

One of the most important duties for any municipal chief executive is maintaining fiscal responsibility. In a mayor-council city, it is the job of the mayor as the chief executive. In a council-manager city, it is the city manager's job.

It is the mayor or manager who holds the fiscal reins. Charters in both forms of government are very specific in their statements of these powers and duties. In Houston, the article on the mayor includes, in addition to the power of appointment and other powers:

- (4) It shall be the duty of the mayor from time to time to make such recommendations to the council as he may deem to be for the welfare of the city, and each year to submit to the council the annual budget of the current expenses of the city.

- (5) To keep the council at all times fully advised as to the financial condition and needs of the city.

A typical council-manager charter has almost identical language. This excerpt is from the Orange charter on duties of the city manager:

2. Prepare the budget annually and submit it to the City Council and be responsible for its administration after adoption.
4. Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem to him desirable.

Mayors and city managers in the two forms of government have considerable freedom in how they accomplish these mandates. As a rule, the city's internal organization is not addressed in the charter. In Houston, for example, the city traditionally has housed many of the financial functions in the Department of Finance and Administration. There is a limit to that, however, for the charter provides for an elected City Controller who has wide-ranging responsibilities in the area of accounting and certifying that money is available for purposes needed by the mayor and council. Pasadena, the second largest mayor-council city, gives the mayor overall fiscal responsibility. But that power is constrained by an independent city controller who is appointed by the city council. The charter states "and the Mayor shall have neither voice nor vote in the employment or removal and discharge of the City Controller nor of any personnel in the Department of Finance, it being the intent of this Charter to divest the Mayor of any authority, control, or direction over the Department of Finance, its officers and employees, except where specifically authorized herein." The mayor does have a budget and financial planning officer who prepares the annual budget and multi-year plan. Smaller mayor-council cities omit such constraints in their charters.

The NCL model charter and the typical council-manager charter give the manager full responsibility for the financial function. The director of finance reports directly to and can be removed by the manager. There are very few exceptions to these clean lines of authority. We have mentioned earlier the independent director of finance in Temple and the comptroller in Sweetwater. Raymondville actually provides for an elected director of finance, but the city has never exercised



that option. There are no more than six other cities that blunt the city manager's authority in this area. Some two dozen city charters provide for a director of finance and list that person's many functions. There is no harm or gain in this recitation of duties in the charter, but an ordinance would suffice.

Some larger council-manager cities separate the finance function from the budget function, giving the former all financially related activities except the budget. This is not charter material, and we know of no city that has placed this detail in their charter.

Finally, property tax administration is no longer the major assignment it once was. The state has preempted most responsibilities in this area except the actual rate-setting and collection of taxes. The department head, who was separate from the finance director, is now most likely a position under finance, handling all revenue collections.

## Designation of the fiscal year

A total of 95 percent of Texas charters have a charter-designated fiscal year of October 1 - September 30. No fiscal year is mentioned in only 1 percent of charters. The other beginning dates and the actual number of charters mandating them are:

<b>January – 4</b>	<b>June–1</b>
<b>April– 2</b>	<b>July–3</b>
<b>May– 1</b>	<b>August–1</b>
<b>September–1</b>	

There is good reason for the widespread designation of October 1 as the beginning of the fiscal year. Property taxes are levied as of January 1, are due the following fall, and delinquent beginning March 1 of the following year. The great majority of city elections – 96 percent of the cities – are held in May. Given that calendar, policymakers and managers figured out long ago that an October 1 budget year would enable new councilmembers elected in the spring at least a couple of months to get acquainted with the city operations.

In contrast, if the budget year were April 1, the incoming council would be living under a previous council's budget for almost an entire year. Another good reason for the October 1 date is property tax receipts. They begin to arrive in October, with sizable payments in December and January. This is early in the fiscal year and means, in many cases, that the city does not have to borrow for operations early in its fiscal year. A few of the very large cities have given consideration recently to a different fiscal year or election date. The reasoning: these large and complex operations have to start their budget planning well ahead of May when new councilmembers are elected. Therefore, the council's goals and budget objectives are already set when any new councilmember is elected.

There is sound argument for establishing the fiscal year in the charter. By leaving it to ordinance, the city runs the risk of some future council changing the date without

adequate forethought. Any change of date will cause either a short fiscal year for the first year or an unusually long one. Either way, the change of a fiscal year is a confusing and traumatic experience, not just for the citizenry, but for policymakers and administrators alike, and should be undertaken only after serious deliberation.

## The property tax

Since there have been major changes in the statutes pertaining to the property tax and since it is still a major source of revenue for the cities, we discuss it first and separately.

In 1979, the Texas Legislature adopted a new property tax code that established uniform appraisal policies and procedures. Now appraisals are conducted and appeals from those appraisals are all handled by central appraisal districts. Cities can control only their own tax rate and the collection of the taxes owed to them, both current and delinquent.

Long and detailed charter articles on property tax administration were superseded, and some cities are now rescinding (by charter amendment, of course) the entire tax article. The city does not lose its right to collect the tax by wiping out the entire article. It is probably preferable, however, to retain provisions setting the tax rate and collecting the taxes, current and delinquent, as well as a few other legal provisions.

The Addison charter is typical of one amended after passage of the 1979 changes to state law. Its section on property taxes consists of nine brief subsections, titled as follows:

- power to tax (including setting tax rate limitation if the council desires to set one in the charter)
- where payable;
- no demand necessary (states where taxes shall be paid; non-receipt of a tax bill does not relieve the property owner of paying the tax);
- removing property from Addison (see seizure and sale of personal property below);
- inadequate description (protects city in case it cannot completely identify a piece of property);
- power to correct errors (allows city to cancel any non-collectable taxes on the tax rolls);
- payment, delinquency, penalties (sets up due date and date taxes are delinquent);
- provides for penalties when not paid by delinquent date);
- tax levy and lien (creates lien on all property in favor of Town of Addison for all taxes due);
- seizure and sale of personal property (more complete section on this general subject); and
- general powers (summary statement of powers section).



Our survey asked whether the charter required a vote of a majority of the “full” council or just a majority of a council quorum to adopt the annual tax rate. We found only a handful of charters that require a vote of the entire council. The reasoning is sound; to require the higher vote could prevent the city from adopting a timely tax rate if one or two councilmembers decided to absent themselves from the meeting to keep their “no new taxes” pledge.

Taxes may be paid in installments in several cities; discounts on early payments are provided only in a couple of cities. Although these incentives are thought by some to encourage payment of property taxes, the great majority of Texas cities do not believe either of these incentives are necessary.

## Other revenues

Since property taxes now bring in a smaller percentage of total city revenues, there are obviously a substantial number of other revenue sources utilized by cities. Most of these are not addressed in the city charters. Only street rental charges to utility companies, occupation tax levies on certain businesses and occupations, and special assessments levied against abutting property owners have generally been found in Texas charters. Most other sources—city sales taxes, the hotel-motel taxes, alcoholic beverage taxes, and federal grants—are largely controlled by state or federal law. Texas charters as a rule have not tried to address any of these sources of revenue.

For a discussion of these latter sources of revenue, the reader is referred to the Revenue Manual for Texas Cities, published by TML.

## Preparation and adoption of annual operating budget

The Texas Legislature passed the first uniform budget law in 1931. This act was amended in 1981 and 1985 and codified into the Local Government Code in 1987 as Chapter 102. The statute prescribes basic requirements that most cities exceed by terms of their own charters or practices. Examples from specific charters that show how cities have extended the scope of policy and management follow the highlights of the law listed below:

- (1) The city council must adopt an annual budget and conduct the financial affairs of the city in strict conformance with the budget. The budget must contain a complete financial statement of the municipality that shows:(1) the outstanding obligations of the municipality;(2) the cash on hand to the credit of each fund;(3) the funds received from all sources during the preceding year;(4) the funds available from all sources dur-

ing the ensuing year;(5) the estimated revenue available to cover the proposed budget; and (6) the estimated tax rate required to cover the proposed budget.

- (2) The budget for each fiscal year must be adopted prior to adoption of the tax levy for the new fiscal year. In most Texas cities, the fiscal year begins October 1 and the levy should be adopted by the last week of the old fiscal year. Therefore, the budget should be adopted by September 30 or earlier.
- (3) A proposed budget that will require raising more revenue from property taxes than in the previous year must contain a cover page with the following statement in 18-point or larger type: “This budget will raise more total property taxes than last year’s budget by (insert total dollar amount of increase and percentage increase), and of that amount (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll) is tax revenue to be raised from new property added to the tax roll this year.”
- (4) The city’s budget officer must prepare a proposed budget for the consideration of the city council. In mayor-council cities, the law requires that the mayor serve as budget officer; in council-manager cities, the city manager is the budget officer.
- (5) Copies of the proposed budget compiled by the budget officer must be filed with the city clerk/secretary and made available for public inspection and posted on the city Web site, if the city has a Web site. 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.
- (6) The city council must hold a public hearing on the budget after the 15<sup>th</sup> 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 10 nor more than 30 days prior to the adoption of the budget.
- (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, made available for public inspection and posted on the city Web site, if the city has a Web site.
- (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,” nor may the council amend the budget 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...”

- (9) The budget and any amendments to it must be filed with the county clerk.
- (10) The governing body may levy taxes only in accordance with the budget. The procedures for levying taxes are prescribed in the Texas Property Tax Code.

## The budget (fiscal plan)–the annual work plan of the city

The annual operating budget is perhaps the most crucial single document debated each year by a governing body. A more expressive title for the budget – “Fiscal Plan” – is used in the Denver City 1985 charter and Seminole’s 1991 charter. Here is the language used in both:

**Figure 14-1: Article VII – Fiscal Plan**

The plan shall provide a complete program of action for the fiscal year. It shall contain the following:

A. OBJECTIVES – Established by the City Council.

B. GOALS – City Manager’s program to meet the objectives of the Council.

C. BUDGETS – Financial plan to meet the administrative needs of the City for the fiscal year consistent with the Objectives and Goals set by the City Council and City Manager.

D. STAFF PLAN – A summary of the personnel requirements required to provide the services of the City. Additions or deletions of personnel must be specifically identified and justified.

(Note: In mayor-council cities, “city manager” above would read “mayor.”)

Both cities have subsequent provisions, the only two in the state, that budgets shall be prepared using the principle of “zero budgeting.” The budget is projected from zero base, not factored from a prior year budget or from prior year expenditures.

Aransas Pass, in its budget article, has a similarly unique provision, but not quite as strong or as dramatic as in the other two charters. Aransas Pass, as part of its “contents of the budget” section, closes with:

- (18) (proposed budget shall contain)...a suggested legislative program and the highlights of the proposed administrative program.

These three cities and others in the state illustrate the initiative and forethought that have been given budget preparation in Texas. Although no city has placed language in its charter on “performance budgeting” (adopted by the legislature for state agencies in 1993), a number of Texas cities were ahead of the state in relating dollars to program accomplishments.

## Budget calendar

City managers and budget officers, as a rule, develop a calendar for preparation and adoption of a budget. It coordinates dates, required action, and responsible individuals. Most of the dates are for internal purposes and are not mandated by the charter. The first key date considered a necessary part of the charter is the latest date (or range of dates) the budget is to be submitted to the city council before the beginning of the next fiscal year. This will vary depending on the size of the city. Some small cities require only 30-45 days; larger cities may require 60-90 days. The second key date in a charter is the proposed date(s) or public hearings by the council; the third is the date by which the budget is to be adopted. (See state law highlights for required dates.) The dates referred to above are all in terms of “x days before the beginning of the fiscal year” or a similar phrase. This calendar will contain many more dates, but those are internal dates to be observed by the department heads, the budget office, and the city manager.

## Budget contents

The state law (Chapter 102 - Municipal Budget, LGC) regarding budget contents is reproduced to show the exact language. Virtually all city charter requirements exceed these basic requirements.

### 102.003. Itemized Budget; Contents.

- (a) The budget officer shall itemize the budget to allow as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes made for the preceding year. The budget must show as definitely as possible each of the projects for which expenditures are set up in the budget and the estimated amount of money carried in the budget for each project.

(b) The budget must contain a complete financial statement of the municipality that shows:

(1) the outstanding obligations of the municipality; (2) the cash on hand to the credit of each fund; (3) the funds received from all sources during the preceding year; (4) the funds available from all sources during the ensuing year; (5) the estimated revenue available to cover the proposed budget; and (6) the estimated tax rate required to cover the proposed budget.

The law requires only the “preceding year” and the “proposed year” figures to be shown. Standard budget practice followed by many cities calls for the budget to have three expenditure columns: (1) for the last completed fiscal year, (2) for the current year (this will consist of 6-9 months of actual expenditures plus an estimate for the last 3-6 months), and (3) the proposed figures for the new year. The Carrollton language is fairly typical of many Texas charters:

## Figure 14-2: Preparation and Submission of Budget

### Section 4.02 Preparation and Submission of Budget

The city manager, prior to August 1 of each year, shall prepare and submit the budget, covering the next fiscal year, to the council, which shall contain the following information. In preparing the budget, each employee, officer, board, and department shall assist the city manager by furnishing all necessary information.

- (1) The city manager’s budget message shall outline the proposed financial policies for the next fiscal year with explanations of any changes from previous years in expenditures and any major changes of policy and a complete statement regarding the financial condition of the city.
- (2) An estimate of all revenue from taxes and other sources, including the present tax structure rates and property evaluations for the ensuing year.
- (3) A carefully itemized list of proposed expenditures by fund and service type and project for the budget year, as compared to actual expenditures of the last ended fiscal year, and an estimate of final expenditures for the current fiscal year.
- (4) A description of all outstanding bond indebtedness, showing amount, date of issue, rate of interest and maturity date, as well as any other indebtedness referred to in Article V, which the city has incurred and which has not been paid.

(5) A statement proposing any capital expenditures deemed necessary for undertaking during the next budget year and recommended provision for funding.

(6) A list of capital project which should be undertaken within the five (5) next succeeding years.

## Public hearing and adoption

Public hearing requirements are covered in state law. Cities have long provided for public hearings; one city charter specifically provides citizens be given five minutes each to speak about the budget. Other charters demand a second public hearing if the council amends the budget after a first public hearing.

Adoption of the budget requires a majority vote of the total council in 61 percent of city charters. In the remaining 39 percent of cities, it can be by majority of a quorum. Because the budget vote is such a crucial decision, many experts prefer the requirement for a majority of the total. It is not a requirement of state law. State law does mandate action in another crucial area: the budget must be adopted before the tax levy is approved by the council and should be adopted before the beginning of the new fiscal year. With one exception, every city charter in the state repeats this requirement.

State law does not address the circumstance of a budget adopted after the beginning of the fiscal year, apparently presuming that everyone will obey the law. Occasionally some cities do not make the deadline. Charters deal with this potential problem in many cities. If the deadline is not met, 26 percent of charters call for the mayor/manager’s proposed budget to become effective. In 36 percent of cities, the charter calls for the current budget to remain in effect until a new budget is adopted. The matter is not addressed in 36 percent of the cities, with the remaining three percent having alternative provisions.

## Operating budget - execution and monitoring

Once the budget is adopted, monitoring of expenditures begins. A few cities mandate the establishment of budget allotments by month and by department. This procedure was used originally to bring budget discipline to departments and avoid overruns and is used by some cities today. It is not controlled or required in most charters.

The city manager/mayor is frequently required to submit monthly or, as a minimum, quarterly reports to the city council to keep them updated on the city’s financial condition.

In the budget law, the Legislature first prohibits amendment of the budget except for emergency purposes (Section 102.009 LGC). But Section 102.010 states that

this chapter does not prevent the governing body of the municipality from making changes in the budget for municipal purposes.” “Municipal purposes” is not defined, but it apparently gives the governing body some discretionary authority. This is contemplated in the NCL model city charter in its section on budget amendments. That language has been adopted verbatim by a number of Texas charters and is quoted below:

**Figure 14-3: Amendments after adoption of budget**

- a. **Supplemental Appropriations**  
If during or before the fiscal year the City Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the City Council by ordinance may make supplemental appropriations for the year up to the amount of such excess.
- b. **Emergency Appropriations**  
To address a public emergency affecting life, health, property, or the public peace, the City Council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of § 2.14.\* To the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the Council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid or refinanced as long term debt not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.
- c. **Reduction of Appropriations**  
If at any time during the fiscal year it appears probable to the City Manager that the revenues or fund balances available will be insufficient to finance the expenditure for which appropriations have been authorized, the Manager shall report to the City Council without delay, indicating the estimated amount of the deficit, any remedial action taken by the manager and recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or reduce any deficit and for that purpose it may by ordinance reduce or eliminate one or more appropriations.

- d. **Transfer of Appropriations**  
At any time during or before the fiscal year the City Council may by resolution transfer part or all of any unencumbered appropriation balance from one department, fund, service, strategy or organizational unit to the appropriation for other departments or organizational units or a new appropriation. The manager may transfer funds among programs within a department, fund, service, strategy or organizational unit and shall report such transfers to the council in writing in a timely manner.
- e. **Limitations; Effective Date**  
No appropriation for debt service may be reduced or transferred, except to the extent that the debt is refinanced and less debt service is required, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

The Colony is the only city known to require a “fiscal note” on ordinances or resolutions introduced in the middle of the fiscal year. A “fiscal note,” as defined in the charter quote that follows, clearly states the financial impact of the measure proposed. This type of cost analysis and disclosure has been an accepted part of the Texas state legislative process for several years, but evidently has not been considered by cities with this one exception. The Colony’s paragraph reads:

## **SECTION 3.10 METHOD OF ADOPTION; GENERAL ORDINANCES**

Any ordinance or resolution (other than an emergency measure, the budget, or routine expenditures of budgeted funds) which authorizes or requires the expenditure or diversion of any city funds for any purpose or proposed any new tax or increased or decreased tax, fee, license, charge, or penalty shall have a separate statement signed by the city manager outlining the fiscal impact and probable gain or loss in income or cost of the measure each year for the first (3) years after its passage and a statement as to whether or not there will be cost involved thereafter. Such separate statement shall not be a part

of the ordinance or resolution but shall remain with the ordinance or resolution throughout the entire legislative process, including submission to the mayor.

Finally, most city charters contain a short section on “Lapse of Appropriations” which provides that every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered.

## Capital budget

Nearly all mayors, councilmembers, and city managers agree that planning ahead for major city construction projects is essential, and 76 percent of charters actually mandate the preparation of a capital program or capital budget. The term that most city councils recognize is capital improvements program – CIP. Many cities boast of an annual CIP that is required by ordinance or, in some cases, dictated by tradition. Cities have wide discretion in preparation and adoption of a CIP because state law does not address this subject.

Just what is a CIP, and how does it differ from a capital budget, and how much of either or both should be the subject of a section in the charter?

A capital improvements program (CIP) is a long-term plan, usually spanning five or six years, for financing major cost items that have a long, useful life: such items as buildings, streets, major utility lines, and expensive equipment.

The CIP itself is a listing of those major projects scheduled for construction or acquisition during the next five or six years. The listing projects the date and total annual amount the city expects to spend on a capital project; the source of funding; and finally, and very importantly, the future operating and maintenance cost. Policymakers and administrators are well aware that the construction funding of such items as fire stations and branch libraries is only the beginning of the outlay. The real cost is in staffing and maintenance.

A CIP should be prepared each year, adopting Year 1 prior to, or in conjunction with, the annual operating budget and carrying forward the subsequent years. The following year, Year 2 (perhaps with revisions) becomes Year 1 and the plan is extended out to another year to keep the five or six years continually out into the future.

Suggestions for projects in the CIP come from varied sources—the citizenry, neighborhood groups, city staff, and the council itself. The designated operating department has the first responsibility for putting these ideas together into a priority schedule. The planning office or the budget/finance office usually compiles the CIP suggestions. Public hearings may be held at this point prior to adoption of the CIP by the council.

Up to this point, the council has adopted a “program of good works to be done,” but has not committed itself

to use current funds in the budget, to the issuance of bonds, or to the use of federal or state grant money.

The program becomes a capital budget when the council commits itself to funding the first year of the program (or such portion of it with which they agree and can find the funds to commit). Some cities adopt the capital budget ahead of the operating budget. They argue that the staff and the council must know before the operating budget decision is made which capital projects the city will undertake. Other cities call for adoption of the capital budget on the same day the operating budget is approved.

Beaumont has very clear language on the capital budget in Article VI. The section is reasonably short, leaving the details discussed above to ordinance or administrative order:

### Figure 14-4: Capital Program

#### Section 19 - CAPITOL PROGRAM

(a) **Submission to Council:** The Manager shall prepare and submit to the Council a five (5) year Capital Program at least three (3) months prior to the final date for submission of the budget.

(b) **Contents:** The Capital Program shall include:

(1) A clear general summary of its contents; and (2) A list of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity of such improvements; and (3) Cost estimates, method of financing, and recommended time schedules for each such improvement.

#### Section 20 – COUNCIL ACTION ON CAPITAL PROGRAM

The Council shall give notice of a public hearing on the proposed Capital Program and shall hold said hearing in the same manner as provided in this Chapter for the annual budget. The hearing for the proposed Capital Program and the notice of same may be in conjunction with the annual budget. The Council shall, by resolution, adopt the Capital Program with or without amendment after the public hearing and on or before the 27<sup>th</sup> day of the last month of the current fiscal year.

## Purchasing and contracts

A typical Texas charter contains three provisions regarding purchasing and contracts: (1) a paragraph or more on competitive bidding for supplies and materials; (2) a statement on purchases the city manager can make (mayor in mayor-council city) without approval by the city council; and (3) a section on construction contract bids. A few charters also address limitations on the sale of city land.

## Supplies, materials, and construction

### THOSE DAYS ARE GONE FOREVER!

“Section 29. All contracts for public printing, public improvement, and public works of every kind and character, and the purchase of supplies for use in any department of the city exceeding an expenditure of Two Hundred and Fifty (\$250) Dollars shall be let on sealed competitive bids.” (Emphasis supplied.)

State law permits a number of exceptions to the \$50,000 competitive procurement threshold. They are listed in Local Government Code, Section 252.022.

One sub-function of purchasing in many cities is the responsibility for inventory control, particularly of such items as water and wastewater pipe and fittings, as well as the materials and supplies. Only a handful of cities have deemed it necessary to address this activity in the city charter; however, one city may have been having some difficulties in this area. By terms of a charter amendment adopted May 1994, the city manager is mandated “to develop an event-oriented inventory management system for city-owned property and required to present the council with an inventory of all city-owned property at the time of presentation of the annual budget message.” The Public Property Finance Act (Sections 271.001-271.009, Local Government Code) also speaks to the purchase and/or acquisition of personal property by cities.

The charter section quoted to the left is from a 1918 Texas city charter. The \$250 figure requiring competitive procurement is now \$50,000 by state statute. Another major change is the choice now available to cities.

Until 1993, state law regarding competitive bidding mandated that if charter limits were lower than the state figure, the charter figure prevailed. In 1993, however, the law was changed, and a city may adopt the state figure even though its charter sets a lower limit. The result of this recent law is that a number of cities have the authority to preempt their charter limits without an amendment changing the limits. The difference between response to this state law and others is that cities are allowed to choose whether they will adhere to their charter provision or

to state law when they differ. Most other state laws supersede charter provisions.

## Construction contracts

In 2001, Subchapter H of Chapter 271 was added to the Texas Local Government Code and extended the authority to use alternative delivery systems, including best-value competitive bidding, competitive sealed proposals, design-build, construction management, and job order contracting, to Texas cities. Detailed information on these procurement methods are available from TML or the Texas attorney general’s office in the publication known as “Texas Municipal Procurement Laws Made Easy.”

## Accepting state law

The City of Pflugerville adopted its first charter in November 1993 and abdicated the entire area of purchasing and sale of city property and assets to the state. That charter’s brief Section 9.09 simply reads: “All sales of city property, purchases made, and contracts executed by the city shall be made in accordance with the requirements of the constitution and laws of the State of Texas.”

When this verbiage is included in a city charter, the city council may, by ordinance, prescribe the sales, purchase, and contract limits the city manager may execute without reference to the council, and require transactions over that set amount to come before the council. This ordinance route offers the advantage of flexible response to changes in the dollar value.

## Municipal debt - short and long-term

Cities borrow money for the same two reasons as individuals—to cover an emergency on a short-term basis and to acquire a major piece of equipment or property using long-term financing.

Short-term loans to a city usually are made by local banks. The purpose is to provide temporary funds with the expectation of repayment within the current fiscal year. Our review of the charters revealed that 74 percent of them provide specifically for borrowing in anticipation of tax collections or other revenues. A city’s short-term loans must mature in the current fiscal year and do not require a voter referendum. Such loans should be used sparingly; excessive use can adversely affect a city’s bond rating.

The city of Denton has a fairly standard section on tax anticipation notes:

### **Sec. 7.07. Borrowing in anticipation of property taxes.**

In any budget year, in anticipation of the collection of the property tax for such year, whether levied

or to be levied in such year, the council may be resolution authorize the borrowing of money by the issuance of negotiable notes of the city, each of which shall be designed "Tax Anticipation Note for the year 19\_\_" (stating the budget year). Such notes shall be renewable, shall mature and be paid not later than the end of the fiscal year in which the original notes have been issued.

Long-term loans are of two kinds – "general obligations" and revenue bonds. "General obligations" are secured by a pledge of property taxes and include time warrants, certificates of obligation and ad valorem tax bonds (G.O. bonds). Revenue bonds are long-term loans secured by a pledge of revenue from an income-producing facility such as the city water system.

## Time warrants

Time warrants are one form of general obligation debt 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 10 percent of the voters.

The procedures for issuing time warrants are cumbersome and expensive and may 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 (COs)

COs are the second form of general obligation debt payment from ad valorem taxes. Like time warrants, they can be issued without voter approval except that upon notice of the city's intent to issue certificates, five percent of the qualified voters can force an election on the issue by submission of a petition.

No charter provision is necessary to utilize the state law. (Subchapter C, Certificate of Obligation Act, Sections 271.041 - 271.063, Local Government Code.) In addition, if a city charter has a provision contrary to the CO law, the charter provision is overridden by law.

The original CO law, enacted by the Legislature in 1971, was sought by cities primarily to provide a funding mechanism for overruns of GO bond projects. While the law even then allowed COs to be paid for materials and supplies and to mature over a period of as much as 40 years, cities

used this new authority very carefully. To their credit, Texas cities have not misused this law and precipitated major citizen backlash. There is a temptation to: (1) buy materials, supplies, and small pieces of equipment with COs that could be purchased out of current operating funds, and (2) carelessly issue obligations of up to 40 years, avoiding voter approval. At least one urban Texas county has been criticized for having a "permanent" program of issuing COs each year for any equipment costing over \$500.

## 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 Attorney General of Texas 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. General obligation bonds have the highest degree of investor acceptance of any type of municipal indebtedness and 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.

Charter provisions for issuance of G.O. bonds vary widely in detail. Some cities extensively detail the purpose for which these bonds may be issued, the conditions of sale, the initiation of a register to keep records, the establishment of a sinking fund to record annual bond payments, and the penalties for misuses of this fund.

Conversely, the only provisions that a number of cities have are the following:

- (1) Recite that the city has the power to issue all types of debt instruments.
- (2) Provide for the passage of a bond ordinance. Several cities provide that bonds may be authorized only with a majority vote of the entire council.
- (3) State the maximum term of the bonds and other conditions of issuance.
- (4) Recite the conditions of sale—public sale, sealed proposals, note of sale to be published, authority of council to refuse all bids.
- (5) Provide for the register and set of books showing all the pertinent details concerning each type of debt issued.

## Spending/taxation limitations

At least one home rule charter directly limits the ability of the city to increase taxes or expenditures from one year to the next. While tax and expenditure limits have been avoided as a matter of State law, a city's charter may be stricter.

## Summary

When writing a new charter or amending an existing one, cities should not hesitate to obtain the counsel of bond attorneys to guide charter writers in the intricacies of state and federal law pertaining to debt insurance and management.



The words are used so often together, one can almost see them as one word: *initiative**referendum**and**recall*! They really are three separate facets of direct democracy or direct legislation, and you generally find provisions for all three in a charter. The citizens of California helped make initiative and recall household words. The public generally hears information regarding recalls in relationship to gubernatorial recalls. California, the most infamous of the recall states, received a great deal of attention in 2003 when Gray Davis was removed from office. This led the way for Governor Arnold Schwarzenegger to be elected to the top spot in California. In the last few years, members of local governing bodies in Texas have been the subject of recall elections as well. The trend has been for a dissatisfied public to utilize their rights as provided for in the city charter.

## Introduction

All three of these actions begin with a citizen petition to the governing body, and all three can lead to a vote by the people. An *initiative* petition asks the city council to act on a specific issue when it has not done so previously. If the petition is valid, the council must adopt it or submit it to a vote of the people. Petitioners welcome council adoption, which is faster. A *referendum* petition asks the city council to reverse an action already taken or proposed. The council can rescind the ordinance or submit it to a vote of the people. A *recall* petition asks the city council to call an election for a vote on removal of one or more councilmembers from office. If the targeted officials resign, an election is unnecessary.

Although an election is the final possibility in all three situations, petitioners are delighted with any council or individual action that avoids an election.

## Early history of initiative, referendum and recall (I R & R)

These three tools for direct citizen participation in government are residuals of prerevolutionary debates and, particularly, of the drafting of the federal constitution.<sup>34</sup> The debate participants, our founders, argued the merits of “direct” democracy with maximum citizen participation versus the merits of “representative” democracy with elected representatives of the people as the predominant decision-makers. The direct democracy proponents, led by Benjamin Franklin and Thomas Jefferson, lost the debate to James Madison and John Adams. Thus, our U.S. Constitution and our state constitutions are instruments of representative democracy with periodic elections in which the people name the leaders to represent their interests.

State constitutions were not submitted to the people for ratification until early in the nineteenth century. Texas went directly to the voters in 1845 for a pre-annexation vote on its draft constitution, and again five years later with a referendum to determine the location of the capital.

The movement toward greater use of initiative, referendum, and recall (IR&R) at the state level gained impetus in 1892 when endorsement of initiative and referendum at the state level was included in the platform of the Populist Party at its first national convention. In 1898, states began incorporating these direct methods into law. Oregon was first, followed during the next ten years by seven more states. By 1912, a total of 15 states had adopted both initiative and referendum and three more states had adopted one or the other.

The recall also appeared early in America. The 1780 Massachusetts Constitution stipulated that delegates to the Congress of the United States could be recalled at any time within their one-year terms, and others could be chosen and commissioned in their place.<sup>35</sup>

In the late 1800s, recall was considered to be primarily a weapon against governors and the executive branch generally; whereas, initiative and referendum were being targeted to the legislative branch. Since governors at the turn of the century were more highly thought of than legislators, the recall movement did not have the impetus that the other two mechanisms had. Also, the states could not decide if members of the judiciary should or should not be included in the list of officials subject to recall. For these and other reasons, the move to adopt recall along with initiative and referendum did not materialize as quickly.

Texas, ironically, has no provision for any of the three citizen participation methods to be used at the state level, but about 100 years ago, shortly after the advent of commission government at the local level in Texas, the legislature began placing one or more of the three methods in the charters it issued. And to this day, the legislature has not enacted any law to block or even impede the use of the methods by home rule cities.

## I R & R at the local level

The circumstances surrounding the arrival and installation in 1901 of the commission form of government in Galveston may have been the instigating factor for the addition of one or more of these three “direct” citizen processes in early Texas charters. The commission form utilized a five-member elected board that served as both legislative and executive branch and was acclaimed and embraced nationwide. The short ballot (in Galveston, it was five elected members of the governing body elected at large who replaced a mayor and 16 aldermen elected by wards) appealed to citizens. Praise

was widespread for its “businesslike” approach to city government.

To offset the criticism that the new form concentrated power in too few hands, the Texas Legislature began placing one or more of three “direct” methods in almost all of the special legislative charters issued to cities, beginning in 1907. All three features were placed in the Dallas and Fort Worth special legislative charters enacted in 1907, the Amarillo and Waco charters passed in 1909, and the Austin charter in 1911. Although all five of these cities, plus a host of others, changed from commission to council-manager forms of government in the next few years, IR&R remained in their charters.

## NCL Model Charter

The eighth and latest edition of the NCL model city charter provides a comprehensive section that addresses a variety of issues regarding IR&R including: general authority, commencement of proceeding, petitions, procedures for filing, suspension of effect of ordinance, action on petitions, and the results of the election. Below is the language provided on General Authority from the NCL Model Charter:

### **General Authority for Initiative, Citizen Referendum, and Recall.**

**(1) Initiative.** The registered voters of the city shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, but such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees.

**(2) Citizen Referendum.** The registered voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

**(3) Recall.** The registered voters of the city shall have power to recall elected officials of the city, but no recall petition shall be filed against any official within six months after the official takes office, nor, in case of a member subjected to a recall election and not removed, until at least six months after the election.

## Charter provisions today

Today, an overwhelming number of Texas city charters call for all three, with the recall provision being the most prevalent; it is found in 93 percent of city charters. The initiative and referendum are provided for in 88 percent of charters. In virtually every charter, IR&R are the subjects of a separate article. Several cities make requirements that apply to all three items. Seguin authorizes the city secretary to use a sampling to check signatures against the voter registration list when the petition names exceed 1,000. There must be a minimum of a 25 percent sample. Several cities have provisions for a minimum turnout before the election will be declared successful, and a couple of cities require a second petition in the case of initiative and referendum. These provisions state that if the petitioners submit one petition and the city council fails to act, the petitioners must then go back and get additional signatures to force an election.

After an initiative or referendum is successful, cities provide various ways for reversing that decision. A few cities state that the council, within months, can simply reverse the decision without an extraordinary vote of any kind. But most charters provide a waiting period before the council can take any action to reverse the vote, and several charters require a majority or greater vote of the total council to reverse the action even after a waiting period. Some charters prohibit petitioners from coming forward on the same question more often than every six months.

Cities are almost evenly split over use of a petitioners' committee (usually five or ten persons). Proponents of such a committee argue that requiring a committee places clear responsibility for the undertaking of initiative or referendum proceedings. Opponents find fault, however, in the fact that such a committee is given the authority to speak for hundreds or thousands of petitioners, and may agree to a city council compromise ordinance without consulting with the petition signers.

In some instances, charter writers have tried to save a little verbiage by combining petition percentages and other common language covering all three actions into one section, stating that it is speaking for all three mechanisms at once. This can be done if handled very carefully, but several charters trying to do this have confused the requirements. Even though it means repeating some requirements, the clearest and cleanest way to state the charter requirements is to do so one at a time for each of the three. In this way, there can be no doubt about meaning.

Finally, when reading the following charts regarding the percentage of signatures required to file a valid petition, it should be remembered that many cities, in addition to requiring a certain percentage of voter signatures, require a minimum number of signatures. The charter frequently provides that the petition must contain the greater of these two: a percentage or a minimum number.

## Initiative provisions in charters

Most of the charters that provide for initiative prohibit petitions being presented to the council that address appropriating funds or authorizing the levying of taxes. Occasionally, a charter prohibits other initiated actions that the framers of the charter felt were inappropriate for citizen initiation.

Requirements on the number of required signatures vary widely. Some cities appear to purposely make it very difficult for voters to initiate ordinances; others have made it fairly easy. The actual requirements reported are:

**Figure 15-1: Signature requirements for initiative\***  
Number of cities requiring “X” percent of all registered voters or of the number voting in the most recent election

Percent:	Registered Voters		Most Recent Election	
	1994	2008	1994	2008
3%	.5	1.0	0	0
5%	2.5	2.0	.5	1.0
10%	14.0	18.0	4.0	3.0
15%	9.0	8.0	3.5	3.0
20%	7.0	9.5	15.0	13.0
25%	6.0	2.0	19.0	20.0
30%	2.5	3.0	10.0	9.0
33/33.3%	0	.5	1.0	.5
35%	1.0	.5	0	0
40%	0	.5	1.5	1.0
50%	0	.5	2.5	2.0
51%	.5	1.0	0	.5
60%	0	.5	0	0

\*Reading the chart: Using line 2 in the left-hand column, the figure means that signatures representing five percent of the voters must be secured; six cities require five percent of the registered voters; one city requires five percent of the last vote.

## Referendum provisions in charters

Many cities and court decisions have declared several areas “off limits” for referendum petitions. Many charters prohibit referendum petitions on: (1) levying taxes, (2) appropriating funds, (3) ordinances fixing rates and charges for utilities, (4) annexations, and (5) ordinances authorizing the issuance of bonds that have been authorized by a vote of the people. Some cities prohibit referendum petitions relating to personnel and administrative matters. The requirements regarding the number of signatures is usually the same as for initiative petitions.

**Figure 15-2: Signature requirements for referendum\***  
Number of cities requiring “X” percent of all registered voters or of the number voting in the most recent election

Percent:	Registered Voters		Most Recent Election	
	1994	2008	1994	2008
3%	.5	1.0	0	0
5%	2.0	1.5	.5	1.5
10%	13.5	16.0	3.0	3.0
15%	9.0	7.0	3.0	3.0
20%	6.0	11.0	16.0	12.5
25%	7.0	3.0	21.0	21.0
30%	3.0	3.0	10.0	10.5
33/33.3%	0	.5	1.0	.5
35%	1.0	.5	0	0
40%	0	0	0.5	1.0
50%	0	.5	2.5	2.0
51%	.5	1.0	0	0
60%	0	0	0	0

\*See explanation under Initiative for example of using this figure.

## Recall provisions in charters

The recall sections of charters have several provisions unique to that device. In less than 5 percent of charters, anywhere from one-tenth to one-half of all the petitioners must swear in the petition that they voted for the councilmember now the subject of their recall. In even fewer charters, candidates to replace the councilmember are listed on the ballot, so that if the citizens vote to recall the councilmember, the individual on the ballot with the most votes is elected at that same election to succeed the recalled individual.

Charters also vary as to whether accusations against a councilmember in a recall petition can be general or must list specific causes for action. North Richland Hills’ charter carries a notation immediately under Article XV on recall stating, “Note: Recall article of this charter has, by implication, been held to be invalid by a district court of Tarrant County in 1991.” According to the city attorney of North Richland Hills, the City of Lake Worth had copied the recall provision of North Richland Hills. This provision states:

Any city official elected by the people, shall be subject to recall and removal from office by the qualified voters of the city on grounds of incompetency, misconduct, or malfeasance in office.

A petition drive attempted to recall a councilmember in Lake Worth in 1991, and the court ruled that the provision was vague and unenforceable. This was a state district court decision that was not appealed. Therefore, the case’s value as precedent is minimal.

Most charter provisions on recall have a statement

that if the mayor or city council does not call a recall election when presented with a valid petition, the county judge shall discharge these duties. Still other charters attempt to place this duty on the district judge. These requirements also present problems because a city does not have the authority to prescribe duties for a county or district judge. The better remedy may be for the charter to provide that any citizen could file with the appropriate court for a writ of mandamus to force the city to call the election.

Finally, charters with recall provisions do have some restrictions on use. First, 55 percent of charters give a newly elected mayor or councilmember a few months on the job before they can be the subject of a recall petition. Our survey showed this grace period generally to be six months.

Similarly, 26 percent of charters provide that after having weathered a recall election, a councilmember may not be subjected to another recall election within a certain period of time. Our review of the charters showed an array of "waiting periods." Again, six months was the norm, but the time frames ranged anywhere from one month to one year.

To save money on an election, 12 percent of charters make a specific provision that recall petitions will not be honored within a specified period before the person in question will come up for election. These times range anywhere from three months to one year, with three months being the most common, followed by six months.

Finally, there are Texas charters which provide that a councilmember will not be subject to a recall election more than once during a term of office. The survey results in this regard are:

**Figure 15-3: Signature requirements for referendum\***  
Number of cities requiring "X" percent of all registered voters or of the number voting in the most recent election

Percent:	Registered Voters		Most Recent Election	
	1994	2008	1994	2008
3%	0	1.0	0	0
5%	1.5	2.0	0	1.0
10%	9.0	18.0	1.0	3.0
15%	5.0	8.0	.5	2.5
16%	0	0	.5	.5
20%	6.0	9.5	7.5	13.0
25%	6.0	2.0	10.0	20.0
30%	8.0	3.0	20.0	9.0
33/33.3%	.5	.5	1.0	.5
35%	2.0	.5	2.0	0
40%	2.5	.5	2.5	1.0
50%	1.0	.5	5.0	2.0
51%	.5	1.0	8.0	.5
60%	0	.5	0	0

\*See explanation under Initiative for example of using this figure.

## I R & R in action

Our survey (Appendix A), which was sent to key officials in every Texas home rule city, asked how many times each of the three provisions had been used in the last five years. We chose five years because we felt institutional memory in most cities might not extend back beyond that period of time.

## Initiative results from the survey

The initiative was reported to be used in 24 cities, a total of 41 propositions were presented to the voters, resulting in 31 propositions being approved by voters, seven being turned down by the voters, and three petitions being found invalid. The subject of the measures presented by the citizens varied widely—from an ethics ordinance to no smoking ordinances, as well as funding for facilities. But the largest number of petitions dealt with freezing property taxes for senior citizens and disabled veterans (authorized by separate state law), all of which were approved.

## Referendum results from the survey

Eleven cities reported use of the referendum in the past five years. A total of 15 propositions were placed on the ballot with 10 being approved, three failing, and two instances where the city council took action, thereby removing the issue from the election process. We attempted to eliminate all charter and bond issue votes; our interest was in the traditional use of the referendum petition. Here again, the diversity in subject matter represented all sorts of issues, such as the sale of alcoholic beverages in city parks.

## Recall results from the survey

Twelve cities reported recall elections in the past five years, with disappointing results for petitioners. Of the 28 individuals that were subject to recall, only twelve recall elections resulted in turning out the individual involved; whereas, the remaining 16 elections resulted in a failure to recall. One city reported that while the recall election may have failed, none of the candidates subject to the recall vote were elected in subsequent elections.

## Summary of survey results

Clinton Rogers Woodruff wrote words in 1911 that are still being used by advocates of the three mechanisms. He said there had been too few IR&R elections up to that time to justify a sound conclusion, and then added, "it may, however, be fairly argued that their existence constitutes a substantial, and on the whole, an effective safeguard. Their value rests in their existence, rather than in their use."<sup>36</sup> This appears to be the case in Texas today, with only 14 percent of all home rule cities being forced into IR&R elections in the last five years.

Regulation of utilities is the subject of a separate article in almost every charter in the state. Texas court cases indicate that a city's authority to require a franchise from a public utility operating inside municipal boundaries is derived from the statute that grants the city exclusive control of the public streets. In the case of a home rule city, such power is derived from Article 1175, Vernon's Annotated Civil Statutes. All three of the regulatory acts discussed below preserve the authority of a city to require franchise from public utilities. It should be remembered, however, that the right to operate a business in the nature of a public utility cannot be prohibited by a city; the city has only the power to regulate the use of its streets and alleys in the operation of such a business.

The overall regulation of utilities, formerly the responsibility solely of the city, has changed in the past 30 years. Three different state agencies are involved now in utility regulation—the Public Utility Commission (PUC) for electricity and telephone, the Railroad Commission (RRC) for gas utilities, and the Texas Commission on Environmental Quality (TCEQ) for water and sewer utilities. This chapter reviews the general regulatory environment for utilities and then examines some appropriate charter language.

## Early history of utilities in Texas

The cities' relationship with utility services is referred to several times in Dick Smith's dissertation, "The Development of Local Government Units in Texas." Smith points out that as far back as the days of the Republic, cities were beginning to levy license fees on businesses of various types. Houston's special legislative charter issued by the Republic authorized "lighting of the streets" as one of its powers of the city. In the 1870s, cities were authorized to regulate railroads coming through town, including their speed and the construction and lighting of crossings. Cities originally built small lighting plants to light the city; these were steadily bought by private operators who then dominated the marketplace from the 1800s to the present time.

## Franchises and rate regulation prior to 1975

From the beginning of regulation, cities were authorized to require companies to obtain permission to use the public streets and right-of-way to conduct their businesses. Although exclusive franchises could not be granted, one electric and one gas company (public or private) was usually the sole source of supply in any given city. With this privilege, the companies then agreed to regulation of rates, annual payments of "street rental" charges, submission of annual reports

to the city, and other regulatory restrictions. Lengthy provisions were placed in most early charters addressing every aspect of these arrangements between the city and companies concerned.

In rate regulation, cities were considered generally to be in a better position prior to state law changes made in the 1970's and 1980's. Before passage of the Public Utility Regulatory Act (PURA) in 1975, the Gas Utility Regulatory Act (GURA) in 1983, and amendments to the Texas Water Code (1989), companies had to go to district court if they were displeased with a decision of the city council on rate requests. Under the new legislation, appeals are directed to the Public Utility Commission (PUC), to the Railroad Commission (RRC), or to the Texas Commission on Environmental Quality (TCEQ).

## Public Utility Regulatory Act (PURA) of 1975

The first comprehensive state regulatory act, the Public Utility Regulatory Act (PURA), was passed in 1975. Article IV of PURA is devoted entirely to cities. The first statement emphasizes that no provision of PURA shall be construed as limiting the right of a city to grant or refuse franchises to use the streets and alleys within the city limits and to make charges for such use.

Secondly, PURA continues the right of a city to engage rate consultants and other professionals to assist the city council in ratemaking proceedings. It also provides that the utility shall be required to reimburse the city for reasonable costs incurred for consulting any experts.

Appeals from the ratemaking decision may be taken to the PUC (not district court) and may come from the company, the city council, or citizens if the latter can secure a petition.

In actual practice, there is not much difference between the actions of most cities that have retained original jurisdiction and those that have ceded it to the PUC. In both cases, cities are joining with other cities in the same geographical area of the state, and sometimes statewide, to employ expert counsel to oppose rate and/or service requests that they feel are not in the best interests of their ratepayers in the city. This challenge to rate increases is now being mounted by cities before the PUC in virtually every case, instead of trying to defeat the utility in hearings at city hall.

## Gas Utility Regulatory Act (GURA)

In 1983, the Texas Legislature enacted the Gas Utility Regulatory Act. GURA was enacted "to protect the public interest in the rates and services of gas utilities." Article III of that act is entitled "Municipalities" and sets out the rights

and responsibilities of cities in their relationship with gas companies serving their communities.

GURA begins, as does PURA, with the statement that the act does not limit the rights and powers of cities to grant or refuse franchises to use the streets and alleys within its city limits. The act then declares that cities may require gas companies to furnish all necessary data in order for the city council to make a reasonable determination of rate base within the city. Further, the city may employ rate consultants, attorneys, auditors, and others necessary to conduct investigations and advise the governing body in its consideration of any matter brought before the council by the gas company, and the company shall pay any reasonable costs of these services.

Finally, the appeal procedure is like that under PURA. The appeal to the Railroad Commission may be made by the city, the gas company, or the citizenry upon the presentation of a petition.

## Other utility operations

### Telephone

All telecommunication regulation is now under the PUC. Cities no longer have the right to regulate these rates, but are entitled to right-of-way compensation under Chapter 283 of the Local Government Code.

### Cable television

In the past, regulation of cable TV and video providers has moved back and forth between Washington and individual cities; the PUC never had any authority in this arena. Cable and video operations are now under Federal Communications Commission (FCC) regulation, with the PUC granting the authority to provide service in the state. As with telephones, cities are entitled to right-of-way compensation under Chapter 66 of the Utilities Code.

### Taxicabs/limousines

These companies are subject to local regulation by the city council.

## Municipal utilities

### Electric

The PUC has no control over rates charged customers inside city limits by municipally owned electric utilities. Article IV of PURA states that ratepayers of a municipally owned electric utility outside the city limits may appeal any action of the governing body affecting the rates of the municipally owned electric utility by filing with the PUC a petition for review signed by the lesser of 10,000 or five percent of the ratepayers served by such utility outside the municipal limits.

The remainder of Article IV sets forth the procedures to be followed by the ratepayers and the city in the appeal of such rates.

### Gas

GURA has a provision almost identical to PURA in regard to ratepayers of a municipally owned gas utility outside the city limits.

### Water and wastewater

The Water Code has, in Section 13.082, provisions similar to PURA. Rates of municipally owned water and wastewater utilities are exempt from regulation by the TCEQ except for service furnished outside the city limits.

## The franchise article in a home rule charter

In our survey and review of city charters, we found that 52 percent of the cities require a majority of the total council to award a franchise. The serious deliberation that one would expect of a decision of this consequence is channeled by the majority of cities through two, and in many cases, three required separate readings of the ordinance granting the franchise, with the last reading being at least 15, or more often, 30 days after the first reading. In addition to these procedures, many cities require either the entire ordinance or a summary of the ordinance to be published in the official newspaper, one time a week, anywhere from one to four weeks.

We did find a few charter provisions requiring a franchise to be submitted to a referendum of the voters if a petition is presented by a certain number of signers. And the survey found a number of charter provisions that the city “shall have the right to buy, construct, lease, and maintain, operate and regulate public utilities.” Several charters specifically provided that:

No franchise shall be granted, renewed, extended or amended, except on condition that the city shall have the right at any time within five (5) years of the expiration of the term thereof to purchase the property of the franchise holder at a price to be determined according to the method agreed upon in the ordinance granting, renewing, extending, or amending the franchise.

Our analysis of street rental fees revealed most city charters provide for collection of this fee but do not specify a rate. Most cities now collect two percent of gross receipts, but some cities collect as high as four percent per year. Keep in mind that cable/video, telephone, and electric franchise fees are now governed by state law. Thus, much of this information is based on older, preempted charter provisions. Water

and/or gas franchises may be the most prominent exceptions. The original version of this book quoted extensively from example, perhaps outdated, charter language regarding franchises. Because of recent state law changes in this area, a city planning to adopt or amend a charter should visit with local legal counsel regarding franchises.

A tally of the figures in number of years for which for which a franchise could be awarded gave these results:

**Figure 16-1: Maximum franchise term**

	1998	2008
10 years	1%	1%
15 years	2%	1%
20 years	25%	21%
25 years	17%	13%
30 years	15%	10%
31 plus years	10%	6%
Not specified in charter	30%	48%
<b>TOTAL CITIES</b>	100%	100%

publish, a report showing the financial condition of said public utility and the financial result of such city ownership and operations, giving the information specified in this section and such additional data as the council shall deem expedient.

## Summary

Franchises are like long-term general obligation bonds—the city has made a commitment binding the current city council and councils for years to come. Common sense and public duty dictate prudent action on franchises only after getting the best advice available. Such action should result in the best possible decision for the present and the future.

## Municipally owned utilities

Several charters contain an article or, sometimes, just one section on the city's own utilities. The most common section is one regarding financial statements for municipally owned utilities. The provision below is found in quite a few charters:

### **Sec. 10.10. Accounts of municipal owned utilities.**

Accounts shall be kept for each public utility owned or operated by the city, in such manner as to show the true and complete financial results of such city ownership and operation, including assets, appropriately subdivided into different classes, all liability subdivided by classes, depreciation reserve, other reserves, and surplus; also revenues; operating expenses including depreciation, interest payments, rental, and other disposition of annual income. The accounts shall show the actual capital cost to the city of each public utility owned, also the cost of all extensions, additions, and improvements, and the source of the funds expended for such capital purposes. They shall show as nearly as possible the cost of any service furnished to or rendered by any such utility to any other city or governmental department. The council shall annually cause to be made by a certified public accountant, and shall





Almost every city charter has a concluding article with contents so diverse that we found forty subjects covered in just a random look at seven charters. Altogether, the cities probably cover a 100 topics in this final article. Some of the paragraphs apply only to the particular city. Some emphasize important state laws by repeating them. We have chosen 25 subjects to highlight in this chapter. These subjects are generally the most frequently found in the General Provisions article; most of them are important, but do not fit neatly into any other article of the charter. A general summary identified five broad categories: standards of conduct, legal provisions, government operations, remainders and reminders, and continuity in change.

## Standards of conduct and conflict of interest

Various provisions of the Texas Constitution and state statutes cover this general category. But many charters repeat or summarize the law to provide emphasis and easy access for charter readers.

**Personal or financial interest** – Over 78 percent of charters prohibit councilmembers from having any personal or financial interest in any contract with the city. Those charter provisions are more stringent than state law. Chapter 171 of the LGC allows councilmembers to vote on matters if they do not have a “substantial interest” in the business concerned; if the councilmember has a substantial interest, then he/she must declare it and refrain from voting.

The Beaumont charter speaks specifically regarding “Personal Interest” as follows:

### Section 16.9 Officers or Employees Not To Have Financial Interest in Any Contract of the City.

No officer or employee of the City shall have a financial interest direct or indirect or by reason of ownership of stock in any corporation, in any contract with the City, or be financially interested directly or indirectly in the sale to the City of any land, materials, supplies, or services except on behalf of the City as an officer or employee; provided, however, that the provisions of this section shall only be applicable when the stock owned by the officer or employee exceeds one percent (1%) of the total capital stock of the corporation. Any willful violation of this section shall constitute malfeasance in office and any officer or employee guilty thereof

shall thereby forfeit the office or position. Any violation of this section with the knowledge expressed or implied of the person or corporation contracting with the governing body of the City shall render the contract voidable by the City Council.

Some cities have such stringent requirements regarding business ownership and financial disclosure that individuals with small businesses who might otherwise make excellent councilmembers choose not to run for the council because they do not want to disclose the names of their clients. In addition, financial disclosure requirements were added to state law in 2005 and 2007 (See Chapters 145 and 176, Local Government Code.)

**Nepotism** – Nepotism prohibitions are found in 79 percent of charters, although these prohibitions are typically not more stringent than state law, as has been done with personal and financial interest prohibitions for councilmembers. They have summarized the state nepotism law found in Section 573.041 of the Government Code. The state law, in prohibiting the city council from hiring any person who is related to a councilmember within the second degree by affinity (relationship by marriage) or within the third degree by consanguinity (relationship by blood), has three exceptions that many cities do not address. Many charters simply prohibit the potential conflict completely. The state law prohibition does not apply to relatives who were continuously employed by the city for: (1) at least 30 days, if the councilmember is appointed; (2) at least six months, if the councilmember is elected at an election other than the general election for state and county offices; or (3) at least one year, if the councilmember is elected at the general election for state and county offices. One cautious West Texas city prohibits employment within the fourth degree of affinity and consanguinity. Several charters include a nepotism provision applying to the city manager.

**Acceptance of gifts** – This prohibition is covered in 59 percent of charters. In many cities, the prohibition concerns only gifts received from the holder of a franchise. The Texas Penal Code has at least three sections that speak to the general question of gifts: Section 36.02 addresses bribery generally, Section 36.08 addresses bribes in return for help with bids or other financial transactions, and Section 36.09 addresses influencing a public official’s conduct or vote.

**Political activity** – Charters in 49 percent of cities have specific provisions outlawing or regulating political activity by city employees. Sections 150.002 and 180.001 of the LGC both prohibit fire and police personnel from taking an active part in another person’s political campaign for an elective position

in the community and prohibit an individual from coercing a fire or police officer to participate, or to refrain from participating, in a political campaign. Many charters have a general prohibition against officers or employees soliciting other employees for political purposes. La Grange has this language in its charter:

## **Section 11.03 Prohibitions**

Activities Prohibited:

(3) No City official or employee, elected or appointed shall orally, by letter or otherwise solicit or assist in soliciting any assessment, subscription, or contribution for any political party or political purpose whatever from any subordinate City official or employee holding any compensated City position.

(4) No person who holds any compensated City position shall solicit or receive any contribution to the campaign funds of any candidate for municipal office or take any part in the management, affairs, or political campaign of any municipal candidate.

## **Legal provisions**

Most charters have provisions that set forth certain legal precepts designed to give the city legal standing if taken to court. These include:

**Construction of charter** – A statement that the charter is a general grant of power and is not to be interpreted as limiting in any way.

**Judicial notice** – A typical statement: “This charter shall be deemed a Public Act, and shall have the force and effect of a general law, may be read in evidence without pleading or proof, and judicial notice shall be taken thereof in all courts and places without further proof.”

**Separability/severability/partial invalidity** – One of these terms is used to declare that the charter will remain intact even if one section, paragraph, or sentence is declared to be unconstitutional.

**Publicity of records** – This provision is generally a brief statement reflecting the Texas Public Information Act, which requires all city records, with a few exceptions, to be open to the public.

**City required to give security or execute bond** – Usually states that the city is exempt from having to post bond or security in any kind of court case.

**Provision relating to assignment, execution, and garnishments** – States that the city is not subject to these legal procedures.

**Written notice of injury** – Requires that individuals injured by reason of a city’s action or lack of action shall be required to give the city written notice of such claim within a certain number of days of the incident.

There have been several cases construing notice of claim ordinances to be in violation of the Open Courts provision of the Texas Constitution. In *Borne v. City of Garland*, 718 S.W.2d 22 (Tex. App. - Dallas, 1986), the court held that the 30-day notice of claim provision in the City of Garland’s charter was in violation of the constitution because it did not contain any exceptions such as “good cause” or “actual notice.” Also, in the case of *Fitts v. City of Beaumont*, 688 S.W.2d 182 (Tex. App. - Beaumont, 1985, writ ref’d n.r.e), the court held that the city charter provision requiring written notice within 60 days violated the Open Courts provision of the constitution.

Both cases generally discuss the statute of limitations in the Texas Tort Claims Act, which is six months, and discuss the fact that there was no exception for good cause shown. As a result of these two cases, cities have amended their charters or notice of claim ordinances to provide specifically that a six-month notice is sufficient if good cause can be shown. These changes were made to address the concern of the court in the above-cited cases. Great caution should be exercised in denying a claim based solely on the fact that notice was not given within the time allowed under the charter or the notice of claim provision; however, it is certainly within the city’s best interests to know as soon as possible about claims that may be made against it, and a charter provision or an ordinance such as this will certainly go a long way in accomplishing that purpose. The Temple charter has a detailed section on written notice:

## **Section 3.8. LIMITATION OF LIABILITY FOR DAMAGES**

Before the City shall be liable for damages for personal injuries of any kind, or for injuries to or destruction of property of any kind, the person injured, or the owner of the property injured or destroyed, or someone on his behalf, shall give the City Manager notice in writing of such injury or destruction, duly verified, within sixty (60) days after the same has been sustained, stating in such written notice when, where, and how the injury or destruction occurred, and the apparent extent thereof, the amount of damage sustained, the amount for which claimant will settle, the actual residence of the claimant by street and number, and at the time the claim is presented, and the actual residence of such claimant for six (6) months immediately preceding the occurrence of such injuries or destruction, and the names and addresses of the witnesses upon whom he relies to establish his claim, and, further, that suit be filed thereon within six (6) months from the date such injuries were received or destruction suffered; and a failure to

# General provisions

notify the City Manager within the time and manner specified herein and a failure to file thereon with six (6) months from the date such injuries were received or such destruction suffered, either or both, shall exonerate, excuse and exempt the City from any liability whatsoever. Further, this section shall not apply to the taking, damaging or destruction of property as guaranteed and covered by Section 17 of Article 1 of the Constitution of Texas.

**Oath of office** – The oath for both elected and appointive officials is found in the Texas Constitution. This is one state requirement that does not need to be in the charter.

**Contractual immunity** - Section 51.074 of the Local Government Code has long provided that a home rule city may “plead and be impleaded” in court. Recently, a plaintiff sued a city, claiming that the language in Section 51.074 provides a waiver of the city’s governmental immunity. In Tooke v. City of Mexia, 197 S.W.3d 325 (Tex. 2006), the plaintiffs successfully bid on a city contract whose term was stated to be for a three-year period. Prior to the end of the three years, the city notified them that the city was “discontinuing” the contract for lack of funding. The plaintiffs sued for breach of contract, asserting that they had relied on a three-year term in purchasing equipment. The Supreme Court of Texas held that the contract covered a governmental function of the city from which it was immune from suit. That immunity was not waived by Section 51.075 of the Local Government Code, which provided simply that a home rule municipality “may plead and be impleaded in any court.” In 2005, however, the legislature provided a limited waiver of immunity for contractual disputes between vendors and cities by enacting Subchapter H of Chapter 271 of the LGC.

## Government operations

A wide variety of provisions specifically addressed to city operations may be found in one or more charters. These include authority to:

- Condemn dangerous structures,
- Provide retirement and health insurance for city employees,
- Provide diversity on city boards and commissions, and
- Give citizens priority in city employment.

## Reminders and reminders

Many charters have unrelated provisions that do not fit readily in other sections but generally enable actions or serve as a reminder of actions mandated, and may include:

**Rearrangement and renumbering** – Authorizes the city council

to rearrange and renumber articles and sections in the charter to place like content together and construct a logical ordering of the articles.

**Gender** – Some charters have a provision to make the charter gender neutral.

**Recording of the charter** – Reminds future city officials of the necessity to comply with Sections 9.005, 9.007, and 9.008 of the LGC, regarding filing the charter with the city secretary and with the Secretary of State’s office.

**Official newspaper** – Some charters name the official newspaper in which to publish the official city notices.

## Continuity in change

Most charters have some language that addresses the question of the transition when a city adopts a new charter or makes major structural changes, such as changing the form of government. Provisions that may be found in this regard include:

**Interim government/continuation of officers/transfer of power, duties, and responsibilities (charters use one of these terms)** – These items are self-explanatory. Several charters might be consulted here for anyone wishing further information on any of the above.

**Continuance of contracts** – States that contracts already in force will not be affected by the new charter.

**Effective date of charter** – Self-explanatory.

**Adoption of charter** – Sets forth a brief report of the charter commission and the date and procedure for election.

**Disaster clause** – Only a few cities have any provision for emergency succession in the event all or a majority of the governing body is killed or incapacitated by some event. The City of Allen has this provision:

### Section 10.09 Disaster clause.

In case of disaster when a legal quorum of elected councilmembers cannot otherwise be assembled due to multiple deaths or injuries, the surviving member or members of the elected council, or highest surviving city official, if no elected official remains, must within twenty-four (24) hours of such disaster, request the highest surviving officers of the local chamber of commerce and the board of trustees of the local school district, and the county judge of Collin County to appoint a commission to act during the

emergency and call a City election within fifteen (15) days of such disaster for election of a required quorum, if for good reasons it is known a quorum of the present Council will never again meet.

State law addresses emergency succession for the governor and the legislature and allows local governments to prepare a succession plan to be used in time of disaster. However, the State's Emergency Management Plan requires cities and counties in their local emergency plans to have a section on "continuity of government - line of succession" in which they set out how the city would be governed in the event a legal quorum of the elected councilmembers cannot be assembled due to multiple deaths or injuries.

## Summary

This listing of items generally found in a city's charter under the title "General Provisions," is only a sample of the content of Texas charters in this last article.

We will repeat that some of these sections are a summary of state law and do not have to be stated in the charter. However, it may be important to repeat some of the more prominent state laws in an appendix to the charter to help individuals reading the charter become fully aware of the relationships of state law to charters and to remind them of some of the basic ground rules of city governance.

In Chapter 4, we discussed the legal requirements for adopting a new charter and amending an existing one. We will now consider some of the practical problems in deciding the subject and number of amendments for the ballot.

## Charter revision commissions

Most cities address amendments near the end of their charters. Several charters mandate city council consideration of charter revisions every five or ten years; others provide for appointment of a charter revision commission periodically, but leave details to the sitting council.

A small percentage of cities provide instructions for appointment and list detailed responsibilities of a charter revision commission. The Pflugerville charter has a section that is typical of these charters:

**Figure 18-1: Section 11.11 Charter Review**

### Section 11.11. Charter Review.

**(a) Charter review commission:** Two years after the adoption of this charter and every five years thereafter, the council shall appoint a Charter Review Commission composed of not fewer than thirteen nor more than twenty members who meet the requirements of section 8.02. Appointment shall be made at the first regular meeting following the anniversary date of the charter's adoption. The Charter Review Commission shall serve for six months, or a longer term if extended by the city council, and shall meet at least once each month during its term. The mayor shall appoint three members and each council member shall appoint two members to serve on the Charter Review Commission. Remaining members shall be appointed by majority vote of the city council.

**(b) Rules of procedure:** The commission must establish its own rules of procedure, which must require that a quorum consists of a majority of its members and that an affirmative vote of a majority of all members present is necessary to act.

**(c) Powers and duties:** The Charter Review Commission shall:

1. Inquire into the operations of city government and review the city charter to determine whether it requires revision. Public hearings may be held and the commission shall have the power to compel the attendance of city officers or employees and to require the submission of city records necessary to its inquiry and review.

2. Propose any recommendations it deems desirable to ensure compliance with charter provisions by city departments.

3. Propose any charter amendments it deems desirable to improve the effective application of the charter to current conditions.

4. Make a written report of its findings and recommendations to the city council.

**(d) Council action:** The council shall receive and have published in the city's official newspaper the Charter Review Commission's final report. It shall consider any recommendations and, if any amendments are presented, shall order the amendment or amendments submitted to the voters of the city.

There are several interesting provisions in that section. The appointment of such a commission every five years is, in our opinion, a reasonable period of time to call for a review of the charter and any problems manifested in the last five years as a result of charter provisions. Some cities mandate a review every ten years. Many charters provide for review every two years. Two years may be more frequent than necessary for review of such a basic—presumably general—document. In addition, to provide for less than two years would be time consuming and impracticable as the Texas Constitution, art. XI, § 5 provides, “Furthermore, no city charter shall be altered, amended or repealed oftener than every 2 years.”

The commission called for in the Pflugerville charter – and others like it – have the power, by some language or another, to inquire into the operations of the city. This is a fairly open-ended invitation for a citizen body and it may account for the reason that only a limited number of charters provide for this type of authority.

Several charters require the city council to publish the report of the commission in a public newspaper. In some cases, a summary of the report, including any suggested charter amendments recommended by the commission, is required. Another city requires the city council to post in three public places the findings of the commission.

Only one city charter states that after publication in a newspaper, if the commission has recommended any charter amendments, “the council shall order such (emphasis supplied) amendment or amendments to be submitted to the voters of the City.” This last particular provision could have some ramifications, particularly if the city council did not care for one or more of the amendments proposed.

Finally, of the charters with redefined charter commission responsibilities, almost all of them limit the life of the review commission to six months, at the end of which it is to file its report.

One community adopted a charter amendment extending the life of the commission for the full four years until appointment of a new commission is required. That same city also has a provision in its charter under which 100 or more citizens (qualified voters) may “require the city council to show cause as to an alleged noncompliance with the articles and sections of this charter.” These two provisions are not found in any other charter in the state. Both actions apparently would require the current city council as well as future governing bodies to live with provisions that were, in all likelihood, directed to some action(s) of a previous council.

The majority of city charters that contain such detail are found in cities with populations below 10,000. Outside of that, there is really no other identifying factor, as they are located throughout the state and are represented in both forms of government.

The great majority of charters leave consideration of amendments to the city council. If citizens believe charter revision is necessary, then can inform the city council. If nothing is done, they can replace them.

## Practical consequences regarding amendment elections

Many mayors and councilmembers keep little notebooks or other records noting sections, paragraphs, and/or phrases in the charter about which they have questions. At some time during their years of service, one of their personal questions or a particular incident may prompt city councils and city administrators to begin to think about a charter amendment election.

Sometimes at a “work session” of the council, the subject is broached and some thinking begins in earnest about the possibility of considering charter amendments. One of the interesting dynamics of this process is that there may be provisions in the charter that the council would just as soon be overlooked. These provisions may include terms of office, the manner in which the council is elected, the appointment of certain officials, or many other matters. There also may be subjects not now in the charter which consideration of a charter amendment election would bring to the forefront. The best example here is probably the question of term limits, but it is only one of a number of possibilities that arise when an election is considered. The numerous possibilities and their complexity may lead some individuals to favor keeping the problems in the current charter rather than opening “Pandora’s box.” And this may explain why charters are not amended very often.

If the decision is made to go forward and consider revision, the council will want to ask the city attorney to devote a substantial amount of time to answering questions about possible amendments and to carefully reviewing the laws affecting the charter. TML also is prepared to advise on possible language and answer other types of questions. Cities should pay particular attention to eliminating conflicting language in the charter—language that may exist now or will exist if certain changes are made. Examples pointed out in previous chapters

include charters that call for both majority and plurality vote for city council, and others that provide that the city council and the city manager can both terminate employees.

A subject that always arises when deciding about an election is how to handle provisions in the charter superseded by state law. It requires serious thought. It is hoped the alternatives presented in Chapter 3 may be of some value to city council and charter commissions when reviewing such questions. One city tried to anticipate federal and state law overriding charter language and recently adopted this amendment:

Amendments to this Charter may be made in the following manner:

(A) In the event amendment is necessitated by a preemptive state or federal law, by statute, court decision, or administrative action, and such preemptive law or regulation is mandatory in its governance of this City, despite any action by the voters either for or against such a proposed amendment, then, and only in such an event, shall the City Council itself act to amend the Charter by ordinance. Upon the passage of such ordinance, a copy thereof, certified by the City Secretary and filed with a copy of this Charter, shall be forwarded to the Secretary of State for filing, as well as certified copies of such ordinance being filed with other appropriate offices.

This type of amendment has a worthy goal—to keep the charter updated at all times. Unfortunately, state law does not set out this procedure as a recognized method of amending a charter. It is thus presumed that a court would not uphold this amendment should some legal question arise.

## Amendment adoption results

Our survey instrument asked cities to indicate the date of the last charter amendment election held, the number of voters, the registered voters at that time, population of the city, and the results (number of propositions submitted and number favored by the voters).

Several facts stand out as we view the tabulation of those questions.

Most charters have been amended fairly recently, more than 42 percent in the last eight years. In response to the question asking the last time the charter was amended, the following answers were given:

**Figure 18-1: Most Recent Charter Amendments by Decade**

No amendments	70
Between 1950 and 1959:	3
Between 1960 and 1969:	4
Between 1970 and 1979:	11
Between 1980 and 1989:	38
Between 1990 and 1999:	78
Between 2000 and 2008:	147

These figures would seem to indicate that cities—voluntarily or pushed by one or more citizens' groups or the electorate as a whole—are responding to a variety of demands for changes in the charter. This would include: (1) allowing the city to respond to broader representation on the city council, and at the same time, term limits on city councils; (2) keeping the charter abreast of changes in state laws; and (3) streamlining administrative responsibility.

Charter amendments appear to be a constant at the ballot each year. For elections held beginning in 2000 and through 2007, 112 cities reported a total of 1,227 proposed amendments being placed on the ballot. When asked regarding the communities most recent charter amendments, the breakdown was as follows:

**Figure 18-3: Number of Amendments Submitted to Voters, 2000-2007**

Year	# of cities	# of amendments submitted to the voters
2000	5	17 amendments
2001	7	94 amendments
2002	7	52 amendments
2003	9	113 amendments
2004	9	106 amendments
2005	20	215 amendments
2006	32	392 amendments, 81 were for 1 city
2007	23	235 amendments, 70 were for 1 city

The most discouraging note was probably the voter turnout. It was not unusual in those amendment elections for only one or two percent of the registered voters to turn out. That means that less than 1 percent of the entire population are in some cases making amendments to the city charter. Even when there were a large number of amendments, voter turnout remained low. In 2006, one city proposed 81 amendments and only 14 percent of the registered voters participated, which was six percent of the total population approving 80 of the 81 proposed amendments. The following year, another city proposed 70 amendments, this time only 11 percent of the registered voters cast their vote in the election, again this was 6 percent of the total population. The larger cities typically report more interest and a higher turnout in amendment elections.

## One amendment elections

It is interesting to note that, for elections held beginning in 2000 and continuing through 2007, 20 cities presented only one amendment to their voters. Several of the seven cities had no choice because of unique circumstances, but there are significant disadvantages to submitting one amendment: (1) whether one amendment or twenty pass, the city cannot hold another charter amendment election for two years; and (2) whether an election is held to consider one amendment or twenty, the cost would be almost the same.

## Summary

Decisions on charter amendment elections, like many government decisions, evolve more from intuition and practice than rules and law. The historic infrequency (10-20 years apart) of charter amendment elections is, however, a guide: move slowly and cautiously to avoid future confusion and costs.





**Editor's Note:** This is the original "Afterword" from the 1994 version. It still rings just as true today as it did then.

## Afterword

Before the days of copy machines and computers, the new city manager of a city with 20,000 population was interviewing the chief building inspector about the procedures used in administering the zoning ordinance and the building, plumbing, and electrical codes. When the inspector showed him his files, the manager was surprised to see originals of letters to contractors and others rather than file copies. He asked if someone had failed to mail the originals and they got back in the files by mistake.

"No," was the reply, "we always mail the carbon copy to the addressee and keep the original in our files. That way our files stay neat and clean. Carbon copies mess up our files." The manager made a note to check the legality of the action and the effect on the recipients who might think receipt of a carbon copy meant the city didn't consider them very important.<sup>37</sup> This incident assuredly later became a personnel workshop example of overemphasis on processes rather than goals!

This handbook is about structure and processes and does not directly emphasize delivering quality services in an efficient manner. However, we strongly believe that city hall's services can be delivered more effectively and efficiently if we take the time to make our structure and our processes as clean and clear as possible.

The danger is in making structure and processes an end rather than a means to an end. A well-written, coherent charter is not an end; it is a foundation on which to build an effective organization equipped to master the challenges facing cities today. Properly drawn, a charter is a legal guideline comparable to a roadmap. It is a continually available reference for principles and requirements to guide actions that avoid policy "potholes." It can be brought forward every five or six years and reviewed to see if any legal provisions need updating. In writing this handbook, we have tried to show the charter as an instrument that should set forth clear instructions on organization, duties, responsibilities, and authority in order that the maximum time and energy of city officials can be expended in "results-oriented" activities.

Three conditions of the current status of cities stood out for me as we researched and wrote this book. The first: Texas urban citizens have sharply divided opinions about the effectiveness of their city officials. The positive votes predominant in charter elections statewide and the reluctance to "fire" city officials, evident in unsuccessful recall elections,

both reflect more confidence in city government than is shown in the media. Citizen participation is also at an all-time high. On the other hand, low voter turnout, frequent defeat of incumbents, and the increasing adoption of term limits for elected officials reflect the national trend toward distrust of government.

The second condition: the council-manager plan is the number one choice as a government form. Only 13 percent (**Editor's note:** now down to nine percent) of the charters call for mayor-council form of government. If you subtract from the number reflected in this percentage the cities utilizing an optional city manager for many years, there are less than 25 charters operating under the mayor-council form of government. The council-manager plan has served the citizens of Texas well. Despite talk from time to time in some of the larger cities of changing the form of government, there doesn't appear to be any real sentiment toward change. A charter revision commission in Austin recently showed absolutely no interest in discussing the matter as a possible charter amendment. City councils apparently remain dedicated to the fact that professional administration is a strong plus for the city.

And the third condition: Texas city charters are fairly well-written, but some are sources of problems caused by a weak original draft document. Too many charters appear to have been copied from neighboring cities without considering whether the original was well written and stated correctly. Charter commissions need advice from knowledgeable city administrators and attorneys as well as other sources on specialized subjects. Lack of knowledge or carelessness have created documents with contradictions and confusing language, leading to contradictory and confusing interpretations.

The observations above come from reading Texas city charters and the survey data accumulated as part of this project. The content was a mix of initiative, innovation, borrowed ideas, and local politics. The presentation methods were a mix of bound copies (plain or with color), age-yellowed newsprint copies, stapled copies, and computer printouts with pages not yet separated. The charter language is as diverse as the cities served. Some retain the language of the days when horses and buggies were downtown traffic. Some expound endlessly on every possible legal problem that have only a remote chance of surfacing from now until eternity. Some are so succinct that not a single word is unnecessary.

Regardless of the diversity of language, the test of charter quality is whether it establishes a sound legal and procedural structure that enables elected and appointed city officials to focus their total energy on the substantive problems that plague their cities.

## Challenges facing cities today

The most pervasive problems in Texas cities today are the problems of our complex society. Their severity has escalated partly because cities have traditionally focused their efforts on basic services, such as fire and police, utilities, and street maintenance, rather than personal human service problems. Almost simultaneously with a tight economy, unparalleled population growth, and cutbacks in funding from state and federal levels, cities are faced now with rising costs for traditional services, and with crime, homelessness, and mandated environmental cleanup and control. An increasing alienation of citizens disappointed with official response to problems produces the unrelenting pressure of bitter criticism, expressed individually and through special interest groups.

Sociological problems, particularly crime and drugs, unemployment, and environmental pollution, know no boundaries. They are not exclusive to large cities but have spread into the small towns as well.

Cities need the best in elected and appointed leadership to meet and overcome their challenges. Every city needs strong mayors (in both forms of government), dedicated city councilmembers and committed city managers today and for the future. We need leaders who can motivate broad participation, build teamwork, assess and redefine programs and services, develop strategies to link programs and services to citizens, evaluate and utilize community resources, explore new ways to generate revenue, encourage collaboration with other governmental agencies and in the private and nonprofit sectors, promote fiscal responsibility to pay now rather than later, and restore the community-wide view to counterbalance special interest influence.

A widely held perception of citizens today is that they are not represented in government, according to William Greider, author of Who Will Tell The People? He says citizens are alienated from government by their inability to find a place where they can make their voice heard and by their conviction that the language of the system, understood by experts but not ordinary people, also shuts them out. It is imperative, he says, for governing officials to invent new ways to get people back in touch with government.<sup>38</sup>

A review of contemporary comments by experts on city problems today reveals a serious underlying weakness that impedes problem solving—the lack of a sense of common bonds and goals that unite the governing and the governed. It is not a new problem. On the contrary, it is as old as the art of governing; and many voices from the past bequeathed words of guidance.

For governing officials, the advice is embodied in the oath taken more than a thousand years ago by ancient Greeks whose culture rested on the political organization of the city-state:

WE WILL EVER STRIVE FOR IDEALS AND SACRED THINGS OF THE CITY, BOTH ALONE AND WITH MANY: WE WILL UNCEASINGLY SEEK TO QUICKEN THE SENSE OF PUBLIC DUTY; WE WILL REVERE AND OBEY THE CITY'S LAWS: WE WILL TRANSMIT THIS CITY NOT ONLY NOT LESS, BUT GREATER, BETTER, AND MORE BEAUTIFUL THAN IT WAS TRANSMITTED TO US.

For the governed, the advice is embodied in the words spoken more than three hundred years ago by John Winthrop, the first governor of Massachusetts Bay Colony: "We must delight in each other, make others' conditions our own, rejoice together, mourn together, labor and suffer together, always having before our eyes our community as members of the same body."<sup>39</sup>

When Texas city officials and citizens restore their sense of union and commitment, they can build communities in which mutual respect will supersede charter provisions, laws, and the courts as the first consideration for policy and administrative decisions.

## 1 Concept and history of local Self-government

1. Charles S. Rhyne, The Law of Local Government Operations, p. 1
2. John P. Keith, City and County Home Rule in Texas, p. 9.
3. City of Clinton v. Cedar Rapids and Missouri River Railroad Co., 24 Iowa 455, 475 (1868).
4. Atkin v. Kansas and Trenton v. New Jersey, 191 U.S. 207, 220-221 (1903); 262 U.S. 182, 185-187 (1923).
5. Dick Smith, "The Development of Local Government Units in Texas," unpublished doctor's dissertation, p. 105.
6. H.P.N. Gammel, ed., Laws of Texas, 1822-1897, as quoted by Smith, p. 110.
7. Ibid, p. 114.
8. Acts 1874, 14<sup>th</sup> leg., p. 140, ch. 100; 8 Gammel's Laws 142, as quoted in Trueman O'Quinn, Title 28: Cities, Towns, and Villages, History, Status, and Function, Revised Civil Statutes of Texas, 1963.
9. Keith, op. cit., p. 24.
10. Delbert A. Taebl, A Citizen's Guide to Home-Rule Charters in Texas, p. 1.
11. Keith, op. cit., p. 29-44.
12. George D. Braden, The Constitution of the State of Texas: An Annotated and Comparative Analysis, p. 688.
13. Ibid., p. 688.
14. Bureau of Municipal Research. Units of Local Government in Texas, p. 33.
15. Wilfred D. Webb, Municipal Home Rule Charters in Texas, p. 8.
16. Smith, op. cit., p. 148.
17. State v. Vincent, 235 S.W. 1084 (Tex. 1920).

## 2 Advantages of home rule status

18. This chapter is lifted almost verbatim from a publication of the Texas Municipal League: They are: Handbook for Mayors and Councilmembers, September, 2009.
19. Forwood v. City of Taylor, 214 S.W. 2d 282 (1948).
20. Urban Policy Group, the White House (Washington, D.C.: 1978) Unpublished.

## 5 General design and format of charter

21. Taebl, op. cit. p. 29.

## 6 Form of government

22. Chang, Tso Shuen, History and Analysis of the Commission and City Manager Plans of Municipal Government in the United States, n.d.

## 7 Powers of city

23. Much of the material in this chapter is taken directly from The Handbook for Mayors and Councilmembers: Home Rule Cities, Texas Municipal League.

## 8 The mayor

24. Peirce, Neal, Citistates, p. 325.

25. Tari Renner and Victor S. DeSantis, "Contemporary Patterns and Trends in Municipal Government Structure, The Municipal Year Book, 1993, p. 57-69. See *also*, Taebel, op. cit., Section 5.

26. For a fuller discussion of the role of the mayor in both forms of government, see James H. Svava, Official Leadership in the City: Patterns of Conflict and Cooperation.

## 9 The city council

27. Delbert A. Taebel, "Alternative Remedies Under the Voting Rights Act," Public Affairs Comment, p. 5.

28. School of Social Sciences, The University of Texas at Dallas, "City of Dallas, Citizens Charter Review Committee: Decision Guide," unpagged, 1989.

29. Stone v. City of Wichita Falls, 477 F. Supp. 581 (D.C. 1979); *aff'd* 646 F 2d 1085; *cert. den'd* 102 S. Ct. 637.

## 13 Departments, offices, agencies and boards

30. Herman James, A Model Civil Service Code for Texas Cities.

31. Gammel's Laws, Vol. II, p. 94-99.

32. *Ibid.* Vol. V, p. 1527-1570.

33. Revised Civil Statutes, Articles 4430-4431.

## 15 Initiative, referendum and recall

34. For a discussion of the entire initiative, referendum and recall movement, including its historical beginnings, see Thomas E. Cronin, Direct Democracy: The Politics of Initiative, Referendum, and Recall.

35. Ibid. p. 42.

36. Clinton Rogers Woodruff, ed., City Government by Commission, p. 314. Although this book is primarily about the rise of the commission form of government in the United States between 1901 and 1911, it addresses the subject of IR&R in a substantial way as it argues that the three mechanisms were used in local government in the commission form of government as one way of assuring the citizenry that the small elected commission could be held accountable to the voters.

## 19 Afterword

37. LeRoy F. Harlow, Without Fear or Favor, p. 212.

38. See William Greider, Who Will Tell the People.

39. John Winthrop, "A Model of Christian Charity," Puritan Political Ideas, 1558-1794, p. 92.

## APPENDIX A

### Texas Municipal League home rule charter survey

City: \_\_\_\_\_ Date: \_\_\_\_\_

Completed by: \_\_\_\_\_ E-mail: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Note: Unless otherwise indicated, the answers below should be based on current charter provisions. Please enter all of the information below even if some of it may be spelled out in your charter. If you have questions regarding this survey, please contact Scott Houston with the TML legal department at (512) 231-7400.

#### Form of Government

a) Council-Manager      b) Mayor-Council      c) Commission      d) Other

#### Mayor

Is mayor member of gov. body?

a) Yes      b) No

Selection of mayor

a) Elected      b) By council      c) Other

#### Authority of Mayor

Appoints boards and commissions

a) Yes      b) No

—w/approval of council

a) Yes      b) No

Regular vote

a) Yes      b) No

Vote only in tie

a) Yes      b) No

No vote

a) Yes      b) No

Enumerated ceremonial duties

a) Yes      b) No

Martial law

a) Yes      b) No

Enumerated emergency powers

a) Yes      b) No

Appoint CAO

a) Yes      b) No

Appoint department heads

a) Yes      b) No

— w/approval of council

a) Yes      b) No

Prepare budget

a) Yes      b) No

Mayor veto

a) Yes      b) No

#### Council

Total on council

\_\_\_\_\_

Number of members for regular meeting quorum

\_\_\_\_\_

Number of members for special meeting quorum

\_\_\_\_\_

Number of votes for council to take action on ordinary matters

a) Majority of those present      b) Majority of quorum      c) Majority of total council

Residency length requirement

a) Yes      b) No

If yes to previous question

a) 6 mo      b) 1 yr      c) 2 yrs      d) Other      e) Not specific

Reside in district

a) Yes      b) No

Owner of property

a) Yes      b) No

Minimum age

\_\_\_\_\_

Registered/qualified voter

a) Yes      b) No

Barred if tax delinquent

a) Yes      b) No

Other qualifications

a) Yes      b) No

Missed meetings vacancy

a) Yes      b) No

Council votes to impeach

a) Yes \_\_\_\_\_#      b) No

Council votes to override mayoral veto

a) Yes \_\_\_\_\_#      b) No

## Elections

In some cities, a federal court or the U.S. Department of Justice has mandated a new way of electing city council members, BUT the charter has not been changed to reflect this new method. If your city council is NOT elected the way your charter currently reads, please check here \_\_\_\_\_.

Uniform election date to hold regular city election	a) May	b) November	c) Other
Filling one vacancy	a) Appointment	b) Election	c) Either
Filling two vacancies	a) Appointment	b) Election	c) Either
Term limit applies	a) council and mayor	b) Separately	c) n/a
Terms staggered	a) Yes	b) No	c) n/a
Elections by	a) Majority	b) Plurality	
Name on ballot	a) Fill out form	b) Petition	c) Other
If petition, number of names	_____		
Fee for name on ballot	a) Yes \$_____	b) No	

## Election Turnout

Date of most recent mayor/city council election	_____ (MM/DD/YY)
Contested?	a) Yes b) No
If yes, number voting in election	_____
Total registered at time of election	_____
Population at time of election	_____
Date of next most recent mayor/city council election	_____ (MM/DD/YY)
Contested?	a) Yes b) No
If yes, number voting in election	_____
Total registered at time of election	_____
Population at time of election	_____

## Council Meetings

Required	a) Weekly	b) Twice/mo	c) Once/mo	d) Not specific
Actual	a) Weekly	b) Twice/mo	c) Once/mo	d) Not specific
Mayor Term	a) 1 yr	b) 2 yrs	c) 3 yrs	d) 4 yrs
Council Term	a) 1 yr	b) 2 yrs	c) 3 yrs	d) 4 yrs
Term limits	a) Two	b) Three	c) Four	d) Four+ e) n/a

## Mayor Salary

Salary	a) Yes	b) No			
\$ _____ Per:	a) Mtg	b) Wk	c) Mo	d) Yr	e) Other
Salary set by Council	a) Yes	b) No			
Expenses:	a) Yes	b) No			
\$ _____ Per:	a) Mtg	b) Wk	c) Mo	d) Yr	e) Other
Expenses set by council	a) Yes	b) No			

## Mayor Pro Tem Salary

Salary	a) Yes	b) No			
\$ _____ Per:	a) Mtg	b) Wk	c) Mo	d) Yr	e) Other
Salary set by Council	a) Yes	b) No			
Expenses	a) Yes	b) No			
\$ _____ Per:	a) Mtg	b) Wk	c) Mo	d) Yr	e) Other
Expenses set by council	a) Yes	b) No			

## Council Salary

Salary	a) Yes	b) No			
\$ _____ Per:	a) Mtg	b) Wk	c) Mo	d) Yr	e) Other
Salary set by Council	a) Yes	b) No			
Expenses	a) Yes	b) No			
\$ _____ Per:	a) Mtg	b) Wk	c) Mo	d) Yr	e) Other
Expenses set by council	a) Yes	b) No			

# Appendix A

## City Manager

City manager established by charter	a) Yes	b) No	
City manager established by ordinance	a) Yes	b) No	
*If yes, please <u>enclose</u> a <u>copy</u> of the <u>ordinance</u> .			
Former member of CC not eligible for	a) 1 yr	b) 2 yrs	c) n/a
Manager participates in CC mtgs	a) Yes	b) No	
Vote required to hire manager	a) Majority	b) Majority of CC	c) Other
Hearing provided to discharge manager	a) Yes	b) No	
Council prohibited from interference in personnel matters	a) Yes	b) No	c) n/a
All department head appointments require confirmation by council	a) Yes	b) No	
If not all dept heads, which of the following require confirmation?			
Finance Director	a) Yes	b) No	
Police Chief	a) Yes	b) No	
Other _____	a) Yes	b) No	
Vote required to discharge manager	a) Majority	b) Maj of CC	c) Other

## City Clerk/Secretary

Title	a) City Clerk	b) City Secretary	
Appointed by	a) Manager	b) Mgr w/CC approval	c) Council
	d) CC on rec of Mgr	e) Mayor	f) Mayor on rec of mgr
	g) Mayor w/CC approval		
Term	a) 1 yr	b) 2 yrs	c) 3 yrs
	d) 4 yrs	e) Pleasure of CC	f) Other g) n/a

## City Attorney

Appointed by	a) Manager	b) Mgr w/CC approval	c) Council
	d) CC on rec of Mgr	e) Mayor	f) Mayor on rec of mgr
	g) Mayor w/CC approval		

## Municipal Judge

Appointed by	a) Manager	b) Mgr w/CC approval	c) Council
	d) CC on rec of Mgr	e) Mayor	f) Mayor on rec of mgr
	g) Mayor w/CC approval	h) Elected	
Term	a) 1 yr	b) 2 yrs	c) 3 yrs
	d) 4 yrs	e) Pleasure of CC	f) Other g) n/a

## Municipal Court Clerk

Appointed by	a) Manager	b) Mgr w/CC approval	c) Council
	d) CC on rec of Mgr	e) Mayor f) Mayor on rec of mgr	
	g) Mayor w/CC approval		
Term	a) 1 yr	b) 2 yrs	c) 3 yrs
	d) 4 yrs	e) Pleasure of CC	f) Other g) n/a

## Financial Administration

Outside audit required	a) Yes			b) No		
Fiscal year begins (month)	1	2	3	4	5	6
	7	8	9	10	11	12
FY may be changed by ordinance	a) Yes			b) No		
Borrowing auth in anticipation of revenue	a) Yes			b) No		c) n/a
Limits set on sale of real property	a) Yes			b) No		c) n/a
Limits set on sale of personal property	a) Yes			b) No		c) n/a
Vote required for adoption of budget	a) Simple Majorityb) Maj of CC					



# Texas Home Rule Charters

If no vote by EOFY	a) Mgr/Mayor's budget effective	b) Continuation of last yr	
	c) No provision	d) Other	
Detailed budget requirements	a) Yes	b) No	c) n/a
Revenues must equal expenditures	a) Yes	b) No	c) n/a
Transfer of appropriations	a) Mgr btwn depts	b) w/approval of CC	c) Council
Capital budget or program	a) Yes	b) No	c) n/a
Vote required to set tax rate	a) Yes	b) No	c) n/a
Vote required to submit bond election	a) Yes	b) No	c) n/a
Purchase limit before CC must act	\$_____		
Purchase limit before written bids required	\$_____		
Charter maximum tax rate:	a) Yes	b) No	c) n/a
If, yes: Operating	\$_____	Debt Service	\$_____ Total \$_____

## Initiative, referendum, recall

Charter provides for initiative a) Yes b) No c) n/a  
 If yes, \_\_\_\_\_% of a) Registered b) Last vote c) Minimum names \_\_\_\_\_  
 If yes, how many times during the past five years has this provision been used by the citizenry and what were the results:

<u>Year</u>	<u>Subject</u>	<u>Resulting Action</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Charter provides for referendum a) Yes b) No c) n/a  
 If yes, \_\_\_\_\_% of a) Registered b) Last vote c) Minimum names \_\_\_\_\_  
 If yes, how many times during the past five years has this provision been used by the citizenry and what were the results:

<u>Year</u>	<u>Subject</u>	<u>Resulting Action</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Voluntary referendum a) Yes b) No c) n/a  
 Charter provides for recall a) Yes b) No c) n/a  
 If yes, \_\_\_\_\_% of a) Registered b) Last vote c) Minimum names \_\_\_\_\_  
 If yes, how many times during the past five years has this provision been used by the citizenry and what were the results:

<u>Year</u>	<u>Position (Mayor/Councilmember)</u>	<u>Result</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Limits on recall a) Yes b) No c) n/a  
 If yes, not before 6 months a) Yes b) No c) n/a  
 If yes, after unsuccessful election a) Yes b) No c) n/a  
 If yes, before election a) Yes b) No c) n/a

## Charter and Amendments

Year of adoption of first charter \_\_\_\_\_  
 Year of latest amendment \_\_\_\_\_  
 Charter revision commission required every a) 5 yrs b) 10 yrs c) 15 yrs d) Other e) State Law f) Not addressed  
 Charter revision commission presently underway? a) Yes b) No

# Appendix A

Charter revision commission presently contemplated? a) Yes b) No  
If so, what is expected date of charter election \_\_\_\_\_ (MM/YY)

## Charter Amendment Election Voter Turnout

Date of most recent charter amendment election \_\_\_\_\_ (MM/DD/YY)  
Number voting in election \_\_\_\_\_  
Total registered at time of election \_\_\_\_\_  
Population at time of election \_\_\_\_\_  
Number of propositions on ballot \_\_\_\_\_

## Departments established by charter

Finance	a) Authorized	b) Mandated
Personnel	a) Authorized	b) Mandated
Legal	a) Authorized	b) Mandated
Planning	a) Authorized	b) Mandated
Police	a) Authorized	b) Mandated
Fire	a) Authorized	b) Mandated
Recreation	a) Authorized	b) Mandated
Park and Recreation	a) Authorized	b) Mandated
Library	a) Authorized	b) Mandated
Health	a) Authorized	b) Mandated
Health Officer	a) Authorized	b) Mandated
Aviation	a) Authorized	b) Mandated
Hospital	a) Authorized	b) Mandated
Other _____	a) Authorized	b) Mandated

## Boards established by charter

Board Name	Authorized	Mandated
_____	Y / N	Y / N
_____	Y / N	Y / N
_____	Y / N	Y / N
_____	Y / N	Y / N
_____	Y / N	Y / N
_____	Y / N	Y / N
_____	Y / N	Y / N
_____	Y / N	Y / N
_____	Y / N	Y / N
_____	Y / N	Y / N
_____	Y / N	Y / N

## Personnel/Officers

Charter establishes civil service	a) Yes	b) No	c) n/a
Charter establishes CS commission	a) Yes	b) No	c) n/a
Charter establishes merit system	a) Yes	b) No	c) n/a
Personnel department	a) Authorized	b) Required	
Personnel rules	a) Authorized	b) Required	
Own retirement system	a) Yes	b) No	c) n/a
Authorized to participate in retirement/pension system	a) Yes	b) No	c) n/a
Political activity prohibited	a) Yes	b) No	c) n/a
Acceptance of gifts prohibited	a) Yes	b) No	c) n/a

# Texas Home Rule Charters

Nepotism prohibited	a) Yes	b) No	c) n/a
Personal interest in contracts prohibited	a) Yes	b) No	c) n/a

## Miscellaneous

Vote required to grant franchise	a) Majority	b) Maj of CC			
Gross receipts	a) 1%	b) 2%	c) 3%	d) 4%	e) Not specified
Franchise subject to referendum	a) Yes	b) No	c) n/a		
Maximum franchise (yrs) specified	a) 10	b) 15	c) 20	d) 25	e) 30    f) Not
Council required to adopt comp plan	a) Yes	b) No	c) n/a		
Redistricting commission established	a) Yes	b) No	c) n/a		
Eminent domain restrictions	a) Yes	b) No	c) n/a		
Revenue cap	a) Yes	b) No	c) n/a		
Annexation authorized	a) Yes	b) No	c) n/a		
Disannexation authorized	a) Yes	b) No	c) n/a		

## APPENDIX B

### Texas Constitution Article XI, Section 5

Home Rule Adoption and Amendments To Charter

#### **Sec.5.CITIES OF MORE THAN 5,000 POPULATION; ADOPTION OR AMENDMENT OF CHARTERS; TAXES; DEBT RESTRICTIONS.**

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 percent 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. Furthermore, no city charter shall be altered, amended or repealed oftener than every two years.

Amended Aug. 3, 1909, Nov. 5, 1912, and Nov. 5, 1991.

## APPENDIX C

### Listing of Home Rule Charters in Texas

Displayed on the following pages are the key historical dates for each of the 351 home rule city governments in Texas. This table begins with the first special congressional acts of incorporation (charter) by the Republic of Texas granted on June 5, 1837, to Houston, Nacogdoches, and 16 other communities (now either nonexistent or general law cities).

Seventy-six current home rule cities began existence by passage of a special law, either by the Congress of the Republic of Texas, or the state legislature beginning in 1845. Until about the turn of the century, these acts all began: "An Act Incorporating the city of \_\_\_\_\_." However, these laws from the very beginning in 1837 were a form of charter for the community. The first act "to sue and be sued," "to hold and dispose of property," and to form a city government by the election of a mayor and eight aldermen who were authorized to levy taxes, enact ordinances for the preservation of order, and establish schools. We reviewed each of the "special legislative charters" which followed and all of them contained the same general language as above. We have therefore in this table chosen to use these earliest dates as dates of their first charter. Other than three cases in which the citation is either missing or incomplete, the dates shown below in the second column are the effective dates of the acts shown. Appreciation is expressed to the staff of the Archives Division of the Texas State Library for their assistance in locating these documents.

Dates in the other three columns were obtained primarily from city charters and city records, but a portion of these dates also were obtained from Secretary of State records, now housed in the State Library.

Cities with footnote <sup>1</sup> by the date of their charter have changed the method of election and/or composition of their governing body from the way their current charter reads but have not incorporated such change in the charter yet. These changes have been made in each city as the result of an agreed settlement with an individual or organization or a federal court mandating such change.

Footnotes 2, 3, and 4 are found only in the second column "Date of First Special Legislative Charter." They are the result of one day, March 20, 1911, in the Texas Legislature when that body approved five special legislative charters, four to be effective only on acceptance by the local voters and the fifth effective without a vote of the local citizens.

Cities with footnote 2 were authorized a special legislative charter, subject to a vote of their citizenry, and such charter was accepted by citizens in the two cities in elections held on the date shown.

Cities with footnote 3 were authorized a special legislative charter, subject to acceptance by their electorate, and the charter in question was rejected by the local electorate, thus no date for such proposed charter is shown.

One City, Terrell, footnote 4, was granted a special legislative charter on the same date (March 20, 1911) as the other four cities, but no referendum of the citizens of Terrell was provided in this case.

## Home Rule Charters in Texas<sup>5</sup>

City	Date of First Special Legislature Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Abilene	1911 <sup>2</sup>	1962	same	2006
Addison	-----	1978	same	1993
Alamo	-----	1979	same	1992
Alamo Heights	-----	1954	same	2007
Alice	-----	1949	same	1999
Allen	-----	1979	same	2007
Alpine	-----	1993	same	1995
Alton	----	1992	same	none
Alvin	-----	1963	same	2002
Amarillo	1909	1913	same	2000
Andrews	-----	1959	same	1994
Angleton	-----	1967	same	1991
Anna	----	2005	same	none
Anson	-----	1920	same	2006
Aransas Pass	-----	1951	same	2006
Arlington	-----	1920	same	2005
Athens	1856	1960	1966	1977
Atlanta	-----	1968	same	2005
Austin	1839	1924	1953	1998
Azle	-----	1971	same	1990
Balch Springs	-----	1990	same	2006
Ballinger	-----	1963	same	2005
Bastrop	----	2002	same	none
Bay City	-----	1989	same	1996
Baytown	-----	1948 <sup>1</sup>	same	2002
Beaumont	1838	1919	1947	2003
Bedford	-----	1966	same	2008
Beeville	-----	1951	same	1978
Bellaire	-----	1949	same	2006
Bellmead	-----	1955 <sup>1</sup>	same	1961
Belton	1852	1914	1951	2005
Benbrook	-----	1983	same	1998
Big Spring	-----	1926	same	1995
Boerne	----	1995	same	none
Bonham	1848	1947	same	2006

# Home Rule Charters in Texas

City	Date of First Special Legislature Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Borger	-----	1927	1930	1998
Bowie	-----	1984	same	2000
Brady	-----	1982	same	2003
Breckenridge	-----	1954	same	1988
Brenham	1866	1920	same	1995
Bridge City	-----	1974	same	2002
Brownfield	-----	1954 <sup>1</sup>	same	2000
Brownsville	1850	1915	same	2001
Brownwood	----	1916	same	1996
Bryan	-----	1917	1941	2006
Buda	----	2007	same	none
Burkburnett	-----	1923	same	2002
Burleson	-----	1969	same	1998
Burnet	----	2000	same	2006
Cameron	1856	1956	same	2007
Canyon	-----	1959	same	1990
Carrizo Springs	-----	1959	same	1989
Carrollton	-----	1961	same	2004
Carthage	1852	1948	same	1986
Cedar Hill	-----	1975	same	2000
Cedar Park	-----	1987	same	none
Celina	----	2007	same	none
Center	-----	1984	same	none
Childress	-----	1917	same	1988
Cibolo	----	2004	same	none
Cisco	-----	1919	1974	none
Cleburne	1871	1914	1950	1986
Cleveland	-----	1981	same	1993
Clute	-----	1957	same	2001
Coleman	-----	1950	same	2002
College Station	-----	1952	same	2004
Colleyville	-----	1977	same	2005
Colorado City	-----	1948 <sup>1</sup>	same	1988
Commerce	-----	1954	same	1995
Conroe	-----	1965	same	1999
Converse	-----	1991	same	2007
Coppell	-----	1986	same	2006
Copperas Cove	-----	1979	same	2005

# Home Rule Charters in Texas

City	Date of First Special Legislature Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Corinth	----	1999	same	none
Corpus Christi	1846	1926	same	2006
Corsicana	1854	1917	same	1997
Crockett	1837	1964	same	1996
Crowley	----	1999	same	2001
Crystal City	-----	1958	same	1983
Cuero	1873	1944	1969	2001
Daingerfield	1851	1980	same	1989
Dalhart	-----	1960	same	1979
Dallas	1856	1914	same	1997
Dayton	-----	1976	same	1992
De Leon	-----	1919	same	1992
Decatur	----	2002	same	2003
Deer Park	-----	1960	same	1981
Del Rio	-----	1918	1967	2008
Denison	1873	1956	1975	1985
Denton	1866	1914	1959	2006
Denver City	-----	1985	same	1988
DeSoto	----	1949	same	2007
Diboll	----	1962	same	2009
Dickinson	-----	1987	same	2001
Dimmitt	-----	1990	same	none
Donna	-----	1957	same	1994
Dumas	-----	1955	same	1993
Duncanville	-----	1962	same	2002
Eagle Pass	-----	1918	1964	2007
Eastland	-----	1919	same	1998
Edinburg	-----	1928	1949	1996
Edna	-----	1966	same	1884
El Campo	-----	1954	same	2007
El Paso	1873	1984	same	2004
Electra	-----	1917	same	1988
Elgin	05-31-1873	1985	same	1993
Elsa	-----	1981	same	none
Ennis	-----	1913	same	1997
Eules	-----	1962	same	1995
Everman	-----	1986	same	2004
Fairview	----	2006	same	none

# Home Rule Charters in Texas

City	Date of First Special Legislature Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Farmers Branch	-----	1956	same	1999
Fate	----	2001	same	none
Floresville	----	2004	same	none
Flower Mound	-----	1981	same	2007
Forest Hill	-----	1976	same	2007
Forney	----	1997	same	none
Fort Worth	1873	1924	same	2006
Fredericksburg	-----	1991	same	none
Freeport	-----	1949	1960	2004
Friendswood	-----	1971	same	2007
Frisco	-----	1987	same	2002
Gainesville	1873	1994	same	1996
Galena Park	-----	1946	same	1979
Galveston	1839	1960	same	1998
Garland	-----	1951	same	1994
Gatesville	-----	1966	same	1994
George West	-----	1980	same	1992
Georgetown	1866	1970	1986	2003
Giddings	1873	1982	same	1984
Gilmer	----	1996	same	2007
Gladewater	1874	1955	same	1985
Glenn Heights	-----	1987	same	none
Gonzales	1837	1957	same	2001
Gorman	-----	1920	same	1960
Graham	-----	1920	same	1991
Granbury	-----	1989	same	2006
Grand Prairie	----	1948	same	1987
Granite Shoals	----	2005	same	2008
Grapevine	----	1965	same	1992
Greenville	1852	1953	same	2005
Groves	-----	1953	same	2000
Gun Barrell City	----	1996	same	2008
Haltom City	-----	1955	same	2003
Harker Heights	-----	1971	same	1991
Harlingen	-----	1927	same	1987
Hearne	1871	1964	same	none
Heath	----	2002	same	none
Henderson	1845	1947	same	1985



# Home Rule Charters in Texas

City	Date of First Special Legislature Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Hereford	-----	1952 <sup>1</sup>	same	1979
Hewitt	-----	1982	same	none
Hidalgo	----	1994	same	none
Highland Park	-----	1975	same	2000
Highland Village	-----	1986	same	2006
Hillsboro	1866	1948	1981	none
Hitchcock	-----	1960	same	1975
Hondo	----	2007	same	none
Horizon City	----	1997	same	none
Horseshoe Bay		2009	same	none
Houston	1837	1913	same	2001
Humble	-----	1970	same	2000
Huntsville	1845	1968	same	2004
Hurst	-----	1956	same	2005
Hutto	----	2004	same	2006
Ingleside	-----	1979	same	none
Iowa Park	----	2008	same	none
Irving	-----	1952	same	2005
Jacinto City	-----	1981	same	1987
Jacksonville	1873	1931	same	2001
Jasper	1838	1964	same	1991
Jersey Village	-----	1986	same	1993
Joshua	----	1998	same	none
Katy	-----	1981	same	2000
Kaufman	1866	1987	same	2003
Keene	----	1999	same	none
Keller	-----	1982	same	1995
Kennedale	----	1998	same	none
Kermit	-----	1989	same	none
Kerrville	-----	1942	same	2008
Kilgore	-----	1960	same	2006
Killeen	-----	1949	same	2005
Kingsville	-----	1916	same	1994
Kirby	-----	1988	same	2000
Kyle	----	2000	same	none
La Feria	----	1989	same	none
La Grange	1837	1983	same	2001
La Marque	-----	1957 <sup>1</sup>	same	2004

# Home Rule Charters in Texas

City	Date of First Special Legislature Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
La Porte	-----	1949	1980	1990
Lacy Lakeview	----	1998	same	none
Lago Vista	----	2004	same	none
Lake Dallas	----	1998	same	2005
Lake Jackson	-----	1954	same	2006
Lake Worth	-----	1965	same	2002
Lakeway	-----	1990	same	2006
Lamesa	-----	1945	same	2007
Lampasas	----	1986	same	none
Lancaster	-----	1956	same	2006
Laredo	1848	1981	same	2006
League City	-----	1962	same	1998
Leander	----	1998	same	none
Levelland	-----	1949	same	1992
Lewisville	-----	1963	same	2001
Liberty	1837	1958	same	2006
Little Elm	----	2002	same	none
Littlefield	-----	1959	same	1995
Live Oak	-----	1976	same	2006
Lockhart	1852	1973	same	2007
Longview	1871	1923	1978	2001
Los Fresno	----	2007	same	none
Lubbock	-----	1917	same	2004
Lucas	----	2008	same	none
Lufkin	-----	1919	1966	1994
Luling	-----	1977	same	1996
Lumberton	----	1999	same	none
Manor		2007	same	none
Mansfield	-----	1975	same	1988
Marble Falls	-----	1986	same	2002
Marlin	1866	1977	same	1993
Marshall	1844	1913	same	1962
Mathis	----	2000	same	none
McAllen	-----	1927	same	2007
McGregor	-----	1979	same	1989
McKinney	1854	1913	1959	1988
Mercedes	-----	1971	same	2001
Mesquite	-----	1953	same	1987

# Home Rule Charters in Texas

City	Date of First Special Legislature Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Mexia	1873	1924	same	1999
Midland	-----	1940 <sup>1</sup>	same	1996
Midlothian	-----	1980	same	none
Mineral Wells		1980	1966	1991
Mission	-----	1928	1961	1987
Missouri City	-----	1974	same	1999
Monahans	-----	1954	same	1991
Mt. Pleasant	1848	1948	same	2002
Muleshoe	-----	1960	same	1979
Murphy	----	2004	same	2004
Nacogdoches	1837	1929 <sup>1</sup>	same	2004
Nassau Bay	-----	1973	same	1994
Navasota	1866	1922	1947	1984
Nederland	-----	1955	same	2001
New Braunfels	1846	1944	1966	2005
North Richland Hills	-----	1964	same	2002
Odessa	-----	1945	same	2002
Olney	-----	1979	same	1990
Orange	1856	1914	1960	2005
Palacios	----	2004	same	2004
Palestine	----	1917	1983	none
Pampa	-----	1927	same	1982
Paris	1845	1948 <sup>1</sup>	same	2007
Pasadena	-----	1943	1964	1992
Pearland	-----	1971	same	2006
Pearsall	-----	1994	same	none
Pecos City	-----	1985	same	1989
Pflugerville	-----	1993	same	2006
Pharr	-----	1949	same	1989
Pittsburg		2009	same	none
Plainview	-----	1920	same	1997
Plano	1873	1961	same	2005
Pleasanton	-----	1982	same	1995
Port Aransas	-----	1978	same	1991
Port Arthur	1911 <sup>2</sup>	1932	1963	1992
Port Isabel	-----	1984	same	none
Port Lavaca	-----	1956 <sup>1</sup>	same	1972
Port Neches	-----	1955	1967	1983

# Home Rule Charters in Texas

City	Date of First Special Legislature Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Portland	-----	1967	same	1987
Prosper	----	2006	same	none
Quanah	-----	1919	same	1969
Ranger	-----	1919	same	1996
Raymondville	-----	1955	same	1970
Red Oak	----	1997	same	none
Richardson	-----	1956	1989	2007
Richland Hills	-----	1986	same	1995
Rio Grand City		2006	same	none
River Oaks	----	1949	same	1957
Roanoke	----	2008	same	none
Robinson	----	1999	same	none
Robstown	-----	1948	same	1985
Rockdale	-----	1978	same	none
Rockport	1871	1983	same	2004
Rockwall	-----	1985	same	1993
Roma		2007	same	none
Rosenberg	-----	1956 <sup>1</sup>	same	2007
Round Rock	-----	1977	same	2008
Rowlett	-----	1980	same	2003
Royse City	----	2004	same	2007
Rusk	1850	1987	same	1996
Sachse	-----	1986	same	2006
Saginaw	-----	1988	same	none
San Angelo	----- <sup>3</sup>	1915	same	2007
San Antonio	1837	1951	same	2004
San Benito	-----	1920	same	2007
San Juan	-----	1975	same	none
San Marcos	-----	1967	same	2008
Sanger	----	1999	same	2006
Santa Fe	-----	1981	same	none
Schertz	-----	1974	same	2006
Seabrook	----	1979	same	2005
Seagoville	-----	1969	same	2003
Sealy	----	1996	same	2006
Seguin	1853	1971	same	2002
Seminole	-----	1991	same	1995

# Home Rule Charters in Texas

City	Date of First Special Legislature Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Sherman	1873	1915	1973	2007
Silsbee	-----	1956	same	1987
Sinton	-----	1966	same	2005
Slaton	-----	1929	same	1994
Snyder	-----	1952	same	1989
Socorro	----	2001	same	none
Southlake	-----	1987	same	2007
Stafford	----	2004	same	none
Stamford	-----	1918 <sup>1</sup>	same	1955
Stephenville	-----	1961	same	2001
Sugar Land	-----	1981	same	2004
Sulphur Springs	1852	1947	same	1983
Sweeny	----	2000	same	none
Sweetwater	-----	1913	1947	1983
Taylor	----- <sup>3</sup>	1914 <sup>1</sup>	same	2001
Temple	1907	1922	1953	2000
Terrell	1911 <sup>4</sup>	1973	same	2004
Terrell Hills	-----	1957	same	1996
Texarkana	1907	1960	same	1983
Texas City	-----	1946	same	1952
The Colony	-----	1979	same	1987
Tomball	-----	1987	same	1995
Trophy Club	----	2004	same	none
Tulia	-----	1972 <sup>1</sup>	same	none
Tyler	1850	1915	1937	1990
Universal City	-----	1972	same	1989
University Park	-----	1989	same	2006
Uvalde	-----	1934	same	1999
Vernon	-----	1916	same	1999
Victoria	1840	1915	1956	1994
Vidor	-----	1969	same	1998
Waco	1856	1913	1958	2005
Wake Village	----	2001	same	none
Watauga	-----	1980	same	2007
Waxahachie	1871	1916	1971	1975
Weatherford	1858	1918	same	1983
Webster	-----	1994	same	2005
Weslaco	-----	1927	same	1994

# Texas Home Rule Charters

City	Date of First Special Legislature Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
West Orange	-----	1956	same	2005
West University Pl.	-----	1940	1983	2007
Wharton	1866	1970	same	2003
White Oak	-----	1994	same	none
White Settlement	-----	1954	same	2005
Whitehouse	----	1996	same	2006
Wichita Falls	-----	1913	1920	2006
Willis	----	2008	same	none
Windcrest	----	2007	same	none
Woodway	-----	1973	same	1994
Wylie	-----	1985	same	1998
Yoakum	-----	1915	1988	none

<sup>5</sup> Sources:

Hans Peter Neilson Gammel, compiler, Laws of Texas, 1822-1897. Ann Arbor, MI: University Microfilms.

Session Laws, Legislature of the State of Texas.

Records, Office of the Secretary of State, Texas.

Charters, Secretary of State's Record Group (RG 307), Archives Division, Texas State Library.

Records, Offices of City Secretaries/Clerks, home rule cities, Texas.

## APPENDIX D

### LOCAL GOVERNMENT CODE

### CHAPTER 9.

### HOME-RULE MUNICIPALITY

#### **Sec. 9.001. ADOPTION OR AMENDMENT OF HOME-RULE CHARTER.**

This chapter applies to the adoption or amendment of a municipal charter by a municipality authorized to do so by Article XI, Section 5, of the Texas Constitution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

#### **Sec. 9.002. SELECTION OF CHARTER COMMISSION.**

(a) The governing body of the municipality may, by an ordinance adopted by at least a two-thirds vote of its membership, order an election by the voters of the municipality on the question: "Shall a commission be chosen to frame a new charter?" The governing body shall by ordinance order the election if presented with a petition signed by at least 10 percent of the qualified voters of the municipality.

(b) The election ordinance shall provide for the election to be held on the date of the municipality's next general election scheduled after the 30th day but on or before the 90th day after the date the ordinance is adopted. However, if no general election is scheduled during that period that allows sufficient time to comply with other requirements of law, the election shall be ordered for the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law and that occurs after the 30th day after the date the ordinance is adopted and published in a newspaper published in the municipality.

(c) The ballot at the election on the question prescribed by Subsection (a) shall also provide for the election from the municipality at large of a charter commission to draft a charter if a majority of the qualified voters voting on the question of choosing a charter commission approve the question. The commission must consist of at least 15 members, but if it has more than 15 members it may not have more than one member for each 3,000 inhabitants of the municipality. The ballot may not contain any party designation.

(d) The provisions of Subsections (a), (b), and (c) regarding the selection of a charter commission do not apply to the first charter election in a municipality if:

- (1) (A) the governing body of the municipality selects a charter commission;  
(B) a charter commission is selected at a mass meeting; or  
(C) the mayor of the municipality appoints a charter commission; and
- (2) the charter commission has proceeded with the formation of a charter for the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

#### **Sec. 9.003. VOTE ON CHARTER.**

(a) The charter prepared by the charter commission shall be submitted to the qualified voters of the municipality at an election to be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law and that occurs on or after the 40th day after the date the charter commission completes its work. The governing body of the municipality shall provide for the submission of the charter at the election to the extent that the provisions for submission are not prescribed by general law.

(b) Before the 30th day before the date of the election, the governing body of the municipality shall order the municipal clerk or the municipal secretary to mail a copy of the proposed charter to each registered voter of the municipality.

(c) The charter commission shall prepare the charter so that to the extent practicable each subject may be voted on separately.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(b), eff. Aug. 28, 1989.

#### **Sec. 9.004. CHARTER AMENDMENTS.**

(a) The governing body of a municipality on its own motion may submit a proposed charter amendment to the municipality's qualified voters for their approval at an election. The governing body shall submit a proposed charter amendment to the voters for their approval at

an election if the submission is supported by a petition signed by a number of qualified voters of the municipality equal to at least five percent of the number of qualified voters of the municipality or 20,000, whichever number is the smaller.

(b) The ordinance ordering the election shall provide for the election to be held on the first authorized uniform election date prescribed by the Election Code or on the earlier of the date of the next municipal general election or presidential general election. The election date must allow sufficient time to comply with other requirements of law and must occur on or after the 30th day after the date the ordinance is adopted.

(c) Notice of the election shall be published in a newspaper of general circulation published in the municipality. The notice must:

- (1) include a substantial copy of the proposed amendment;
- (2) include an estimate of the anticipated fiscal impact to the municipality if the proposed amendment is approved at the election; and
- (3) be published on the same day in each of two successive weeks, with the first publication occurring before the 14th day before the date of the election.

(d) An amendment may not contain more than one subject.

(e) The ballot shall be prepared so that a voter may approve or disapprove any one or more amendments without having to approve or disapprove all of the amendments.

(f) The requirement imposed by Subsection (c)(2) does not waive governmental immunity for any purpose and a person may not seek injunctive relief or any other judicial remedy to enforce the estimate of the anticipated fiscal impact on the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1219, Sec. 5, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1349, Sec. 76, eff. Sept. 1, 1997.

Amended by: Acts 2007, 80th Leg., R.S., Ch. 414, Sec. 1, eff. September 1, 2007.

## **Sec. 9.005. ADOPTION OF CHARTER OR AMENDMENT.**

(a) A proposed charter for a municipality or a proposed amendment to a municipality's charter is adopted if it is approved by a majority of the qualified voters of the municipality who vote at an election held for that purpose.

(b) A charter or an amendment does not take effect until the governing body of the municipality enters an order in the records of the municipality declaring that the charter or amendment is adopted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

## **Sec. 9.006. CONCURRENT ELECTIONS.**

This chapter does not prevent the voters at an election to adopt a charter or an amendment to a charter from electing at the same election persons to hold office under the charter or amendment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

## **Sec. 9.007. CERTIFICATION OF CHARTER OR AMENDMENT.**

(a) As soon as practicable after a municipality adopts a charter or charter amendment, the mayor or chief executive officer of the municipality shall certify to the secretary of state an authenticated copy of the charter or amendment under the municipality's seal showing the approval by the voters of the municipality.

(b) The secretary of state shall file and record the certification in his office in a book kept for that purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

## **Sec. 9.008. REGISTRATION OF CHARTER OR AMENDMENT; EFFECT.**

(a) The secretary or other officer of a municipality performing functions similar to those of a secretary shall record in the secretary's or other officer's office a charter or charter amendment adopted by the voters of the municipality. If a charter or amendment is not recorded on microfilm, as may be permitted under another law, it shall be recorded in a book kept for that purpose.

(b) Recorded charters or amendments are public acts. Courts shall take judicial notice of them, and no proof is required of their provisions.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.



## APPENDIX E

### Texas Constitution Article XI, Section 11

#### Term of Office Exceeding Two Years and Vacancies

##### **Sec.11.TERM OF OFFICE EXCEEDING TWO YEARS IN HOME RULE AND GENERAL LAW CITIES; VACANCIES.**

(a) A Home Rule City may provide by charter or charter amendment, and a city, town or village operating under the general laws may provide by majority vote of the qualified voters voting at an election called for that purpose, for a longer term of office than two (2) years for its officers, either elective or appointive, or both, but not to exceed four (4) years; provided, however, that tenure under Civil Service shall not be affected hereby; provided, however, that such officers, elective or appointive, are subject to Section 65(b), Article XVI, of this Constitution, providing for automatic resignation in certain circumstances, in the same manner as a county or district officer to which that section applies.

(b) A municipality so providing a term exceeding two (2) years but not exceeding four (4) years for any of its non-civil service officers must elect all of the members of its governing body by majority vote of the qualified voters in such municipality, and any vacancy or vacancies occurring on such governing body shall not be filled by appointment but must be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur.

(Added Nov. 4, 1958; amended Nov. 6, 2001.) (TEMPORARY TRANSITION PROVISION for Sec. 11: See Appendix, Note 3.)

## APPENDIX F

### Texas Constitution Article XVI, Section 40

#### Dual Office Holding

##### **Sec. 40. HOLDING MORE THAN ONE OFFICE; EXCEPTIONS; RIGHT TO VOTE.**

(a) No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and the officers and directors of soil and water conservation districts, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States, or retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and officers of the State soil and water conservation districts, from holding at the same time any other office or position of honor, trust or profit, under this State or the United States, or from voting at any election, general, special or primary in this State when otherwise qualified.

(b) State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts. Such State employees or other individuals may not receive a salary for serving as members of such governing bodies, except that:

(1) a schoolteacher, retired schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water district created under Section 59, Article XVI, or Section 52, Article III; and

(2) a faculty member or retired faculty member of a public institution of higher education may receive compensation for serving as a member of a governing body of a water district created under Section 59 of this article or under Section 52, Article III, of this constitution.

(c) It is further provided that a nonelective State officer may hold other nonelective offices under the State or the United States, if the other office is of benefit to the State of Texas or is required by the State or Federal law, and there is no conflict with the original office for which he receives salary or compensation.

(d) No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a notary public if qualified by law.

(Amended Nov. 2, 1926, Nov. 8, 1932, Nov. 7, 1972, Nov. 6, 2001, and Sept. 13, 2003.)

## APPENDIX G

### Texas Constitution Article XVI, Section 1

#### Official Oath

##### ARTICLE 16. GENERAL PROVISIONS

###### Sec.1.OFFICIAL OATH.

(a) All elected and appointed officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

"I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

(b) All elected or appointed officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God."

(c) Members of the Legislature, the Secretary of State, and all other elected and appointed state officers shall file the signed statement required by Subsection (b) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (a) of this section. All other officers shall retain the signed statement required by Subsection (b) of this section with the official records of the office.

(Amended Nov. 8, 1938, and Nov. 6, 1956; Subsecs. (a)-(c) amended and (d)-(f) added Nov. 7, 1989; Subsecs. (a) and (b) amended, Subsecs. (c) and (d) deleted, and Subsecs. (e) and (f) amended and redesignated as Subsec. (c) Nov. 6, 2001.) (TEMPORARY TRANSITION PROVISION for Sec. 1: See Appendix, Note 3.)

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