

**RESOLUTION NO. 17-048**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GALVESTON, TEXAS  
ADOPTING THE CITY COUNCIL POLICY MANUAL WRITTEN BY CITY STAFF AS  
A HANDBOOK FOR COUNCIL MEMBERS; PROVIFING FOR FINDINGS OF FACT  
AND PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, the City Council of the City of Galveston has stated their desire for a Policy Manual which will explain the laws, rules, regulations, and procedures a Council person could expect to encounter during their tenure as an elected official; and,

**WHEREAS**, such a Policy Manual is meant to serve as an introduction for incoming Council persons unfamiliar with the operations of the City of Galveston; and,

**WHEREAS**, the City Secretary, with input from all departments of the City of Galveston, has promulgated such a Policy Manual for use by current and future Council persons so that they may quickly become accustomed to serving the City of Galveston; and,

**WHEREAS**, a resolution adopting the City Council Policy Manual is required to formally adopt such Policy Manual; and,

**WHEREAS**, the City Council deems it in the public's interest to adopt the City Council Policy Manual.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GALVESTON, TEXAS:**

**SECTION 1.** The findings and recitations set out in the preamble to this Resolution are found to be true and correct and they are adopted by the City Council and made a part hereof for all purposes.

**SECTION 2.** The City Council Policy Manual, attached and incorporated herein as Exhibit A, is hereby adopted by the City Council of the City of Galveston, Texas. The City Council Policy Manual may be amended by City Staff as necessary.

**SECTION 3.** This Resolution shall be and become effective from and after its adoption.

APPROVED AS TO FORM:

  
MEHRAN JADIDI  
CITY ATTORNEY

I, Janelle Williams, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the City Council of

the City of Galveston at its regular meeting held on the 28th day of September, 2017, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this 3 day of Oct., 2017.



*Janelle Williams*  
Secretary for the City Council  
of the City of Galveston



# **CITY OF GALVESTON**

## **City Council Policies & Procedures Manual**

## **WELCOME**

Congratulations on your appointment to the City Council! The City of Galveston is pleased that you are willing to serve in this important policy decision-making capacity. You are about to begin a challenging and rewarding experience.

Membership on the City Council is a satisfying and challenging experience, as well as a responsibility. Council Members are responsible for regularly attending all meetings, understanding the duties of their positions and consistently working and voting in a manner that will contribute to the betterment of the community as a whole. As a member of the Galveston City Council, you are part of a team. The Council has the ultimate responsibility for almost all policy decisions.

While you will find that your role requires time, effort and some long meetings, it also provides an opportunity for genuine public service. You will be able to help shape the future of Galveston and to make decisions affecting every citizen's satisfaction with the city.

As a Council Member, you are an essential part of the city's commitment to developing policies and services that reflect the needs and values of the community. In carrying out your responsibilities, you will work with board/commission members, and with the City Manager, City Attorney, City Secretary, and City Auditor, and their immediate staff – of which all play a critical role in the city's organization.

This handbook has been prepared to make your new role easier by providing you with background information on the city and its government and to introduce you to your role as a Council Member. This handbook is directed specifically to Council Members and discusses their specific role, operating procedures and responsibilities. (Additionally, this handbook reviews conflict of interest laws and other legal issues pertaining to Council Members and meetings.)

We hope you will enjoy your role as a Council Member and that you will find that you've played an important role in shaping the future of Galveston.

**PLEASE NOTE THAT THIS PACKET IS A GENERAL OVERVIEW AND IS NOT INTENDED TO BE A CUMULATIVE OR EXHAUSTIVE LIST OF THE POLICY AND PRACTICES OF THE CITY OF GALVESTON, THE DUTIES, RESPONSIBILITIES AND OBLIGATIONS OF A COUNCIL MEMBER AND/OR ALL LEGAL ISSUES RELATING TO COUNCIL MEMBERS. ALSO, ALL REFERENCES TO LEGAL ISSUES AND/OR LAW ARE SUBJECT TO CHANGE AS THE RELEVANT LAW AND/OR STATUTE MAY CHANGE FROM TIME TO TIME. IF YOU HAVE ANY QUESTIONS, INCLUDING LEGAL QUESTIONS, PLEASE DIRECT THEM TO THE CITY MANAGER OR CITY ATTORNEY FOR ASSISTANCE.**

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**Informational Publications Attached:**

- Home Rule Charter
- TML Publication - How Cities Work
- TML Publication - Guide to Becoming a City Official

## **TEXAS FORMS OF CITY GOVERNMENT**

Types of cities: Municipalities may have one of five forms of government: Home Rule, Special Law, or Type A, B or C General Law. The City of Galveston is governed under a Home Rule Charter as of June 23, 1959.

### **HOME RULE CITIES**

Home Rule cities are larger cities. Any city over 5,000 in population in which the citizens have adopted a Home Rule Charter is a Home Rule city. A Charter is a document that establishes a city's governmental structure and provides for the distribution of powers and duties among the various branches of government.

The legal position of Home Rule cities is the reverse of General Law cities. Rather than looking to state law to determine what they *may* do, as General Law cities must, Home Rule 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 pre-empted by the state, the city generally can proceed.

### **DUTIES OF THE CITY COUNCIL**

The City Council is the governing body for the City of Galveston and must bear responsibility for the integrity of governance.

The Council shall govern the city with a commitment to preserving the values and integrity of representative local government and democracy, and the following statements will serve as a guide to that commitment:

- The Council must strive for continual improvement of each member's personal knowledge and ability to serve in an atmosphere conducive to the responsible exchange of ideas.
- The Council will keep the community informed on municipal affairs in conjunction with City Staff; encourage communication between the citizens and Council and strive for constructive relationships with Galveston County, neighboring communities, Galveston Independent School District and other governmental bodies.
- The Council will recognize and address the rights and privileges of the social, cultural, and physical characteristics of the community when setting policy.
- The Council will seek to improve the quality and image of public service.
- The Council will commit to improving the quality of life for the individual and the community, by being dedicated to the faithful stewardship of the public trust.

## **RESPONSIBILITIES OF COUNCIL MEMBERS**

### **Mayoral Responsibilities**

The Mayor occupies the highest elective office in the municipal government. As political head of the city, the Mayor is expected to provide the leadership necessary to keep it moving in the proper direction. In general, the Mayor has a number of legislative, appointive, signatory, ceremonial and administrative duties including the following:

- The Mayor shall be the presiding officer at all meetings.
- The Mayor shall preserve order and decorum and is responsible for keeping the meetings orderly by recognizing each Member for discussion, limiting speaking time, encouraging debate among Members.
- The Mayor, or the presiding officer, shall ensure that all discussion and interaction is within the guidelines of the Open Meetings act, and shall prohibit discussion that isn't clearly posted within the Agenda.

### **Mayor Pro-Tem Responsibilities**

The Mayor Pro-Tem is a member of the Council who performs the Mayor's duties during the Mayor's incapacity or absence. The Mayor Pro-Tem is selected by a majority vote of the Council from among its own membership. The Mayor Pro-Tem is to be elected each year, as stated in the City Charter.

### **Council Responsibilities**

Council Members are the city's legislators. Their primary duty is policymaking, which includes identifying the needs of local residents, formulating programs to meet the changing requirements of the community, and measuring the effectiveness of ongoing municipal services. Some specific responsibilities are as follows:

- Council Members shall know and observe the adopted rules and procedures governing their duties and responsibilities.
- Council Members shall be prepared to discuss and act upon the posted agenda.
- Council Members shall take the initiative to be informed about Council actions taken in their absence. When absent, the individual Council Member is responsible for obtaining relevant information prior to the Council meeting when said item is to be considered.
- Council Members appointed to serve as ex officio or liaison to a board, commission, or committee are responsible for keeping all Council Members informed of significant board, commission, or committee activities.
- Council Members adopt the Budget each year, establishing the roadmap for the coming year.
- Council Members appoint board, commission, and committee members as necessary, people who also share a common desire to work for the betterment of Galveston.
- Council Members act as strong and respectable leaders for Galveston, and as ambassadors for Galveston.

- Council Members appoint the City Manager, City Attorney, City Secretary, City Auditor, Municipal Court Judge, and Alternate Municipal Court Judge.
- Council Members set policy, goals and vision for Galveston in conjunction with City Staff.

### **Other Important Things to Know as a City Council Member**

- The best government is LOCAL government. We provide clean water to drink, safe and clean disposal systems of trash and wastewater, entertainment and enjoyable amenities, and we protect people and property with Police and Fire Protection. We make life *possible* and *better*. No other form of government can say that.
- You are an ambassador for Galveston. Speak positively about City Staff and your other City Council Members.
- *Listen* to citizen concerns. Your role is to help citizens feel “heard”, not necessarily solve concerns shared with you, but listen. Then discuss with the City Manager.
- Communicate freely with the Council Appointees – City Manager, City Attorney, City Secretary, and City Auditor. But remember, you should never act as an individual when dealing with the Council Appointees. You are one of seven members of the City Council. Directives given to the Council Appointees should be as a group.
- The City Manager runs the daily operations of the city. Allow him to be successful, which, in turn, makes you successful. Take the glory for things good, and let the City Manager take the heat for things not so good. Don’t feel obligated to be rebuked by a citizen if you can avoid it. Refer them to the City Manager and let him/her deal with it.
- Never hesitate to ask the City Manager anything. He works for you, and he wants you to be informed and successful. His time is your time.
- If a citizen asks you a question or brings up an issue to you, never guess. If you know the answer or the policy, tell them. If you don’t, either refer them to the City Manager or tell them you’ll get back to them. Once you have visited with the City Manager, then you can agree which one of you will follow up with the citizen.
- Never direct the work of any city employee. Remember, they work for the City Manager. If you need something from a department, go through the City Manager first. If you demand something of an employee, you are putting them in a very awkward position. They will be afraid to tell you no, but may not have the authority to do what you’re asking of them. *Always go through the City Manager first.*
- Prepare yourself for City Council meetings. Packets are provided electronically, typically at least 5 days prior to the meetings. Be familiar with the material and the issues, and if you have questions, call the City Manager prior to the meeting.

## **WHERE COUNCIL ACTIVITY OCCURS**

### **Council Meetings**

4th Thursday of the month, typically beginning at 1:15 p.m., at the Galveston City Hall, 823 Rosenberg, Galveston, TX 77550. Some months include an additional meeting on the 2<sup>nd</sup> Thursday of the month.

### **Council Workshops**

4th Thursday of the month, typically beginning at 9:00 a.m., Galveston City Hall. Some months include an additional workshop on the 2<sup>nd</sup> Thursday of the month.

### **Special Sessions**

Special meetings/workshops of the Council shall be called by the City Secretary upon written request of the Mayor or of any two members of the Council, as stated by the City Charter.

### **Emergency Meetings**

If there is an imminent threat to public safety or a totally unforeseeable circumstance requiring action of government body. Requires notice to be posted two hours prior to meeting time (Chapter 551, Government Code, Open Meetings Act).

### **Executive Sessions**

Held to discuss such matters as legal issues, personnel matters or private consultation with the City Attorney. Chapter 551, Government Code, Open Meetings Act limits those items that can be discussed in closed session.

## **CITY COUNCIL MEETING PROCEDURES AND PROTOCOLS**

### **Rules of Procedure**

The Council shall by ordinance determine its own rules and order of business. Should the Council fail to establish rules of order of business by ordinance or in any case when such established rules of order do not speak to a particular question, Robert's Rules of Order, Revised, shall govern and establish the procedure under which all official sessions and meetings of the Council shall be conducted. All City boards, commissions, committees, or agencies of the City shall adhere to the same rules of order established by and for Council unless otherwise provided for by State law or City Ordinance. Provided nothing in Robert's Rules of Order, Revised, or in this Charter shall ever deprive the Mayor of the right to vote like other Councilmembers. Council shall be prohibited from adopting any rule of order in which an abstention from voting is counted as an affirmative or negative vote.

Four (4) or more Councilmembers shall constitute a quorum, but no action of the Council shall have any force or effect unless it is adopted by the favorable votes of four (4) or more of the Councilmembers. If an action fails for lack of four (4) favorable votes Councilmembers who voted for or against the action may have Council reconsider the action by placing it on the agenda for the next regularly scheduled meeting in accordance with rules for placing items on agendas. Minutes of all meetings shall be taken and recorded, and such minutes shall constitute a public record.

### **Order of Business**

Promptly at the hour set by law on the day of each regular meeting, the members of the City Council, the City Secretary or the assistant City Secretary, the City Attorney or the Assistant City Attorney, and the City Manager or the Deputy City Manager, shall take their regular stations in the Council Chambers, and the business of the Council shall be taken up for consideration and disposition in the following order:

1. Declaration of a quorum and call meeting to order;
2. Invocation;
3. Pledge of allegiance;
4. Roll call;
5. Conflicts of interest;
6. Approval of minutes of previous meetings;
7. Presentations and proclamations;
8. Communications and petitions;
9. Public hearings. Members of the public shall be allowed to address Council during each public hearing and shall not be required to submit a written request before addressing Council. Each member of the public shall be allowed to speak for a maximum of three (3) minutes at each public hearing;
10. Requests to address Council on items on the agenda. Upon submitting a written request before the beginning of a City Council meeting, members of the public shall be allowed to address council on one (1) or more items on the agenda. Each member of the public shall be allowed to speak for a maximum of three (3) minutes regardless of the number of agenda items the person wishes to address.
11. Ordinances and resolutions;
12. Consent items. The items listed for the consent agenda are considered routine and will be enacted by one (1) motion. There will be no separate discussion of these items unless a Council Member objects, in which event the item will be removed from the consent agenda for separate consideration.
13. Action items;
14. Appointments to boards, committees, commissions;
15. Reports of Council, officers, boards and city manager;
16. Executive session;
17. Requests to address Council on non-agenda items. Upon submitting a written request before the beginning of a City Council meeting, members of the public shall be allowed to address Council on non-agenda items. Each member of the public shall be allowed to speak for a maximum of three (3) minutes regardless of the number of non-agenda items the person wishes to address.
18. Adjournment.

Nothing herein shall prevent the city council from rearranging or eliminating or adding various items in the order of business for their own convenience or for the convenience of the general public. The city council reserves the right to retire into executive session for any item which is on its regular or workshop agenda in accordance with the provisions of the Texas Open Meetings Act.

**Rules of Debate**

The following rules of debate shall govern the Council:

1. The Mayor or Mayor Pro Tem or such other member of the City Council as may be presiding may move, second and debate from the chair, subject only to such limitations of debate as are imposed on all members and shall not be deprived of any of the rights and privileges of a Council Member by reason of his or her acting as the presiding officer.
2. Every member desiring to speak shall address the chair, and, upon recognition by the presiding officer, shall confine himself or herself to the question under debate, avoiding all personalities and indecorous language.
3. A member, once recognized, shall not be interrupted when speaking unless it be to call him or her to order, or as herein otherwise provided. If a member, while speaking, be called to order, he or she shall cease speaking until the question of order be determined, and if, in order, he or she shall be permitted to proceed.
4. A Council Member may request, through the presiding officer, the privilege of having an abstract of his or her statement on any subject under consideration by the Council entered in the minutes. If the Council consents thereto, such statement shall be entered in the minutes.

**Decorum**

The following rules of decorum shall govern the council and council meetings:

1. While the council is in session, the members must preserve order and decorum, and a member shall, neither by conservation or otherwise, delay or interrupt the proceedings or the peace of the council nor disturb any member while speaking or refuse to obey the orders of the council or its presiding officer, except as otherwise herein provided.
2. Any person making personal, impertinent or slanderous remarks or who shall become boisterous while addressing the council shall be forthwith barred from further audience before the council by the presiding officer, unless permission to continue be granted by a majority vote of the council.
3. The city manager shall furnish a member or members of the police department to be sergeant-at-arms of the council meeting. The sergeant-at-arms shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the council meeting. Upon instructions of the presiding officer, it shall be the duty of the sergeant-at-arms, or any of them present, to place any person who violates the order and decorum of the meeting under arrest, and cause him to be prosecuted under the provisions of this Code, the complaint to be signed by the presiding officer.

**Protests Against Council Action**

Any council member shall have the right to have the reasons for his dissent from, or protest against, any action of the council entered in the minutes.

## **QUORUM OF THE CITY COUNCIL**

### **Quorum**

The authority vested in the City Council may be exercised only at a meeting of a quorum of its members. The Open Meetings Act defines “quorum” as a majority of the governing body, unless otherwise defined by applicable law or the governing body’s charter.

### **Walking Quorum**

A walking quorum occurs when members of a governmental body meet in a series of meetings in person or via phone or other electronic communication in numbers of less than a quorum to deliberate public business to avoid the requirements of the Open Meetings Act. A governmental body circumvents Open Meetings Act requirements with a “walking quorum” or serial meetings of less than a quorum, and then ratifying at a public meeting the votes already taken in private.

A “walking quorum” is described in *Esperanza Peace and Justice Center v. City of San Antonio*. The night before an open city council meeting was to be held, the mayor met with several city council members in the city manager’s office and spoke with others by telephone about the city budget. A decision was made that night and ratified at the public meeting the next day. The federal court stated that it would violate the spirit of the Act and render a result not intended by the Legislature “[i]f a governmental body may circumvent the Act’s requirements by ‘walking quorums’ or serial meetings of less than a quorum, and then ratify at a public meeting the votes already taken in private.” The *Esperanza* court said that a meeting of less than a quorum is not subject to the Act “when there is no intent to avoid the Act’s requirements.”

On the other hand, the Act would apply to meetings of groups of less than a quorum where a quorum or more of a body attempted to avoid the purposes of the Act by deliberately meeting in groups less than a quorum in closed sessions to discuss and/or deliberate public business, and then ratifying their actions as a quorum in a subsequent public meeting.

## **AGENDA PACKET INFORMATION**

The agenda for each City Council meeting is prepared as a joint effort between the City Manager and staff, City Attorney, and City Secretary. Council sponsored items may be placed on the agenda by the Mayor or two Council Members. The City Secretary prepares the Agenda electronically using the Agenda Center module on the City’s website. Council sponsored items presented to the City Secretary for inclusion on the agenda shall be submitted no later than 3:00 p.m. on the day before the seventy-two (72) hour posting period required by the Open Meetings Act. To the City Secretary for inclusion on the agenda, items may not be submitted on a Saturday, Sunday, or City observed holiday. (Example: A Council meeting scheduled for Thursday June 30, would require receipt of agenda items by 3:00 p.m., Friday June 24). Council packets are distributed electronically by email and are accessible on an iPad issued by the city or on your own personal device, should you choose to use it (Remember, City business is subject to the Public Information Act, so you may want to use a City-provided device so as not to have any personal information on it in the event of a Public Information Act Request). As required by law, the agenda is posted 72 hours (typically Friday after 3:00 p.m.), prior to the meeting. It is posted in paper form at City Hall on the outdoor bulletin board and also on the city’s website. Note: A paper packet is printed for each meeting at the request of the Mayor or Council Member. However, the iPads were purchased to assist in the green initiative.

## **PREPARATION FOR MEETINGS**

It is your responsibility to be prepared for the City Council meetings. The City Manager, City Secretary, and staff will have made every effort to provide you with information adequate for supporting staff recommendations, and the City Manager is available to answer any questions you may have, prior to the meeting. This doesn't mean discussion and questions aren't to be a part of the meeting; it simply means it is your duty to familiarize yourself with the information provided, to make the meetings as productive and efficient as possible.

## **CONSENT AGENDAS**

Consent Agendas will be used as appropriate. A Consent Agenda is a method of taking multiple actions with one motion. Items on a Consent Agenda can include Approval of Minutes, Awards of Bids, Adoption of Resolutions that are common, etc. If an item is listed on a Consent Agenda, it can be removed from the Consent Agenda and addressed as a single item at the request of any City Council Member.

## **EXECUTIVE SESSIONS**

Executive Sessions are permitted as an exception to the Open Meetings Act. To legally enter into Executive Session (a Closed Meeting), the governing body must first convene in an Open Meeting, legally posted, and the presiding officer must announce that a closed meeting will be held, and identify which exceptions will be used. The specific exceptions applicable to Cities are:

### **§551.071 – CONSULTATION WITH ATTORNEY**

1. Seeking advice from attorney about:
  - a. Pending or contemplated litigation
  - b. A settlement offer
2. On a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

### **§551.072 – DELIBERATION REGARDING REAL PROPERTY**

A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governing body in negotiations with a third person.

### **§551.073 – DELIBERATION REGARDING PROSPECTIVE GIFT**

A governmental body may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the state or the governmental body if deliberation in an open meeting would have a detrimental effect on the position of the governing body in negotiations with a third person.

### **§551.074 – PERSONNEL MATTERS**

1. To deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or
2. To hear a complaint or charge against an officer or employee

3. If the officer or employee who is the subject of the deliberation or hearing requests a public hearing, the governmental body must conduct the deliberation or hearing in an open meeting.

**§551.076 – DELIBERATION REGARDING SECURITY DEVICES**

Does not require an open meeting to deliberate the deployment or specific occasions for implementation of security personnel or devices.

**§551.087 – DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS**

1. To discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or
2. To deliberate the offer of a financial or other incentive to a business prospect described above.

**Note: It is a violation of the Open Meetings Act to discuss or disclose information discussed in Executive Session outside of the specific meeting.**

**USE OF ELECTRONIC DEVICES DURING MEETINGS**

It is highly recommended not to appear to be texting or otherwise communicating with anyone on your cell phone during a meeting. This could be seen or perceived as a violation of the Open Meetings Act, and could be investigated as such. If the use of electronic devices is for purposes of information for you as a Council Member, relevant to the issue at hand, then you should announce to the attendees of the meeting that you are looking up something relevant on your device, and explain why, even offering to show the audience what you are researching.

**REMOTE MEETING ATTENDANCE FOR COUNCIL MEETINGS**

City staff is authorized to facilitate remote meeting attendance by City Council Members for City Council Regular Meetings, Special Meetings, Workshops or other called meetings. When a Council Member attends a City Council meeting from a remote location, the City Secretary shall make a notation on the posted meeting agenda specifying the location where any member of the City Council participating remotely will be physically present during the meeting and that each location shall be open to the public both visually and audibly during the open portions of the meeting. Each location shall have two-way communication with each other during the entire meeting, and each participant in the videoconference call, while speaking, shall be clearly visible and audible to each other participant and, during the open portions of the meeting, to the members of the public in attendance at the location of the meeting.

(End of Section on City Council meetings)

### **USE OF THE CITY SEAL**

The city seal is reserved for use in official duties and communications of the Mayor, City Council Members, and the City Secretary. The city's corporate seal is further authorized for use by current city employees as deemed appropriate for official communications and identification of persons employed by the City of Galveston. The city's corporate seal is allowed for use on the city's official website and any official website of current members of the City Council. The city's corporate seal should not be used for commercial purposes and should not be used in a manner that signifies or implies sponsorship or approval by an agency or department of the city. The city's corporate seal is further authorized for use as provided by state law and the laws of the City of Galveston.

### **CITY COUNCIL MAIL PROCESS**

The City Secretary receives and processes the City Council's incoming mail. All mail to the Mayor and to Council is received and distributed to the mailboxes located in the City Secretary's Office. Mail to the Mayor and Council is not opened and reviewed unless the Council Member so requests. Mail is available for pickup by Council during office hours of the City Secretary's Office.

All needed responses to letters are coordinated with the City Secretary.

### **TELEPHONE/APPOINTMENT/CALENDAR PROCESS**

Telephone calls to the city's telephone number for the Mayor and City Council are received through the City Secretary's office. If the city staff can help with the inquiry or request, it is handled by the city staff. If the party wants to speak only to the Mayor and/or City Council Members, the number designated by the Mayor or Council Member is given to the caller or a message is taken.

Appointments for the Mayor and City Council Members are usually handled by putting anyone wanting to meet with the Mayor or Council Members directly in touch with the requested party. This alleviates a 3<sup>rd</sup> party and having to make multiple calls to each for scheduling purposes.

### **EXPENSE REIMBURSEMENT/TRAVEL POLICY**

It is commonplace for cities to reimburse Council Members for travel and other expenses incurred on official city business trips to meetings of the Texas Municipal League, council of governments, and similar organizations.

City of Galveston Travel Policy - (Appendix A of the City of Galveston Purchasing Policy) Reimbursable travel expenses include air fare, mileage, lodging, and meals and incidentals. A travel advance is available for meals and incidentals. Within thirty (30) business days after completion of the trip, the employee or officer shall submit a completed Travel Expense Voucher Form available from the City Secretary, to the Finance Department. This document shall include all requested information with supporting documentation/receipts attached.

## **SOURCES FOR INFORMATION**

As a new Council Member, you may want to look at the following sources of information:

1. Review previous City Council meeting minutes. Copies are available through the City Secretary's Office or on the city's website.
2. Study current budget, previous year's financial report and other key financial documents.
3. Texas Municipal League's Monthly News Magazine: "Texas Towns and Cities"
4. Texas Municipal League's "Handbook for Home Rule Cities"
5. It is highly recommended to attend a Texas Municipal League training session for Newly Elected Officials.
6. Online City Council Library at <http://www.cityofgalveston.org/500/City-Council-Library>.

## **COUNCIL TRAINING AND PROFESSIONAL DEVELOPMENT**

All newly elected Council Members shall attend an orientation session provided by City Staff. The Planning Department will provide a separate orientation session to Council Members on the Land Development Regulations, and will provide Council with a printed copy of the LDR's. Orientation sessions will be offered to prospective City Council candidates prior to their election to office.

Council Members are encouraged to attend at least one training event per year, and others as found beneficial to performance of their elective duties, subject to the availability of funds as appropriated in the annual budget.

Selection of professional development events are at the discretion of each Council Member, reasonably limited to expenditures within the amount appropriated for Mayor and each Council Member.

Council Members are encouraged to select training events from the Texas Municipal League (TML), or other sources you may feel appropriate.

## **COUNCIL APPOINTEES**

The City Council appoints the City Manager, the City Attorney, the City Secretary, the City Auditor, the Municipal Court Judge, and the Alternate Municipal Court Judge for the City of Galveston. Department Heads and other professional staff are the responsibility of the City Manager. The following is a summary of each appointment:

### **City Manager**

The City Manager shall be the Chief Administrative and Executive Officer of the city. He shall be responsible to the Council for the proper administration of all affairs of the city and to that end he shall have power and shall be required to:

- Appoint and remove any officers or employees of the city except those officers appointed by the Council as otherwise provided by law or the City Charter.
- Prepare the budget annually, submit it to the Council for approval, and be responsible for its administration after adoption.
- Keep the Council advised of the financial condition and administrative activities of the City, and make such recommendation as may seem desirable.
- Perform such other duties as may be prescribed by the City Charter or required of the City Manager by the Council, not inconsistent with the provisions of the City Charter.

The City Manager coordinates the meetings of the City Council and is the head of the Development Team. He is also responsible for representing the city at local social and political functions, functions of the Texas Municipal League, the Texas City Management Association (TCMA), and the International City Management Association (ICMA).

The City Manager coordinates the actions of the City Council, works with the City Secretary to prepare meeting agendas, is the CEO and CFO of the city, deals with citizens, answers questions and concerns, deals with complaints, and determines if an item needs to be addressed by the City Council.

### **City Attorney**

The City Council appoints a City Attorney, who is licensed to practice law in the State of Texas, as City Attorney, and shall serve at the pleasure of the City Council. The City Attorney shall be the legal adviser and attorney for all officers and departments of the city and shall represent the city in all litigation and proceedings, including the prosecution of cases before the Municipal Court. The City Attorney shall draft, approve, or file written legal objections to, every ordinance before it is acted upon by the Council, and shall pass upon all documents, contracts, and legal instruments in which the City may have an interest.

### **City Secretary**

The City Council shall appoint the City Secretary, who shall serve at the pleasure of the Council. The City Secretary shall keep the minutes and other records of the Council, and shall receive service of civil process, and shall have such other duties and responsibilities as may be assigned by the City Charter, City Ordinance and/or the Council. All ordinances adopted or passed by the City Council shall be inscribed by the City Secretary, at the foot of each ordinance so inscribed, the City Secretary shall attest the date of such ordinance's adoption. The City Secretary is hereby made the legal custodian of all records of the city, and shall be responsible for their safekeeping. The City Secretary shall be responsible for furnishing duly certified and authenticated copies of any city records, consistent with city council direction, state or federal law. The City Secretary shall serve as the "records management officer" for the city, consistent with V.T.C.A., Local Government Code § 203.025 and successor statutes. The City Secretary is also responsible for elections, codification of city ordinances, records retention, Public Information Act Requests, assuring compliance with the Open Meetings Act, Laserfiche system, and shall be a Certified Texas Municipal Clerk.

**City Auditor**

There shall be a qualified City Auditor who shall be appointed by the Council and be responsible directly to the Council. The City Auditor shall have such duties, responsibilities and staff as determined by ordinance including the responsibility to conduct or cause to be conducted, financial, performance, investigative, and other audits following government auditing standards as promulgated by the Comptroller General of the United States. The City Auditor shall assist the City Council in establishing accountability and in improving City system and service delivery.

**Municipal Judge/Alternate Municipal Judge**

The Judge of the Municipal Court and Alternate Judge of the Municipal Court shall be appointed by the City Council. The person so appointed shall be a licensed attorney in the State of Texas and shall have been a resident of and domiciled in the City of Galveston for not less than three (3) years immediately prior to appointment and shall continue to reside and be domiciled in the City while serving as Municipal Court Judge. The Municipal Judge shall deal with the administrative services of Municipal Court solely through the Municipal Court Clerk or the City Manager. The term of the Municipal Judge's appointment shall be for two (2) years. In the event the Judge of the Municipal Court is unable to act for any reason, the Council shall appoint a qualified attorney to act in the Judge's place. The Judge, or anyone acting in the Judge's place, shall receive such compensation as may be set by the Council. The Council shall have the power to create and establish additional Municipal Courts, with the same or separate jurisdictions, and to appoint an additional Magistrate for each Court so established. The Municipal Court Judge shall not give orders to the Municipal Court Clerk or to any subordinates of City Manager.

Galveston's Municipal Court is considered a "Court of Record", meaning that the Municipal Court Judge must be a licensed attorney in good standing in the State of Texas.

**COUNCIL / STAFF RELATIONS**

The City Manager is the primary link between the Mayor/Council and department heads and other professional staff. The Council relationship with the staff shall be through the City Manager. However, the City Council may directly email staff members with questions so long as the City Manager and Deputy City Manager are copied on all communications.

**Agenda Questions:**

Questions arising from Council Members after receiving their agenda information packet may be directed to the City Manager or City Secretary for staff clarification prior to the Council meeting. Any additional information requested or deemed necessary will be distributed to all Council Members.

**Presentations to Council:**

The City Manager shall designate appropriate staff to address each agenda item and shall see that it is adequately prepared and presented to the Council. Presentations should be professional, timely, and allow for discussion of options for resolving the issue. Staff shall present the staff recommendation, or present the specific options for Council consideration.

**Staff Conduct and Training:**

The City Council Appointees are responsible for the professional and ethical behavior of the city staff. All staff members shall show each other, Council Members, and the public respect and courtesy at all times. The City Council Appointees are responsible, within the constraints of the appropriated budget, for staff development.

Neither the Council nor any of its members shall direct or request the City Manager or any of the City Manager's subordinates to appoint or remove from office or employment any person except a person whose office is filled by appointment of the Council under the provisions of the City Charter. Except for the purpose of inquiry and investigation the Council and its members shall deal with the administrative services of the City solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.

### **BOARDS AND COMMISSIONS**

The City Council appoints citizens to serve on City boards, commissions, and committees. They are:

- Airport Advisory Committee – consists of seven members and one ex officio member appointed by the City Council for a three-year term. The committee makes recommendations to the Airport Director and City Council concerning present and future development and operation of the city airport. The committee shall have no legislative or executive authority and shall only serve as an advisory committee.
- Animal Services Advisory Board – consists of five members appointed by the City Council for a two-year term. The purpose of the committee shall be to assist animal shelters located in the city to comply with Texas Health and Safety Code, Chapter 823 related to animal shelters.
- Arts and Historic Preservation Advisory Board – consists of seven members appointed by the City Council for a three-year term. The board makes recommendations to Council for the distribution of a portion of hotel occupancy taxes set aside for arts and historical preservation.
- Building Board of Adjustments and Appeals – consists of seven members and two alternates appointed by City Council for a three-year term. The board hears appeals from decisions of the building official, fire code official, or code official.
- Civilian Review Board – consists of seven members appointed by the City Council for a two-year term. The board receives citizen complaints regarding alleged misconduct of the Galveston Police Department.
- Commission on the Arts – consists of nine members appointed by the City Council for a two-year term. The board was created to further the Fine Arts on Galveston Island through the recognition and development of excellence and all aspects of the cultural arts in the community, and ensure the accessibility of the arts by all.
- Ethics Commission – consists of seven members appointed by the City Council for a three-year term. The commission investigates any alleged violation of the city charter.
- Families, Children and Youth Board – consists of twenty members and six alternates appointed by the City Council for a two-year term. The objective of the board shall be to propose resolutions to problems and to make recommendations to the City Council with respect to programs and actions to improve the quality of life for families, children, and youth in the city.

- Finance and Fiscal Affairs Committee – consists of seven members appointed by the City Council for a three-year term. The committee reviews, evaluates, and makes recommendations to Council, all aspects of the city’s fiscal affairs, including its financial statements and reports, audit, budget, and budget performance, fund accounting and fund balances, and financial management policies, as well as, the fiscal impact of revenue/expense trends and operational efficiencies.
- Galveston Housing Authority – consists of five members appointed by the Mayor for a two-year term. The authority may prepare, carry out, acquire, lease, and operate a housing project in its area of operation.
- Galveston Housing Finance Corporation/Galveston Property Finance Authority – consists of seven members appointed by the City Council for a two-year term. The corporation may finance the cost of residential ownership and development that will provide decent, safe, and sanitary housing at affordable prices for residents of Galveston.
- Galveston Island Redevelopment Authority – consists of five members appointed by the City Council for a 4-year term. The authority was organized for the purpose of aiding, assisting, and acting on behalf of the City in the performance of its governmental functions to promote the common good and general welfare of the areas included in TIRZ 11, TIRZ 12, TIRZ 13, and TIRZ 14 and neighboring areas; to promote, develop, encourage and maintain housing, employment, commerce and economic development in the city; to administer, manage and supervise economic development vehicles and tools implemented by the city.
- Galveston Port Facilities Corporation – consists of the membership of the Galveston Wharves Board plus two additional members appointed by the City Council for a three-year term. The corporation was organized for the purpose of aiding, assisting, and acting on behalf of the City in the performance of its governmental functions to promote the common good and general welfare of the City by aiding and assisting the Wharves Board in building, constructing, purchasing, acquiring, leasing, improving, enlarging, extending, repairing, maintaining, replacing, developing, operating and leasing any and all property, improvements, and facilities under the management and control of the Wharves or otherwise necessary or convenient for the proper operation of the ports or harbors of the city.
- Industrial Development Corporation – consists of seven members appointed by the City Council for a two-year period, including; the Mayor; three members of City Council; Chairperson of the Park Board of Trustees, or designee; Chairperson of the Galveston Chamber of Commerce, or designee; and Chairperson of the Galveston Economic Development Corporation, or designee. The corporation is responsible for aiding, assisting, and acting on behalf of the city to promote the employment, commerce, and economic development in the city.
- Investment Advisory Committee – consists of four members, including; one Mayoral appointment; one Council appointment; one City Manager appointment; and the Director of Finance. The committee is responsible for reviewing and updating the Investment Policy annually, reviewing investment recommendations, reviewing investment reports, overseeing the City’s portfolio to ensure compliance with State law, adopting a list of qualified brokers authorized to engage investment transactions, and approving the independent source providing state mandated investment training. Appointees shall serve the same term as the City Council or Mayor who appointed them.

- Landmark Commission – consists of seven members, two alternates, and one ex officio (non-voting) appointed by the City Council for a three-year period. The commission has original jurisdiction of: the application process for designation of property as a “Galveston Landmark”; the application process for designation of an area as a historic zoning district; and the application process for a Certificate of Appropriateness.
- Park Board of Trustees – consists of eight members and one ex officio (voting) member appointed by the City Council for a two-year period. The Park performs functions and duties prescribed by Local Government Code, Chapter 306, and City Code Sections 26-47 through 26-54, for the purpose of improving, equipping, maintaining, financing and operating a public beach park or parks, or facilities owned by the City or to be acquired by the City.
- Parks and Recreation Advisory Board – consists of seven members and one ex officio (non-voting) member appointed by the City Council for a two-year period. The board shall act in an advisory capacity to the City Manager and the City Council in developing an overall program for Parks and Recreation for the City of Galveston.
- Planning Commission - consists of seven members and one ex officio (non-voting) member appointed by the City Council for a three-year period. The Planning Commission duties are to make, amend, extend, or add to a Master Plan for the physical development of the City; recommend to the City Council approval or disapproval of proposed changes in the zoning plan; approve or disapprove the platting or subdividing of land within the corporate limits of the City and within adjacent areas as permitted by law.
- Tree Committee – consists of seven members appointed by the City Council for a two-year period. The committee was created to make recommendations to City Council regarding Galveston trees and vegetation.
- Zoning Board of Adjustment - consists of five members, two alternates, and one ex officio member appointed by the City Council for a two-year period. The board is authorized, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance. The Zoning Board of Adjustment is the only board that has final authority over their decisions. All other Boards make recommendations to the City Council.

### **BOARD AND COMMITTEE ATTENDANCE**

As used in this section "meeting" shall mean regularly scheduled meetings and specially called meetings in which one (1) or more action items are to be considered. As used in this section "committee" shall mean committees, boards, and commissions.

Appointees must attend seventy-five (75) percent of the meetings in twelve (12) months of appointment schedule. Failure to comply will result in the removal from the board, commission or committee. If an appointee does not comply, the chair of the committee shall provide written notice to the City Secretary of the dates and reasons, if known, of the member's absences. The City Secretary shall place the item on the City Council's next regularly scheduled meeting. The appointee will be invited and encouraged to attend, and will be given an opportunity to speak and state reasons for the absences.

In the event the City Council finds that the committee member's absences were not because of good cause, the City Council shall remove the committee member, place the member on probation, or take any action deemed appropriate by the City Council.

In the event City Council removes a person from a committee under this section, the City Council shall appoint another person to fill the removed member's unexpired term of office.

The removal of a member in accordance with this section does not apply to any board, commission or committee established by law or charter which prohibits such removal of committee members, or to ex-officio, non-voting committee members.

The City Secretary will monitor all board and committee attendance annually.

All applicants for City boards, commissions, and committees, shall sign and date acknowledgement of the Attendance Policy on the board application form.

## **ADMINISTRATIVE POLICY AND PROCEDURE FOR PROCLAMATIONS**

### **POLICY**

The City of Galveston will issue a proclamation at no charge to citizens who wish to recognize individuals for their outstanding achievements in the community, nonprofit organizations, special events or day that are exemplary or special.

Proclamations are not issued for commercial purposes, such as the opening of a new business, a new service, a new product or a new professional service.

Groups or citizens seeking proclamations year after year must provide new information for the proclamation.

Information submitted will be edited to reflect city policy when necessary. The city is unable to complete a proclamation without the facts. Personal endorsements for individuals or businesses are not considered for proclamations.

### **PROCEDURE**

A request for a proclamation must be made in writing to the City Secretary's Office at least **10 business days prior** to the date that will be proclaimed or the date the document will be presented. Each request must be accompanied by the name and telephone number of a person who can answer additional questions about the proposed proclamation.

Individuals seeking a proclamation must accompany the request with:

1. Facts about the subject matter
2. Specific title of what will be proclaimed
3. Date of the proclamation and date to be presented

**The Mayor's Office will make the final decision on whether a proclamation is issued or not.**

All proclamations must be picked up in the City Secretary's Office unless prior alternative arrangements are made. The original proclamation will be presented to the citizen making the request at no cost.

Proclamations:

Proclamations issued by the City of Galveston are either proposed by individuals or organizations in observance of a certain day, week, or month, such as “Cancer Control Week”, “Crime Prevention Week,” etc. They are presented to non-profit organizations, individuals for their outstanding achievements in the community, in connection with special events or days that are exemplary or special, or in connection with an anniversary of the founding of a business.

Honorary Citizen:

This **Certificate** proclaims an individual an honorary citizen of Galveston and is given to an individual visiting the City or a person accompanying a VIP.

Recognition:

This **Certificate** is given to individuals or organizations for their outstanding service to the City of Galveston or in recognition of a state or national honor.

Distinguished Citizen Award

This **Award** is intended to recognize one of our own citizens who has distinguished him/herself either locally, state-wide, nationally or internationally. This can be for a one-time action or for a series of actions that bring positive recognition to the individual and to the City of Galveston.

People Like You

Small **Certificate** presented to a young citizen of Galveston for a specific project(s) he/she may have done for the good of the City. These are not intended for distribution to large groups. As with other certificates, mass distribution leads to the certificate losing its significance.

Letters of Commendation, Recognition, Greetings, Congratulations and Ambassadors of Good Will

These letters are presented at the requests of citizens, Council members or organizations.

All letters are signed by the Mayor but could also contain dual signatures, the Mayor’s and Councilperson’s who requested the ceremonial item.

**SPEAKING ENGAGEMENTS**

The City Secretary’s office coordinates requests for the Mayor and/or Council Members to speak at various events and engagements. If the Mayor is unable to attend, staff first checks availability of the Mayor Pro Tem. If the Mayor Pro Tem is unable to attend, an email is sent to the entire Council requesting a volunteer to attend and speak on behalf of the Mayor. If a specific Council Member is requested, staff contacts that Council Member to check their availability.

## **PROCEDURES FOR PASSAGE OF AN ORDINANCE**

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

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

### **City Charter - Procedure to Enact Legislation**

The Council shall legislate by ordinance only, and the enacting clause of every ordinance shall be "Be it Ordained by the City Council of the City of Galveston." All ordinances shall be submitted to the City Attorney for the City Attorney's approval before adoption and unless approved by the City Attorney, in writing, the City Attorney shall file with the City Secretary the City Attorney's written legal objections thereto. Every proposed ordinance shall be in writing and shall be read, either in full or by descriptive caption, in open meeting before any vote is taken thereon, provided, however, that any proposed ordinance that is read by descriptive caption only shall be available for public inspection in the office of the City Secretary not less than seventy-two (72) hours prior to adoption. All ordinances, unless otherwise provided by law or this Charter or by the terms of such ordinance, shall take effect immediately upon the final passage thereof.

### **City Charter - Code of Ordinances**

The Council shall have the power to cause all general ordinances of the City to be compiled and printed in code form, whenever the codification or recodification thereof is deemed desirable or required by law. When adopted by the Council, the printed codes of general ordinances so designated shall be in full force and effect without the necessity of such codes or any part thereof being published in any newspaper. A printed copy of the City's Code of Ordinances when authenticated by the City Secretary shall be admitted in evidence without further proof and shall be prima facie evidence in all courts of the existence and regular enactment of all ordinances therein set forth.

### **Moratoriums**

Moratoriums imposed on property development/demolition of residential and/or commercial property are regulated by Texas Local Government Code Sections 212.131 through 212.139. A municipality may not adopt a moratorium on property development unless the municipality complies with the notice and hearing procedures prescribed in Section 212.134, and makes written findings as provided by Section 212.135, 212.1351, or 212.1352, as applicable.

Sec. 212.134. NOTICE AND PUBLIC HEARING REQUIREMENTS. (a) Before a moratorium on property development may be imposed, a municipality must conduct public hearings as provided by this section.

(b) A public hearing must provide municipal residents and affected parties an opportunity to be heard. The municipality must publish notice of the time and place of a hearing in a newspaper of general circulation in the municipality on the fourth day before the date of the hearing.

(c) Beginning on the fifth business day after the date a notice is published under Subsection (b), a temporary moratorium takes effect. During the period of the temporary moratorium, a municipality may stop accepting permits, authorizations, and approvals necessary for the subdivision of, site planning of, or construction on real property.

(d) One public hearing must be held before the governing body of the municipality. Another public hearing must be held before the municipal zoning commission, if the municipality has a zoning commission.

(e) If a general-law municipality does not have a zoning commission, two public hearings separated by at least four days must be held before the governing body of the municipality.

(f) Within 12 days after the date of the first public hearing, the municipality shall make a final determination on the imposition of a moratorium. Before an ordinance adopting a moratorium may be imposed, the ordinance must be given at least two readings by the governing body of the municipality. The readings must be separated by at least four days. If the municipality fails to adopt an ordinance imposing a moratorium within the period prescribed by this subsection, an ordinance imposing a moratorium may not be adopted, and the temporary moratorium imposed under Subsection (c) expires.

***Sample Timeline (using the 2017 Broadway Moratorium Timeline)***

- May 16, 2017 Planning Commission Public Hearing
- May 18, 2017 City Council First Reading of Ordinance
- May 19, 2017 Temporary Moratorium is in effect
- May 25, 2017 City Council Second Reading of Ordinance, Public Hearing, and Approval of 90 Day Moratorium
- August 10, 2017 City Council Public Hearing and Optional Extension of Moratorium for another 90 Days
- August 23, 2017 Original Moratorium Expires
- August 24, 2017 Moratorium Extension Begins
- November 21, 2017 Moratorium Extension Expires

**NEIGHBORHOODS-COUNCIL PROJECTS AND INITIATIVES PROGRAM**

**Projects and Initiatives Outline**

As part of the annual budget process, the Manager will consider neighborhood and district type initiatives and projects presented by council members and the mayor. These projects and initiatives will be considered by the Manager individually or collectively during the budget process. Costs associated with each project or initiative, individually or collectively, will be presented to Council during the Budget process to identify those for inclusion in the final budget.

***Eligible Projects and Initiatives:*** Capital improvement projects, collaborative projects, or any other projects deemed supportive of neighborhood improvement.

**Specific requirements:**

1. The scope of any proposed Projects or Initiatives must be limited to the budget year. Projects not encumbered in the approved budget year will be resubmitted for approval as part of the next budget;
2. Funding sources for these Projects or Initiatives must be clearly delineated; and
3. No project or initiative can be for the exclusive benefit of a single individual or business property owner unless that property owner is another governmental entity.

### **Project or Initiative Development**

1. Council will provide proposed projects to the Manager for consideration by Council during the budget process.
2. The Manager will review all proposed projects and/or initiatives and determine if they can be combined with proposed or existing City projects.
3. Like projects may be consolidated to gain economies of scale or other efficiencies.
4. The Manager will provide a comprehensive list of proposed projects and initiatives for Council consideration as part of the budget process.
5. The Manager will include a cost estimate for all projects or initiatives to be considered by Council.
6. Funding will be at the discretion of the Council and this will drive the annual scale of the Projects and Initiatives program.
7. All discretionary Project and Initiative spending will be clearly identified within the City budget presented for public hearings.

### **Program Administration**

All approved projects and initiatives will be administered as part of the City's normal operations, more specifically, by a Project Manager assigned by the City Manager's office. Administrative and construction management costs will be charged against Council approved program funding. In addition, as part of each project, a contingency will be established at a rate to ensure sufficient funding is available to complete the project. Contingency funding not spent will go to the fund balance in reserve for the district where the funds originated.

### **Program Reporting**

The Manager will report on these projects quarterly as part of the monthly Manager's Report which is provided to Council and the public.



## **TEXAS PUBLIC INFORMATION ACT**

Texas Government Code, Chapter 552, known as the Texas Public Information Act, requires that most City records, including those in the possession of City Council Members, be open to the public for inspection.

"Public records" are broadly defined under the act to include "the portion of all documents, writings, letters, memoranda, or other written materials which contain public information." "Public information" includes "all information collected, assembled, or maintained by or for governmental bodies pursuant to law or ordinance or in connection with the transaction of official business."

Certain information is specifically excluded from the requirements of the Texas Public Information Act. While the list of exempt materials is too long to recite here, it includes such items as working papers being used to draft ordinances or resolutions, certain personnel records, information that would, if released, give an advantage to bidders, documents protected because of attorney-client relationships, and documents related to pending or ongoing litigation.

Despite the narrow exemptions established in the law, its effect is to require that most of the written material used or produced by Council Members be made available upon request, to the news media and other members of the public. If it is felt that certain records are exempt from the requirements of the law, and there has been no previous determination that particular types of records are exempt, the City Official must request an opinion from the Attorney General no later than the 10<sup>th</sup> business day after the date of receiving the written request.

If an Attorney General's opinion is requested, and the opinion subsequently holds that the information is public and the City Official persists in refusing to release it, the city has 10 days to file suit to challenge the Attorney General's determination.

The City of Galveston has designated the City Secretary as the Records Management Officer in regards to the Public Information Act and therefore all training requirements discussed under Chapter 552 of the Government Code are satisfied. Therefore, all request made under the Public Information Act shall be directed to the City Secretary.

For more information regarding the Public Information Act, please refer to the TML Handbook for Mayors and Council Members in the Appendix.

## **TEXAS OPEN MEETINGS ACT**

### **Charter or Ordinance Requirements**

All meetings of the City Council must comply with the requirements of the charter or ordinance creating them. The City's Charter, for example, requires that all meetings of the City Council be open to the public.

### **Texas Open Meetings Act**

Every meeting of the City Council must be conducted in accordance with Chapter 551 of the Government Code, commonly referred to as the Texas Open Meetings Act. The Act is based on the notion that public officials should discuss and vote on public business under public scrutiny, so that the public will have the opportunity to know what their public officials are doing. You should remember that the Act contains criminal penalties for violations of the Act. To help educate government officials on the Act's requirements, each elected or appointed member of a governmental body must take at least one hour, but not more than two hours, of training in the Open Meetings Act.

The training must be completed not later than 90 days after the member takes the oath of office or assumes the responsibilities of the office.

The attorney general's office allows the requirement to be met in at least two ways:

- (1) a video is available to borrow or online at [https://www.oag.state.tx.us/open/og\\_training.shtml](https://www.oag.state.tx.us/open/og_training.shtml); and
- (2) Certification of other entities such as the Texas Municipal League, to provide the training. Please visit the attorney general's Web site or call TML for more information on the training.

The training needs to be conducted in coordination with the City Secretary who is responsible for certifying that all elected and appointed officials are in compliance with the requirements under Government Code Chapter 551.

For more information on the Texas Open Meetings Act, please see TML Handbook for Mayors and Council Members in the Appendix.

### **CONFLICT OF INTEREST**

Mayors and Council Members are expected to avoid involvements that put their own personal interests at cross purposes with those of the public. In most cases, good judgment is enough to keep City Officials within the bounds of propriety. There are however, state laws governing the behavior of City Officials, and Local Officials need to be aware of them in order to avoid violations.

A conflict of interest exists when a public official is presented with a matter for consideration in which the official has some personal interest that has the potential of influencing the official in the exercise of independent judgment. Conflicts of interest may be divided into two categories, statutory and common law. The first involves conflicts that are defined by statute; the second are conflicts that have been defined by court decision. The purpose of the rules regarding conflicts of interest is to prevent public officials from using their authority for personal benefit rather than for the benefit of the public.

Anticipating that potential conflicts of interest will inevitably arise at the local level, while acknowledging the practical impossibility of flatly prohibiting such conflicts, the Texas Legislature enacted a statute that requires the public disclosure of conflicts between the public interest and a Council Member's private interests (Section 171.000 et. Seq., Local Government Code).

The purpose of this statute is to prevent Council Members and other local officials from using their positions for hidden personal gain. The law requires the filing of a form by any Council Member whose private financial interests – or those of relatives – would be affected by an action of the Council Member. If a Council Member has a question as to whether or not he/she has a conflict of interest, he/she should contact the City Attorney. *It should be noted that simply being uncomfortable with a subject does not constitute a justified reason to abstain from voting on the matter at hand. You were elected to vote, and unless you have a valid reason to abstain, you should vote.*

For more information on what constitutes a conflict of interest, please refer to the TML Handbook for Mayors and Council Members in the Appendix.

***On the following page is the form of an affidavit which is required to be submitted to the City Secretary pursuant to Chapter 171, Local Government Code.***

Meeting Date \_\_\_\_\_  
Agenda Item(s) In Conflict \_\_\_\_\_

**CONFLICT OF INTEREST AFFIDAVIT**

**THE STATE OF TEXAS       §**  
**COUNTY OF GALVESTON   §**  
**CITY OF GALVESTON      §**

I, \_\_\_\_\_, as a Council Member of the Galveston City Council, make this affidavit and hereby on oath states the following:

I have a relationship or a substantial interest in a business entity for one or more of the following reasons:

\_\_\_\_\_ Ownership that consists of one of the following situations:

- (1) 10 percent or more of the voting stock or shares of the business entity;
- (2) 10 percent or more of the fair market value of the business entity; OR
- (3) \$15,000.00 or more of the fair market value of the business entity.

\_\_\_\_\_ Funds from the business exceeded 10 percent of the above said person's gross income for the previous year; AND/OR

\_\_\_\_\_ Real property is involved of which the interest is either equitable or legal ownership with a fair market value of \$2,500.00 or more.

\_\_\_\_\_ Other: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name

BEFORE ME, the undersigned authority, this day personally appeared \_\_\_\_\_ and on oath stated the facts hereinabove stated are true to the best of his or her knowledge or belief.

Sworn to and subscribed before me on this \_\_\_\_ day of \_\_\_\_\_, 2017.

[SEAL]

\_\_\_\_\_  
Notary Public

## **CONFLICTS DISCLOSURE**

Local Government Code Chapter 176 requires that Mayors, Council Members, City Managers or administrators, and certain other city officials must file a “conflicts disclosure statement” with a city’s records administrator within seven (7) days of becoming aware of the following situations:

1. A city officer or the officer’s family member has an employment or business relationship that results in taxable income of more than \$2,500 with a person who has contracted with the city or with whom the city is considering doing business.
2. A city officer or the officer’s family member receives and accepts one or more gifts with an aggregate value of \$250 in the preceding 12 months from a person who conducts business or is being considered for business with the officer’s city.

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

An officer who knowingly fails to file the statement commits a Class C misdemeanor, which is punishable by a fine up to \$500.

***On the following page is the form of an affidavit which is required to be submitted to the City Secretary pursuant to Chapter 176, Local Government Code.***

**CONFLICT OF INTEREST QUESTIONNAIRE**

**FORM CIQ**

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

**OFFICE USE ONLY**

Date Received

**1** Name of person who has a business relationship with local governmental entity.

**2**  Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

**3** Name of local government officer with whom filer has employment or business relationship.

\_\_\_\_\_  
Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes       No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes       No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes       No

D. Describe each employment or business relationship with the local government officer named in this section.

**4**

\_\_\_\_\_  
Signature of person doing business with the governmental entity

\_\_\_\_\_  
Date

Adopted 06/29/2007

**LOCAL GOVERNMENT OFFICER  
CONFLICTS DISCLOSURE STATEMENT**

**FORM CIS**

(Instructions for completing and filing this form are provided on the next page.)

<p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.</p> <p>This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.</p>	<p><b>OFFICE USE ONLY</b></p> <p>Date Received</p>
<p><b>1</b> Name of Local Government Officer</p>	
<p><b>2</b> Office Held</p>	
<p><b>3</b> Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code</p>	
<p><b>4</b> Description of the nature and extent of employment or other business relationship with person named in item 3</p>	
<p><b>5</b> List gifts accepted by the local government officer and any family member, excluding gifts described by Section 176.003(a-1), if aggregate value of the gifts accepted from person named in item 3 exceed \$250 during the 12-month period described by Section 176.003(a)(2)(B)</p> <p>Date Gift Accepted _____ Description of Gift _____</p> <p>Date Gift Accepted _____ Description of Gift _____</p> <p>Date Gift Accepted _____ Description of Gift _____</p> <p style="text-align: center;">(attach additional forms as necessary)</p>	
<p><b>6</b> <b>AFFIDAVIT</b></p> <p style="text-align: center;">I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to a family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a), Local Government Code.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature of Local Government Officer</p> <p>AFFIX NOTARY STAMP / SEAL ABOVE</p> <p>Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.</p> <p>_____ Signature of officer administering oath      Printed name of officer administering oath      Title of officer administering oath</p>	

Adopted 06/29/2007

## LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

Section 176.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of the local governmental entity; or an employee of a local governmental entity with respect to whom the local governmental entity has, in accordance with Section 176.005, extended the requirements of Sections 176.003 and 176.004. This form is required to be filed with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of this statement.

A local government officer commits an offense if the officer knowingly violates Section 176.003, Local Government Code. An offense under this section is a Class C misdemeanor.

Please refer to chapter 176 of the Local Government Code for detailed information regarding the requirement to file this form.

### INSTRUCTIONS FOR COMPLETING THIS FORM

*The following numbers correspond to the numbered boxes on the other side.*

1. **Name of Local Government Officer.** Enter the name of the local government officer filing this statement.
2. **Office Held.** Enter the name of the office held by the local government officer filing this statement.
3. **Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code.** Enter the name of the person described by Section 176.002, Local Government Code with whom the officer has an employment or other business relationship as described by Section 176.003(a), Local Government Code.
4. **Description of the nature and extent of employment or business relationship with person named in item 3.** Describe the nature and extent of the employment or other business relationship with the person in item 3 as described by Section 176.003(a), Local Government Code.
5. **List gifts accepted, excluding gifts described by Section 176.003(a-1), if aggregate value of the gifts accepted from person named in item 3 exceed \$250.** List gifts accepted during the 12-month period (described by Section 176.003(a), Local Government Code) by the local government officer or family member of the officer, excluding gifts described by Section 176.003(a-1), from the person named in item 3 that in the aggregate exceed \$250 in value.
6. **Affidavit.** Signature of local government officer.

Adopted 06/29/2007

## NEPOTISM

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

The Texas nepotism statute, Chapter 573 of the Government Code, forbids the City Council from hiring any person who is related to a Council Member within the second degree by affinity or within the third degree by consanguinity. Since “affinity” and “consanguinity” are the controlling factors in determining nepotism, both terms need to be clearly understood. The Nepotism Chart on the following page is provided to better help illustrate the various levels of both affinity and consanguinity.

*Affinity* is kinship by marriage, as between a husband and wife, or between husband and blood relatives of the wife (or vice versa).

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

For more specific information regarding the Texas Nepotism Statute and what constitutes nepotism, please refer to the TML Handbook for Mayors and Council Members.

City Charter – Article XIV, Section 6. Nepotism.

No person who is related by affinity or consanguinity (marriage or blood) as defined by State law, to a member of the Council or other elected official, or to a department head, or to the City Manager, shall be appointed to any office, clerkship or other paid position with the City, but this prohibition shall not apply to officers or employees who have been employed by the City continuously for more than two years prior to the elections of such member of council or other elected official. No department head, or other City employee who is related by affinity or consanguinity (marriage or blood) as defined by State law, to a City employee, shall supervise that employee. "Defined by State law" shall mean the degree of affinity or consanguinity prohibited by State law for State officials.

<b>Consanguinity (Relationship by Blood) Civil Law Degrees of Relationship</b>				
	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>
Officer	Child	Grandchild	Great Grandchild	Great, Great-Grandparent
	Parent	Sister/Brother	Niece/Nephew	Grand Niece/Nephew
		Grandparent	Aunt/Uncle	1 <sup>st</sup> Cousin
			Great-Grandparent	Great Aunt/Uncle
				Great, Great-Grandparent

<b>Affinity (Relationship by Marriage) Civil Law Degrees of Relationship</b>				
	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>
Officer	Spouse	Parent-in-Law	Grandparent-in-Law	Great Grandparent-in-Law
		Daughter/Son-in-Law	Brother/Sister-in-Law	Aunt/Uncle-in-Law
			Grandchild-in-Law	First Cousin-in-Law
				Niece/Nephew-in-Law
				Great Grandchild-in-Law

**CRIMINAL MISCONDUCT**

There are a number of state penal laws that prohibit acts, which improperly influence public employees. Two of the more pertinent statutes concern bribery and gifts. **Bribery** occurs when someone confers a benefit upon a public employee or official in return for an official's decision or act. The law prohibiting gifts is similar to bribery, except the prohibited benefit is conferred with regard to any particular decision or act.

A **bribe or gift** can be anything that could "reasonably be regarded as economic gain or economic advantage." For example, assume you are asked if it would be illegal for Council Members to accept a helicopter ride from a petitioner of a zoning change for the sole purpose of inspecting the property in question. The ride would be legal so long as it was given solely for that purpose, because Council Members received no economic advantage or gain.

However, assume the petitioner had promised a Council Member a helicopter ride to Aruba if the member would vote for the zoning change. Clearly, that would be bribery since the petitioner would be offering a benefit in exchange for the vote. Again, assume the same petitioner offered the same Council Member the same ride without discussing how the Council Member should vote. If the offer is made because of the Council Member's official status, then it could be a violation of the gift statute, because the member received an economic benefit. The same would be true if the helicopter ride had been given to a spouse of a Council Member because bribery includes conferring a benefit on the official or "any other person in whom the beneficiary is interested."

What about gifts from friends or a token Christmas gift from some person who frequently appears before the City Council? Each situation must be addressed on its particular facts. The law has several exceptions and nuances that we will not attempt to address. **One simple way to approach the issue is to ask yourself the following question if you are offered a "gift." Would the gift be offered if I were not a public official? If you cannot definitely answer "yes" to that question, we recommend you not accept the gift.**

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

Certain exceptions apply, such as:

1. An item with a value of less than \$50 (excluding cash or a negotiable instrument, such as a check or gift card);
2. A gift given by a person with whom the official or employee has a familial, personal, business, or professional relationship, independent of the official or employee's status or work;
3. Any benefit that the official or employee is entitled to receive by law or for which the person has performed a duty independent of the person's status as a public service (for example, a jury duty fee); or
4. Any political contributions as defined by the Texas Election Code.

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

### **Definitions**

***Benefit*** means anything reasonably regarded as an economic gain or economic advantage, but does not include a contribution or expenditure made and reported in accordance with the law.

***City staff*** means any person on the City of Galveston payroll as an employee, whether full-time or part-time.

***Elected City Official*** means the Mayor and members of the City Council.

***Family member*** means any person related to the elected City Official in the first degree by either affinity or consanguinity (see Nepotism Chart).

***Level of staff contact*** means the position or positions within the administrative chain of command of the City Manager designated by that Council appointed official to receive and/or act upon inquiries from elected City Officials.

***Substantial interest*** in a business entity means an equitable or legal ownership with a fair market value of Two Thousand, Five Hundred Dollars and No Cents (\$2,500.00) or more; an interest of a family member shall be considered a substantial interest of the City Official.

Substantial interest in a business entity means ownership of ten percent (10%) or more of the voting stock or shares of the business entity, ownership of Five Thousand Dollars and No Cents (\$5,000) or more of the fair market value of the business entity, or a situation whereby funds received by a City Official from a business entity exceed ten percent (10%) of the official's gross income for the previous year.

All elected City Officials shall conduct themselves with the highest of ethical standards so as to give no occasion for distrust of their devotion to the best interests of the city and the public trust that they hold; government decisions and policy should be made using the proper procedures of the governmental structure, and public office should not be used for personal gain.

### **Responsibilities of Public Office**

Elected City Officials are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this state and to carry out impartially the laws of the nation, state and municipality and thus to foster respect for all government. They are bound to discharge faithfully the duties of their office regardless of personal considerations. Recognizing that the public interest must be their primary concern, they should attend each City Council meeting and diligently prepare for the issues to be undertaken.

### **APPENDIX**

- Local Government Code/Penal Code Provisions
- The Language of Local Government
- Acronyms and Abbreviations
- Parliamentary Motions Guide.

## LOCAL GOVERNMENT CODE PROVISIONS

### **LOCAL GOVERNMENT CODE SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT CHAPTER 171. REGULATION OF CONFLICTS OF INTEREST OF OFFICERS OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS**

#### **§ 171.001. Definitions**

In this chapter:

(1) "Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

(2) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

#### **§ 171.002. Substantial Interest in Business Entity**

(a) For purposes of this chapter, a person has a substantial interest in a business entity if:

(1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

(2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

(b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

(c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 40(a), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 561, § 37, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, § 5.95(27), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 849, § 1, eff. Sept. 1, 1997.

#### **§ 171.0025. Application of Chapter to Member of Higher Education Authority**

This chapter does not apply to a board member of a higher education authority created under Chapter 53, Education Code, unless a vote, act, or other participation by the board member in the affairs of the higher education authority would provide a financial benefit to a financial institution, school, college, or university that is:

(1) a source of income to the board member; or

(2) a business entity in which the board member has an interest distinguishable from a financial benefit available to any other similar financial institution or other school, college, or university whose students are eligible for a student loan available under Chapter 53, Education Code.

Added by Acts 1989, 71st Leg., ch. 1, § 41(a), eff. Aug. 28, 1989.

#### **§ 171.003. Prohibited Acts; Penalty**

(a) A local public official commits an offense if the official knowingly:

(1) violates Section 171.004;

(2) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or

(3) acts as surety on any official bond required of an officer of the governmental entity.

(b) An offense under this section is a Class A misdemeanor.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 40(a), eff. Aug. 28, 1989.

§ 171.004. Affidavit and Abstention from Voting Required

(a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

(1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

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

(b) The affidavit must be filed with the official record keeper of the governmental entity.

(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 40(a), eff. Aug. 28, 1989.

§ 171.005. Voting on Budget

(a) The governing body of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest.

(b) Except as provided by Section 171.004(c), the affected member may not participate in that separate vote. The member may vote on a final budget if:

(1) the member has complied with this chapter; and

(2) the matter in which the member is concerned has been resolved.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Renumbered from § 171.006 and amended by Acts 1989, 71st Leg., ch. 1, § 40(a), eff. Aug. 28, 1989.

§ 171.006. Effect of Violation of Chapter

The finding by a court of a violation under this chapter does not render an action of the governing body voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed the governing body without the vote of the person who violated the chapter.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Renumbered from § 171.008 by Acts 1989, 71st Leg., ch. 1, § 40(a), eff. Aug. 28, 1989.

§ 171.007. Common Law Preempted; Cumulative of Municipal Provisions

(a) This chapter preempts the common law of conflict of interests as applied to local public officials.

(b) This chapter is cumulative of municipal charter provisions and municipal ordinances defining and prohibiting conflicts of interests.

Amended by Acts 1989, 71st Leg., ch. 1, § 40(a), eff. Aug. 28, 1989.

§ 171.009. Service on Board of Corporation for No Compensation

It shall be lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity.

Added by Acts 1989, 71st Leg., ch. 475, § 2, eff. Aug. 28, 1989.

**LOCAL GOVERNMENT CODE**

**CHAPTER 212. MUNICIPAL REGULATION OF SUBDIVISIONS AND PROPERTY DEVELOPMENT**

**SUBCHAPTER A. REGULATION OF SUBDIVISIONS**

**§ 212.017. Conflict of Interest; Penalty**

(a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has a substantial interest in a subdivided tract if the person:

(1) has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more;

(2) acts as a developer of the tract;

(3) owns 10 percent or more of the voting stock or shares of or owns either 10 percent or more or \$5,000 or more of the fair market value of a business entity that:

(A) has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more; or

(B) acts as a developer of the tract; or

(4) receives in a calendar year funds from a business entity described by Subdivision (3) that exceed 10 percent of the person's gross income for the previous year.

(c) A person also is considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to another person who, under Subsection (b), has a substantial interest in the tract.

(d) If a member of the municipal authority responsible for approving plats has a substantial interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the municipal secretary or clerk.

(e) A member of the municipal authority responsible for approving plats commits an offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the municipal authority responsible for approving plats unless the measure would not have passed the municipal authority without the vote of the member who violated this section.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, § 3.01, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 561, § 38, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, § 5.95(27), eff. Sept. 1, 1995.

## PENAL CODE PROVISIONS

### **PENAL CODE TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION**

#### **CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE**

##### **§ 36.02. Bribery**

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or

(4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

(c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

(e) An offense under this section is a felony of the second degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3237, ch. 558, § 2, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 304, § 4.02, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

##### **§ 36.08. Gift to Public Servant by Person Subject to His Jurisdiction**

(a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to

become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

(g) A public servant who is a hearing examiner employed by an agency performing regulatory functions and who conducts hearings in contested cases commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from any person who is appearing before the agency in a contested case, who is doing business with the agency, or who the public servant knows is interested in any matter before the public servant. The exception provided by Section 36.10(b) does not apply to a benefit under this subsection.

(h) An offense under this section is a Class A misdemeanor.

(i) A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3238, ch. 558, § 5, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 304, § 4.04, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

#### § 36.09. Offering Gift to Public Servant

(a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

(b) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

#### § 36.10. Non-Applicable

(a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or

(3) a benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are not reimbursable by the state or political subdivision;

(4) a political contribution as defined by Title 15, Election Code;

(5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code;

(6) an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code; or

(7) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity.

(b) Section 36.08 (Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

(c) Section 36.09 (Offering Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2707, ch. 738, § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 3240, ch. 558, § 6, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 472, § 60, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 4.05, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

Amended by Acts 1995, 74th Leg., ch. 76, § 5.95(38), eff. Sept. 1, 1995.

## **PENAL CODE**

### **CHAPTER 39. ABUSE OF OFFICE**

#### **§ 39.02. Abuse of Official Capacity**

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant's office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than \$20;

(2) a Class B misdemeanor if the value of the use of the thing misused is \$20 or more but less than \$500;

(3) a Class A misdemeanor if the value of the use of the thing misused is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of the use of the thing misused is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of the use of the thing misused is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the use of the thing misused is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the use of the thing misused is \$200,000 or more.

(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 3241, ch. 558, § 7, eff. Sept. 1, 1983. Renumbered from § 39.01 and amended by Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

§ 39.06. Misuse of Official Information

(a) A public servant commits an offense if, in reliance on information to which he has access by virtue of his office or employment and that has not been made public, he:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;

(2) speculates or aids another to speculate on the basis of the information; or

(3) as a public servant, including as a principal of a school, coerces another into suppressing or failing to report that information to a law enforcement agency.

(b) A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:

(1) he has access to by means of his office or employment; and

(2) has not been made public.

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:

(1) the public servant has access to by means of his office or employment; and

(2) has not been made public.

(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 552, Government Code.

(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 3243, ch. 558, § 9, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 30, § 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 43, § 3, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 927, § 1, eff. Aug. 28, 1989. Renumbered from § 39.03 and amended by Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, § 5.95(90), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 76, § 14.52, eff. Sept. 1, 1995.

## The Language of Local Government

**This list of definitions and acronyms provides easy-to-understand explanations of words, phrases, terms and acronyms commonly used in local government that may not be familiar to citizens or newly elected or appointed municipal officials.**

### A

**ad hoc**– for a particular purpose, for a limited time

**ad valorem tax**– a tax levied on the assessed value of real property

**affidavit** – a written statement made under oath

**agenda** – an outlined plan of an entire business meeting

**Amendment** – a change or addition that changes the meaning or scope of an original formal document, usually laws or regulations, but can include plans, specifications, contracts, etc.

**annexation** – the process by which a municipality, upon meeting certain requirements, expands its incorporated limits

**appropriation** – a sum of money authorized by a legislative body to be spent for a specific purpose

**assessed valuation** – a valuation set upon real estate or other property by the County Appraisal District to be used as a basis for levying taxes

### B

**balanced budget** – a budget in which estimated revenues equal estimated expenditures

**bond** – an interest bearing certificate issued by a government or business, redeemable on a specific date; used as a measure of raising funds for capital improvements

**budget (capital)** – a spending plan for improvements and acquisitions of significant value and a useful life of more than one year such as buildings, roads, equipment, etc.

**budget (operating)** – a comprehensive financial plan to sustain municipal operations during a given year, with related explanation

### C

**capital improvement**– a government acquisition of real property, major construction project, or acquisition of long-lasting, expensive equipment

**Capital Improvement Program (CIP)** – a comprehensive plan of capital investment projects which identifies priorities as to need, method of financing, and project costs and revenues that will result during a five-year period. The program is a guide for identifying current and fiscal year requirements and becomes the basis for determining the annual capital budget.

**chair** – the presiding officer

**charter** – a written instrument that creates and defines powers, rights and privileges for a specific jurisdiction or organization; a city's constitution

**code** – a systematic statement of a body of law given by statutory authority

**comprehensive plan** – the basic foundation for local planning; it lays out a community's vision and priorities, and describes where, how, and in some cases when development will occur

**condemnation** – the process of taking private property for public use through the power of eminent domain

**conflict of interest** – a term used in connection with a public official's relationship to matters of private interest or personal gain and on which the official must abstain from voting

**consensus** – quality or condition of being in mutual agreement

**consent agenda** – a policy of the governing body to approve, in one motion, routine and/or non-controversial items, as determined prior to the meeting; a Council Member may request that any item be removed for a separate discussion

**consumer price index (CPI)** – Measure of the average change over time in the prices paid by urban consumers

for fixed-market consumer goods and services. The CPI provides a way for consumers to compare and contrast the cost of market goods and services on different days, months, years, etc.

**contiguous** – sharing a common boundary

**contingency**– an appropriation of funds to handle unexpected events and emergencies that occur during the course of the fiscal year

## D

**debt service** – payments to creditors, primarily the holders of municipal bonds; debt service includes principal, interest, and minor incidentals such as paying agents' fees

**development plan** – specific guidelines, requirements or policies for planned growth

## E

**easement** – an interest in land owned by another that entitles its holder to a specific limited use

**eminent domain** – the legal power of a government to expropriate private property for the sake of public necessity

**enterprise fund** – used to account for operations that provide goods or services to the general public on a user-charge basis

**extra-territorial Jurisdiction (ETJ)** – unincorporated area extending generally five miles from the city limit in which the city has the authority to regulate subdivision and platting of property.

## F

**foreclosure** – procedure by which property is sold to satisfy a lien

**franchise fee** - a percent of profit to the grantor of the franchise

**fund balance** – the excess of a fund's assets over its liabilities and reserves

## G

**general fund** – the general operating fund of the municipality used to account for all financial resources except those required to be accounted for in a special fund

**general obligation bond** – a financial instrument giving borrowing power to a municipality, based upon the pledging of taxing power to retire the debt and pay interest

## I

**impact fees** – set-aside fees collected from citizens and developers for infrastructure adjustments to the community; monies to be used as the development further impacts the municipality

**infrastructure** – facilities necessary to provide city services, usually referring to physical assets such as road, pipes, city buildings, etc. but sometimes including personnel, management structure, etc.

## L

**land use** – designations of how land is being used or is planned to be used in the future (e.g. single family, commercial, industrial, etc.).

**lien** – a claim or charge on property for payment of debt, obligation or duty

**line item** – a specific item or group of similar items defined by detail in a unique account in the financial records; revenue, expenditure and justifications are reviewed, anticipated and appropriated at this level

**lot** – a portion or parcel of land considered as a legal unit

## M

**master plan** – a comprehensive long-range plan intended to guide the growth and development of a community or region and one that includes analysis, recommendations and proposals for the community's population, economy, housing, transportation, community facilities and land use

**minutes** – a written summary of actions taken at a meeting and the vote on each item

**mixed use development** – combination of different but compatible land uses within a single building, site, or district.

**multi-model** – a type of transportation system that incorporates multiple forms of movement: vehicular, public transportation, bicycle, aviation, and pedestrian. A solid multi-modal system minimizes congestion, improves air quality, and provides all citizens with the means of safe and efficient transportation.

**municipality** – a political unit having corporate status and, usually, powers of self-government

## O

**ordinance** – an enforceable municipal law, statute or regulation that applies to all citizens within that municipality; penalty provisions may apply

## P

**performance bond** – bond from a contractor that guarantees the work/services will be performed in accordance with the contract

**public improvement district (PID)** - a taxing entity which can finance, construct and maintain public improvements. A PID may be formed to address any type of public improvement or service. It has authority to issue debt and to impose a mill levy against real and personal property within the district. Allows any city to levy and collect special assessments on property that is within the city or within the city's Extraterritorial Jurisdiction (ETJ).

**plat** – a map representing a tract of land, showing the boundaries and location of individual properties and streets

**public hearing** – provides citizens the opportunity to express their position on a specific issue, both pro and con, as mandated either by statute or by order of proper authority after due notice

**public meeting** – any meeting of a governmental body at which public business is discussed or decided or policy formulated

**public record** – any record retained by a government body as further defined by statute and open to inspection

## Q

**quasi-judicial** – referring to the actions of a governmental entity in which there are hearings, orders, judgments or other activities similar to those conducted by courts

**quorum** – the prescribed number of members of any body that must be present to legally transact business; the quorum is a majority of all members unless the bylaws state otherwise

## R

**resolution** – a decision, opinion, policy or directive of a municipality expressed in a formally drafted document and voted upon

**revenue bonds** – bonds sold for which the principal and interest are payable exclusively from the earnings of

a specific revenue source and which do not pledge the property credit or general tax revenue of a city  
**revenues** – monies received or anticipated by a local government from either tax or non-tax sources  
**rezone** – to change the zoning classification of particular lots or parcels of land  
**right-of-way** – a strip of land owned by a government agency over which the public has right of passage such as streets, parkways, medians, sidewalks, easements and driveways constructed thereon

## S

**site plan** – a plan, to scale, showing uses and structures proposed for a parcel of land  
**statute** – a law enacted by the legislative branch of the state or federal government  
**subdivision** – the division of a single tract or other parcel of land into two or more lots (Specific definitions will vary in specific ordinances or regulations)  
**sustainable development** – development that meets the needs of the present without compromising the ability of future generations to meet their own needs

## T

**table** – to suspend consideration of a pending legislative bill or measure  
**tax increment financing (TIF)** – funding from net increases in real property tax revenues within a community redevelopment area established pursuant to state statute  
**tract** – a parcel of land, generally held for subdividing

## V

**variance** – an exception to certain development standards such as setbacks, building height, lot dimensions and other zoning code requirements

## Z

**zone** – a specifically delineated area or district in a municipality within which there are regulations for the use, placement spacing, and size of land and buildings  
**zoning** – division of land into districts based on the allowable use of the land. These districts have uniform zoning regulations including those on land use, height, setbacks, lot size, density, and coverage.

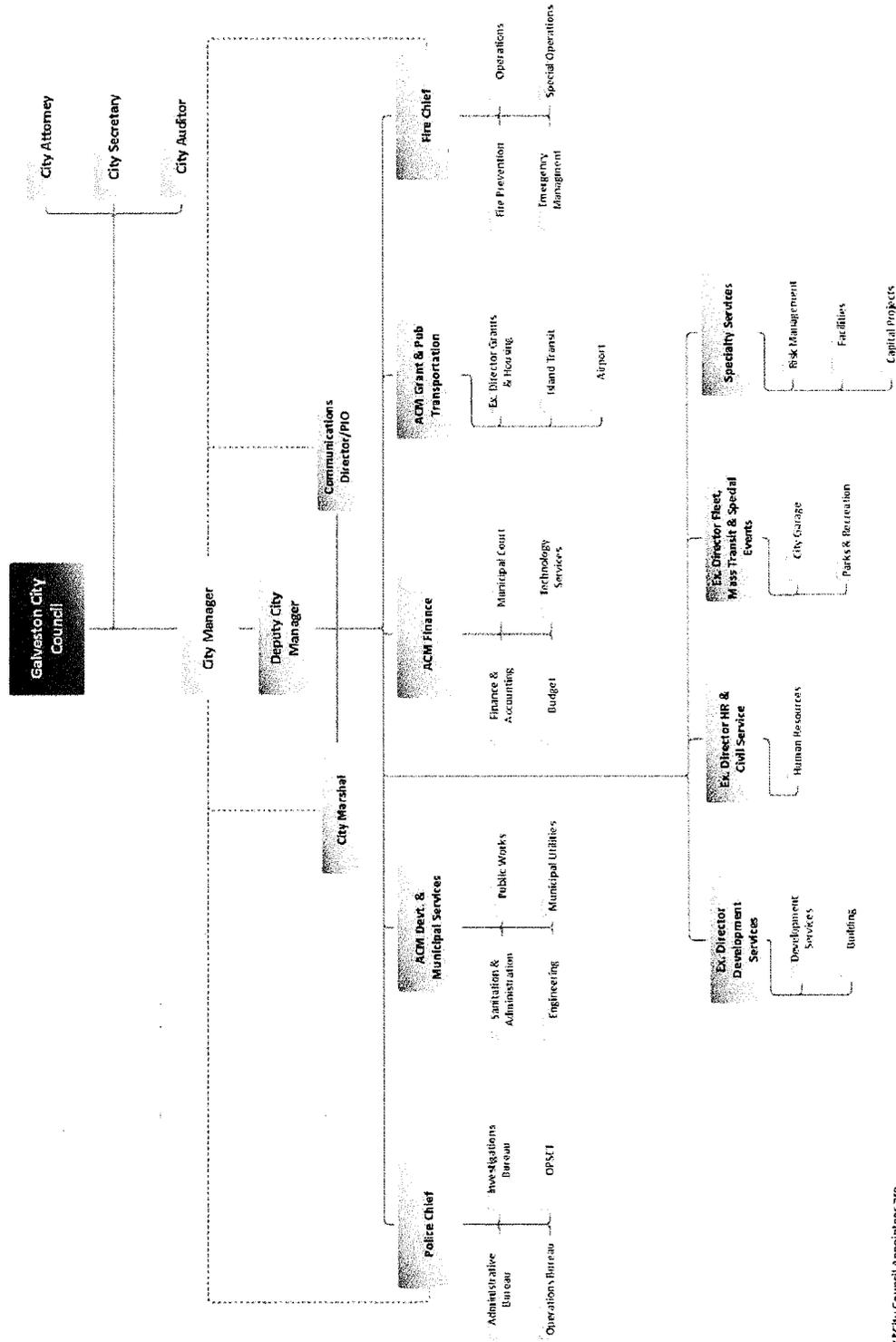
Roberts Rules of Order is offered as a reference guide to aid in making motions and conducting meetings.

## Parliamentary Motions Guide

Based on Robert's Rules of Order Newly Revised (10<sup>th</sup> Edition)

The motions below are listed in order of precedence. Any motion can be introduced if it is higher on the chart than the pending motion.

YOU WANT TO:	YOU SAY:	INTER- RUPT?	2ND?	DEBATE?	AMEND?	VOTE?
<b>Incidental Motions</b> no order of precedence. Arise incidentally and decided immediately.						
§21 Close meeting	I move to <b>adjourn</b>	No	Yes	No	No	Majority
§20 Take break	I move to <b>recess</b> for	No	Yes	No	Yes	Majority
§19 Register complaint	I rise to a <b>question of privilege</b>	Yes	No	No	No	None
§18 Make follow agenda	I call for the <b>orders of the day</b>	Yes	No	No	No	None
§17 Lay aside temporarily	I move to <b>lay</b> the question <b>on the table</b>	No	Yes	No	No	Majority
§16 Close debate	I move the <b>previous question</b>	No	Yes	No	No	2/3
§15 <b>Limit or extend debate</b>	I move that debate be limited to ...	No	Yes	No	Yes	2/3
§14 <b>Postpone to a certain time</b>	I move to postpone the motion to ...	No	Yes	Yes	Yes	Majority
§13 <b>Refer to committee</b>	I move to refer the motion to ...	No	Yes	Yes	Yes	Majority
§12 Modify wording of motion	I move to <b>amend</b> the motion by ...	No	Yes	Yes	Yes	Majority
§11 Kill main motion	I move that the motion be <b>postponed indefinitely</b>	No	Yes	Yes	No	Majority
§10 Bring business before assembly (a <b>main motion</b> )	I move that [or "to"] ...	No	Yes	Yes	Yes	Majority
<b>Incidental Motions</b> - no order of precedence. Arise incidentally and decided immediately.						
§23 Enforce rules	<b>Point of order</b>	Yes	No	No	No	None
§24 Submit matter to assembly	I <b>appeal</b> from the decision of the chair	Yes	Yes	Varies	No	Majority
§25 Suspend rules	I move to <b>suspend the rules</b> which ...	No	Yes	No	No	2/3
§26 Avoid main motion altogether	I <b>object to the consideration</b> of the question	Yes	No	No	No	2/3
§27 Divide motion	I move to <b>divide the question</b>	No	Yes	No	Yes	Majority
§29 Demand rising vote	I call for a <b>division</b>	Yes	No	No	No	None
§33 Parliamentary law question	<b>Parliamentary inquiry</b>	Yes	No	No	No	None
§33 Request for information	<b>Point of information</b>	Yes	No	No	No	None
<b>Motions That Bring a Question Again Before the Assembly</b> - no order of precedence. Introduce only when nothing else pending.						
§34 Take matter from table	I move to <b>take from the table</b> ...	No	Yes	No	No	Majority
§35 Cancel previous action	I move to <b>rescind</b> ...	No	Yes	Yes	Yes	2/3 maj. w/ notice
§37 Reconsider motion	I move to <b>reconsider</b> the vote ...	No	Yes	Varies	No	Majority



\*\*\*City Council Appointees are shown in the following color (City Manager, City Attorney, City Auditor, City Secretary)

PART I - CHARTER CITY OF GALVESTON, TEXAS<sup>[1]</sup>**PREAMBLE**

In order to establish a municipal government which will preserve and protect the God-given and lawful rights, and the equal status under the Constitution and laws of the United States and of the State of Texas of every individual, which will attract able and sincere persons to the public service, and which will protect our natural resources, and which will ensure the proper and efficient expenditure of the public funds, the people of this community, exercising their rights of self-government and affirming their beliefs in those principles do ordain these provisions for the Charter of this City.

(Ord. No. 91-95, § 3(1), 11-14-91; Ord. No. 16-035, § 8, 5-17-16)

## Footnotes:

--- (1) ---

**Editor's note**— The Charter Commission elected on May 12, 1959, presented this Charter to the Board of Commissioners of the City of Galveston, Texas on January 28, 1960. At a special election held Tuesday, April 19, 1960, this Charter was adopted by a vote of 5,505 in favor and 4,803 against adoption.

**State Constitution reference**— Home rule cities, art. XI, § 5.

**State Law reference**— Adoption of home rule charts, Vernon's Ann. Civ. St. arts. 1165—117a—9.

## ARTICLE I. - INCORPORATION, FORM OF GOVERNMENT, AND GENERAL POWERS

**Section 1. Incorporation.** The inhabitants of the City of Galveston, in Galveston County, Texas, within the corporate limits as now established and as hereafter extended, shall continue to be and are hereby constituted a municipal body politic and corporate, in perpetuity, under the name of "CITY OF GALVESTON", hereinafter referred to as the "City", and having such powers, privileges, rights, duties and immunities as are herein provided.

(Ord. No. 96-59, § 4, 6-16-96)

**Section 2. Corporate Limits and Jurisdiction.** The corporate limits of the City, and the authority and jurisdiction of the City, shall include and extend over all areas of land and water as set forth and described in the Act of the 28th Legislature of the State of Texas, granting a charter to this City (Special Laws, 28th Legislature, chapter 37), and over such other areas of land and water as have been added thereto by ordinance of this City heretofore enacted.

(Ord. No. 96-59, § 4, 6-16-96)

**Editor's note**— By subsequent annexation virtually all of Galveston Island which was unincorporated has been annexed into the city.

**State Law reference**— Boundary map, Vernon's Ann. Civ. St. art. 971a.

**Section 3. Form of Government.** The Municipal Government provided by this Charter shall be, and shall be known as, "Council-Manager Government." Pursuant to the provisions of, and subject only to the limitations imposed by, the State Constitution, the State Laws, and this Charter, all powers of the city shall

be vested in an elective Council, hereinafter referred to as the "Council", which shall enact legislation, adopt budgets, determine policies, and appoint the City Manager who shall execute the laws and administer the Government of the City.

(Ord. No. 96-59, § 4, 6-16-96)

**State Law reference**— For authority of home-rule city to create a commission or other form of government, Vernon's Ann. Civ. St. art. 1175.

**Section 4. General Powers of the City.** The City is and shall continue to be a Home Rule City, with full power of local self-government, including the right to amend this Charter, as provided by the Constitution and laws of this State. It shall have all the powers granted to cities by the Constitution and laws of the State of Texas, together with all the implied powers necessary to carry into execution such granted powers. It may use a corporate seal; may sue and be sued; may contract and be contracted with; may cooperate with the government of the State of Texas or any agency or political subdivision thereof, or with the Federal government or any agency thereof, to accomplish any lawful purpose for the advancement of the interest, welfare, health, morals, comfort, safety, and convenience of the City and its inhabitants; may acquire property within or without its corporate limits for any municipal purposes in fee simple, or in any lesser interest or estate, by purchase, gift, devise, lease or condemnation, and subject to the provisions of this Charter, may sell, lease, mortgage, hold, manage, and control such property as may now or hereafter be owned by it; may pass ordinances and enact such regulations as may be expedient for the maintenance of the good government, order, and peace of the City, and the welfare, health, morals, comfort, safety and convenience of its inhabitants; and shall have and may exercise all municipal powers, functions, rights, privileges and immunities of every kind and nature whatsoever, subject only to the limitations imposed by the State Constitution, the State Laws, and this Charter. The enumeration of particular powers by this Charter shall not be deemed to be exclusive and, in addition to the powers enumerated or implied herein, it is intended that the City shall have and may exercise all powers that, under the Constitution and Laws of this State, it would be competent for this Charter specifically to enumerate.

(Ord. No. 96-59, § 4, 6-16-96)

**State Law reference**— Enumerated powers of home rule cities, Vernon's Ann. Civ. St. art. 1175.

**Section 5. Streets and Public Property.** The City shall have exclusive dominion, control and jurisdiction in, upon, over and under the public streets, sidewalks, alleys, highways, public squares and public ways within the corporate limits of the City, and in, upon, over and under all public property of the City. With respect to each and every public street, sidewalk, alley, highway, public square, public park, or other public way within the corporate limits of the City, the City shall have the power to establish, maintain, improve, alter, abandon or vacate the same; to regulate, establish, or change the grade thereof; to control and regulate the use thereof; and to abate and remove in a summary manner any encroachment thereon.

(Ord. No. 96-59, § 4, 6-16-96)

**Section 6. Annexation of Territory.** The Council may by ordinance annex additional territory lying adjacent to the City, with or without the consent of those inhabiting the territory annexed, and the corporate limits of the City shall thereupon include such additional territory.

(Ord. No. 96-59, § 4, 6-16-96)

**Editor's note**— The city has annexed virtually all of the unincorporated areas of Galveston Island.

**State Law reference**— Annexation, Vernon's Ann. Civ. Stat. art. 1182a.

## ARTICLE II. - THE COUNCIL

**Section 1. Number and Term of Office.** The Council shall have seven (7) members, consisting of the Mayor and six (6) other Councilmembers who shall be elected in the manner provided by this Charter to serve for terms of two (2) years each, except as may otherwise be provided under Section 2 of Article III of this Charter.

(Ord. No. 63-13, § 2, 4-11-63; Ord. No. 77-25, § 3, 4-4-77; Ord. No. 91-95, § 3(2), 11-14-91; Ord. No. 96-59, § 5, 6-16-96)

**Cross reference**— Elections, Art. III.

**State Constitution reference**— Terms of office exceeding two (2) years authorized, Art. XI, § 11.

**Section 2. Qualifications.** At the time of election, each Councilmember shall be a qualified voter of the City of Galveston, and shall hold no other elective public office. A person elected to Council must have attained the age of eighteen (18) years of age. A person elected to Council who is employed by the City or any agency of the City will be separated from employment with the City or any agency of the City on the day the person takes office. Each Councilmember elected to represent a district shall have been domiciled and shall have had his or her principal physical residence in such district for a period of not less than one (1) year immediately preceding the Councilmember's election. The Mayor shall have been domiciled and shall have had his or her principal physical residence in the City for a period of not less than one (1) year immediately preceding the Mayor's election. For the purposes of this section, a person must meet all of the following to meet the requirement for a "principal physical residence", if applicable:

- (a) The person must use the residence address for voter registration and driver's license purposes;
- (b) The person must use the residence address as the person's home address on documents such as employment records, resumes, business cards, government forms, and loan applications;
- (c) The person must not claim a homestead exemption on any property other than the residence.

The requirements for eligibility to be a candidate for public office, set forth in the Texas Election Code, shall apply to candidates for Mayor and City Council unless superseded by this Charter, and in the event of such a conflict the provisions of the Charter shall apply to the extent allowed by law. If a Councilmember shall cease to possess any of these qualifications, or shall be convicted of a crime involving moral turpitude, the office of the Councilmember shall immediately become vacant.

(Ord. No. 77-25, § 3, 4-4-77; Ord. No. 91-95, § 3(3), 11-14-91; Ord. No. 96-59, § 5, 6-16-96; Ord. No. 98-33, § 4, 6-3-98; Ord. No. 98-66, § 2, 7-30-98; Ord. No. 12-009, § 2, 2-23-12; Ord. No. 16-035, § 8, 5-17-16)

**Section 3. Vacancies.** If a seat on the council becomes vacant, it shall be filled for the remainder of the unexpired term at a special election called for such purpose, unless the next regular City election is to be held within one hundred twenty (120) days from the time of such vacancy, and in that event the seat shall remain vacant until filled at such next regular election.

(Ord. No. 77-25, § 3, 4-4-77; Ord. No. 96-59, § 5, 6-16-96)

**Section 4. Powers of the Council.** All powers and authority that are expressly or impliedly conferred on or possessed by the City shall be vested in and exercised by the Council; provided that the Council shall not exercise those powers that are expressly conferred upon other City Officers by this Charter. Council shall have authority to appoint the City Manager, the City Attorney, the City Secretary, City Collector of Taxes, the City Auditor, and Judge of the Municipal Court under this Charter.

(Ord. No. 96-59, § 5, 6-16-96; Ord. No. 98-33, § 5, 6-3-98; Ord. No. 98-66, § 3, 7-30-98; Ord. No. 16-035, § 8, 5-17-16)

**Section 5. Investigative Powers of the Council.** The Council shall have the power to inquire into the official conduct of any department, agency, office, officer, or employee of the City, and into any other matters of proper concern to the Municipal Government. For this purpose the Council shall have the power to administer oaths, subpoena witnesses, and to compel the production of books, papers, and other evidence material to the inquiry. The Council shall provide by ordinance penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence, and shall have the power to punish any such contempt in the manner provided by this ordinance.

(Ord. No. 96-59, § 5, 6-16-96)

**Section 6. Interference in Administrative Matters.** Neither the Council nor any of its members shall direct or request the City Manager or any of the City Manager's subordinates to appoint or to remove from office or employment any person except a person whose office is filled by appointment of the Council under the provisions of this Charter. Except for the purpose of inquiry and investigation the Council and its members shall deal with the administrative services of the City solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.

(Ord. No. 91-95, § 4(1), 11-14-91; Ord. No. 96-59, § 5, 6-16-96)

#### **Section 7. Mayor and Mayor Pro Tem.**

- (a) *Creation of the Office of Mayor, Qualifications, Term.* There is hereby established the office of Mayor of the City of Galveston, the incumbent of which shall possess the same qualifications as those prescribed in this Charter for a Councilmember. The Mayor shall be elected by the qualified electors of the City of Galveston in the manner as this Charter provides and shall serve for a term of two (2) years and until the Mayor's successor shall have been elected and qualified unless sooner removed as provided by this Charter.
- (b) *Mayor Pro Tem.* At the first regular meeting of the Council after the introduction of newly elected Councilmembers following each regular election of Councilmembers, the Council shall elect one of its members as Mayor Pro Tem who shall hold such office and title for a period of one year and until a successor Mayor Pro Tem is elected as provided herein. If the Mayor Pro Tem is unavailable, the Council may select one of its members to perform the function of Mayor Pro Tem during such time of unavailability.
- (c) *Disability of the Mayor.* If for any reason the Mayor is absent from the City, sick or unable to perform the duties of office, the Mayor Pro Tem shall act as Mayor and during such absence or disability, shall possess all of the powers and perform all of the duties of the Mayor.
- (d) *Vacancies.* If the Mayor shall cease to possess any of the qualifications required of the office or shall be convicted of a crime involving moral turpitude, the office shall immediately become vacant. In such case or in case of death, resignation or permanent disability of the Mayor, or whenever a vacancy in the office of the Mayor shall occur for any reason, the Mayor Pro Tem shall act as Mayor and shall

possess all of the rights and powers of the Mayor and perform all of the duties under the official title, however, of "Mayor Pro Tem" until a Mayor shall have been elected in an election ordered by the Council to fill the vacancy in the office of the Mayor, such election to be called by the Council and held within thirty (30) days after the vacancy occurs or as soon thereafter as possible; provided, however, that no such election shall be called and the Mayor Pro Tem shall continue to act as Mayor if the next regular city election is to be held within one hundred twenty (120) days after such vacancy in the office of the Mayor has occurred.

- (e) *Powers and Duties.* The Mayor shall preside at all meetings of the Council, shall be recognized as the head of the City's government for all ceremonial purpose and shall have the other special powers and duties expressly provided for the Mayor in this Charter but the Mayor shall have no other administrative powers or duties.

(Ord. No. 63-13, § 2, 4-11-63; Ord. No. 77-25, § 3, 4-4-77; Ord. No. 91-95, §§ 3(4), 4(2), 11-14-91; Ord. No. 96-59, § 5, 6-16-96; Ord. No. 98-33, §§ 6, 7, 6-3-98; Ord. No. 16-035, § 8, 5-17-16)

**Section 8. Salaries.** The members of the Council shall receive no salaries.

(Ord. No. 96-59, § 5, 6-16-96)

**Section 9. Reserved.**

**Editor's note**— Ord. No. 16-035, § 8, adopted May 17, 2016, repealed § 9, in its entirety. Former § 9 pertained to "City Secretary," and was derived from Ord. No. 96-59, § 5, adopted June 16, 1996 and Ord. No. 98-33, § 5, adopted June 3, 1998.

**Section 10. Meetings of the Council.** The Council shall meet in regular session at the City Hall at least twice each month at such time as may be prescribed by Ordinance, unless otherwise ordered by the Council for reasons to be spread upon the Minutes. Special meetings of the Council shall be called by the City Secretary upon written request of the Mayor or of any two (2) members of the Council. Except as may be otherwise authorized under applicable provision of the Texas Open Meetings Act as it now exists or is hereafter amended, all meetings of the Council shall be open to the public.

(Ord. No. 77-25, § 3, 4-4-77; Ord. No. 91-95, § 3(11), 11-14-91; Ord. No. 96-59, § 5, 6-16-96)

**State Law reference**— Open meetings act, Vernon's Ann. Civ. St. art. 6252-17.

**Section 11. Rules of Procedure.** The Council shall by ordinance determine its own rules and order of business. Should the Council fail to establish rules of order of business by ordinance or in any case when such established rules of order do not speak to a particular question, Robert's Rules of Order, Revised, shall govern and establish the procedure under which all official sessions and meetings of the Council shall be conducted. All City boards, commissions, committees, or agencies of the City shall adhere to the same rules of order established by and for Council unless otherwise provided for by State law or City Ordinance. Provided nothing in Robert's Rules of Order, Revised, or in this Charter shall ever deprive the Mayor of the right to vote like other Councilmembers. Council shall be prohibited from adopting any rule of order in which an abstention from voting is counted as an affirmative or negative vote.

Four (4) or more Councilmembers shall constitute a quorum, but no action of the Council shall have any force or effect unless it is adopted by the favorable votes of four (4) or more of the Councilmembers. If an action fails for lack of four (4) favorable votes Councilmembers who voted for or against the action may have Council reconsider the action by placing it on the agenda for the next regularly scheduled meeting in accordance with rules for placing items on agendas. Minutes of all meetings shall be taken and recorded, and such minutes shall constitute a public record.

(Ord. No. 89-17, § 3(1), 1-26-89; Ord. No. 96-59, § 5, 6-16-96; Ord. No. 98-33, § 9, 6-3-98; Ord. No. 98-66, § 4, 7-30-98)

**Section 12. Procedure to Enact Legislation.** The Council shall legislate by ordinance only, and the enacting clause of every ordinance shall be "Be it Ordained by the City Council of the City of Galveston." All ordinances shall be submitted to the City Attorney for the City Attorney's approval before adoption and unless approved by the City Attorney, in writing, the City Attorney shall file with the City Secretary the City Attorney's written legal objections thereto. Every proposed ordinance shall be in writing and shall be read, either in full or by descriptive caption, in open meeting before any vote is taken thereon, provided, however, that any proposed ordinance that is read by descriptive caption only shall be available for public inspection in the office of the City Secretary not less than seventy-two (72) hours prior to adoption. All ordinances, unless otherwise provided by law or this Charter or by the terms of such ordinance, shall take effect immediately upon the final passage thereof.

(Ord. No. 77-25, § 3, 4-4-77; Ord. No. 91-95, § 4(3), 11-14-91; Ord. No. 96-59, § 5, 6-16-96)

**Section 13. Publication of Ordinances.** The City Council shall by Ordinance prescribe the requirements for the publication of ordinances in conformity with the laws of the State of Texas.

(Ord. No. 91-95, § 3(7), 11-14-91; Ord. No. 96-59, § 5, 6-16-96; Ord. No. 16-035, § 8, 5-17-16)

**State Law reference**— Publication of ordinances, V.A.T.C., Local Gov. Code § 52.011 et seq.

**Section 14. Code of Ordinances.** The Council shall have the power to cause all general ordinances of the City to be compiled and printed in code form, whenever the codification or recodification thereof is deemed desirable or required by law. When adopted by the Council, the printed codes of general ordinances so designated shall be in full force and effect without the necessity of such codes or any part thereof being published in any newspaper. A printed copy of the City's Code of Ordinances when authenticated by the City Secretary shall be admitted in evidence without further proof and shall be prima facie evidence in all courts of the existence and regular enactment of all ordinances therein set forth.

(Ord. No. 96-59, § 5, 6-16-96)

**State Law reference**— Ordinance codification, V.A.T.C., Local Gov. Code § 53.001 et seq.

**Section 15. Emergency Powers.** In the event of a disaster or emergency, the Mayor, or in the Mayor's absence or disability, the Mayor Pro Tem shall have all the emergency management powers and duties as authorized by State law. The Council shall by Ordinance provide for the designation of a member of Council who will have all the emergency management powers and duties as authorized by State law in the event of the absence or disability of both the Mayor and Mayor Pro Tem and provide authority of the Mayor Pro Tem or Council designee to exercise emergency powers shall cease when the Mayor ceases to be absent or disabled. The Ordinance will further make provisions for succession of government as well as the cessation of emergency powers.

(Ord. No. 91-95, § 4(4), 11-14-91; Ord. No. 96-59, § 5, 6-16-96; Ord. No. 12-009, § 2, 2-23-12; Ord. No. 16-035, § 8, 5-17-16)

**Section 16. Limitation on Number of Terms of Councilmembers.** *Effective for the 2014 municipal election* and for all elections thereafter, a person who has served as Mayor for a total period of six (6) years or as a member of the City Council for six (6) years shall not again be eligible to serve in that office until at least six (6) years out of office have elapsed since the last term in office has ended. For purposes of this

section, a person may in addition to serving six (6) years as a Councilmember also serve six (6) years as Mayor for a total of twelve (12) years, but will not be eligible to serve as a member of Council or as Mayor until at least six (6) consecutive years out of office have elapsed since the last term of office has ended.

Any amount of time for which a person fills a City Council vacancy shall not be counted towards the six (6) years in determining term limits.

(Ord. No. 77-25, § 3, 4-4-77; Ord. No. 91-95, § 3(5), 11-14-91; Ord. No. 96-59, § 5, 6-16-96; Ord. No. 12-009, § 2, 2-23-12; Ord. No. 16-035, § 8, 5-17-16)

**Section 17. Limitation on employment.** No member of the Council shall, during the time for which the member is elected or for two (2) years thereafter, be employed by either the Park Board or the Wharves Board.

(Ord. No. 12-009, § 2, 2-23-12; Ord. No. 16-035, § 8, 5-17-16)

### ARTICLE III. - ELECTIONS

**Section 1. Calling and Regulating Elections.** The Council shall by Ordinance call the regular City election at the time or times hereinafter provided, and may call such special elections as are authorized by the State Law and this Charter. All elections shall be held in accordance with the Laws of the State of Texas regulating the holding of Municipal Elections and in accordance with the ordinances adopted by the Council for the conduct thereof. The Council shall appoint the election judges and other election officials. Voting precincts shall be as established by ordinance and may be altered from time to time in like manner.

(Ord. No. 96-59, § 6, 6-16-96; Ord. No. 96-59, § 6, 6-16-96)

**State Law reference**— Time and place of elections, V.A.T.S. Election Code, title 4; election officers, V.A.T.S. Election Code, title 3.

**Section 1a. Elections to Amend the Charter.** An election to amend this Charter shall not be held more often than every two (2) years.

(Ord. No. 96-59, § 6, 6-16-96)

**Editor's note**— The above section 1a was created by an amendment approved by a vote of the electorate at the election held on April 7, 1979. The results were confirmed by Ord. No. 79-24, adopted April 9, 1979.

**Section 2. Election of Mayor and Councilmembers.\*** The City shall be divided into six (6) districts. The Mayor shall be elected at large and all six (6) members of Council shall be elected from districts at a regular municipal election, to be held for such purpose on a date authorized by State law in May. In the event State law is amended to eliminate the May uniform election date, then the regular municipal election shall be held on a date set by the City Council that is permissible under State law.

- (a) It shall be the duty of the City Council to establish the boundaries of districts covering the entire City for the purpose of electing District Councilmembers. Such boundaries shall be established by Ordinance, which shall be final for the purposes of this Charter. Any subsequent establishment shall be made when required by this Charter. Except as changed hereby, all other provisions of the City Charter relating to elections of the members of the City Council shall remain unchanged.

- (b) Promptly following the addition of territory to the City by a boundary change, the City Council shall, by Ordinance, add such territory to an adjacent district or districts. The Mayor shall be elected at large and the Councilmembers shall be elected from districts. The districts from which Councilmembers shall be elected shall be designated by City Council as Districts 1, 2, 3, 4, 5, and 6 according to the boundaries of these districts, as established by Ordinance, in accordance with this Section. At each election, candidates shall be voted upon and be elected separately for each Councilmember district.
- (c) Any qualified person who desires to become a candidate for the office of Mayor or Councilmember shall file with the City Secretary, in accordance with State law, a signed application for the candidate's name to appear on the ballot, specifying the office and position for which the candidate is filing. The order of the ballot of the names of the candidates for each office shall be determined by lot in a drawing to be held under the supervision of the City Secretary. Every qualified voter shall be entitled to vote for Mayor and for one (1) candidate for Councilmember who runs for the district in which the voter lives. The City Council shall be the judge of the election and qualifications of Councilmembers, subject to review by the courts in case of contest. Each district Councilmember shall be elected by the qualified voters of each respective district. The candidate for Mayor and the candidate for each Councilmember district who shall receive fifty (50) percent of the votes plus one (1) vote shall be declared elected in accordance with State law. A candidate for Mayor shall not be a candidate for Councilmember at the same election and a person may be a candidate for only one (1) Councilmember position or district at the same election.
- (d) All candidates elected at a municipal election shall, upon being sworn, take office immediately upon qualifying.

(Ord. No. 63-13, § 2, 4-11-63; Ord. No. 75-18, § 3, 4-10-75; Ord. No. 77-25, § 3, 4-4-77; Ord. No. 87-47, § 1, 9-3-87; Ord. No. 91-95, § 3(6), 11-14-91; Ord. No. 93-108, § 3, 11-11-93; Ord. No. 96-59, § 6, 6-16-96; Ord. No. 99-09 Exh. A(§ 1), 1-28-99; Ord. No. 02-033, § 1, 5-4-02; Ord. No. 04-028, § 2, 2-26-04; Ord. No. 12-009, § 2, 2-23-12)

**Editor's note**— See Appendix A.

**Section 3. Canvassing Election and Declaring Results.** The returns of every municipal election shall be delivered forthwith by the election judges to the City Secretary. The Council shall canvass the returns and declare the official results of the election in accordance with State law. The returns of every municipal election shall be recorded in the minutes of the Council, by precinct totals for each candidate or for or against each issue submitted.

(Ord. No. 96-59, § 6, 6-16-96)

**Section 4. Notification and Qualification of Elected Officers.** It shall be the duty of the City Secretary to promptly notify all persons elected. A member of the Council who is elected in a regular municipal election shall take office and enter upon the duties of office immediately after the election has been canvassed, or as soon thereafter as the person may qualify by taking and subscribing the person's oath of office. A member of the Council who is elected in a special election to fill a vacancy for an unexpired term shall take office immediately upon qualifying.

(Ord. No. 75-18, § 3, 4-10-75; Ord. No. 77-25, § 3, 4-4-77; Ord. No. 91-95, § 4(5), 11-14-91; Ord. No. 96-59, § 6, 6-16-96; Ord. No. 12-009, § 2, 2-23-12)

**Section 5. Elections on Creation of Mass Transit Systems.** The City Council shall call a public referendum before creating a mass transit system that requires the expenditure of local, state or federal

funds by the City of Galveston. The definition of a mass transit system includes, but is not limited to trolley cars, heavy rail systems, or light rail systems.

(Ord. No. 87-5, § 1, 1-22-87; Ord. No. 96-59, § 6, 6-16-96)

**Section 6. Elections on Privatizing the Sanitation Department.** The City Council shall call a public referendum before privatizing the City sanitation department.

(Ord. No. 87-5, § 1, 1-22-87; Ord. No. 96-59, § 6, 6-16-96; Ord. No. 98-33, § 11, 6-3-98)

**Section 7. Elections on Charging a Fee for Parking on Seawall Boulevard and Method of Collecting Such Fee.** The City of Galveston shall be prohibited from charging a fee for parking a motor vehicle on Seawall Boulevard, until such fee and method of collecting such fee is approved at an election by a majority of qualified voters voting in such election.

(Ord. No. 04-035, § 2, 5-26-04)

#### ARTICLE IV. - INITIATIVE, REFERENDUM AND RECALL

**Section 1. Power of Initiative.** The people of the City shall have the power of direct legislation by initiative, and in the exercise of such power may propose any ordinance which is not in conflict with the laws of the State or the provisions of this Charter, except an ordinance concerned with the appropriation of money or the levy of taxes.

(Ord. No. 96-59, § 7, 6-16-96)

**Section 2. Power of Referendum.** The people of the City shall have the power to approve or reject in a referendum election any legislation, or portion of legislation, that has been enacted by the Council and that would be subject to the initiative process, excepting that an ordinance authorizing the issuance of tax or revenue bonds that has been approved by the voters in an election duly held for that purpose shall not be subjected to such referendum and provided further, that no election shall be called on the issue of casino gaming, unless casino gaming is first made legal under state law. This provision shall apply notwithstanding any other provision in this Charter.

(Ord. No. 89-17, § 3(2), 1-26-89; Ord. No. 96-59, § 7, 6-16-96; Ord. No. 98-33, § 12, 6-3-98)

**Section 3. Requirements of Petition for Initiative or Referendum.** Petitions to initiate proposed legislation not in conflict with existing State or federal law or for a referendum on legislation that has been enacted by the Council shall be signed by qualified voters of the City equal in number to at least ten (10) percent of all the qualified voters in the City. The petition to initiate legislation shall contain the full text of the proposed ordinance, which must be written by a licensed Texas attorney who must file the original copy of the proposed legislation with the City Attorney at least ten (10) days prior to the commencement of circulation or signing of the initiative petition, and the petition for a referendum shall contain at least the full descriptive caption of the ordinance on which a referendum is asked and the date of its enactment by the Council. Any petition for initiative or referendum must be presented to the Council, with the minimum number of signatures as required by this Charter, within one hundred twenty (120) days after any petition is first distributed to be signed. No signature to a petition shall be counted unless it is followed by the printed name of the signer, the printed street address of the signer, the signer's current voter registration number as shown on the voter's registration certificate, the date the voter signed the petition, and the petition must also comply with any additional requirements prescribed by applicable State law. It shall not be necessary that a voter's registration number be in the signer's own handwriting. At the end of the petition there shall be a verification made by the person who has circulated the petition, sworn to before a Notary Public, that

each signature appearing is the genuine signature of the person whose name purports to be signed to the petition, and was made in the presence of the person so verifying.

A petition to initiate legislation or for a referendum may consist of a number of separate petitions, which shall be counted together to determine the number of voters who have signed the petition, but each separate petition shall in that case fulfill all of the requirements as to form and verification.

(Ord. No. 89-17, § 3(3), 1-26-89; Ord. No. 96-59, § 7, 6-16-96)

**Section 4. Suspension of Legislation Enacted by Council; Time for Filing Petitions.** A petition to initiate proposed legislation may be submitted at any time excepting only that no ordinance shall be proposed by an initiative petition that is on the same subject as an ordinance so submitted and defeated at an election held within one year prior thereto. A petition for a referendum on legislation that has been enacted by the Council may be filed prior to or within thirty (30) days after the effective date thereof asking that such legislation either be repealed or submitted to the vote of the people. When such a petition has been received and is certified to be sufficient by the City Secretary the legislation concerned shall not go into effect, or its operation shall be suspended, until and unless it is approved by the voters in an election as herein provided. In the event a petition is not submitted prior to or within thirty (30) days after the effective date thereof, but is submitted within one hundred twenty (120) days as otherwise provided by this Charter, the operation of the legislation concerned shall not be suspended.

(Ord. No. 96-59, § 7, 6-16-96; Ord. No. 98-33, § 13, 6-3-98)

**Section 5. Procedure after a Petition is Received.** The petition to initiate legislation or for a referendum shall be filed with the City Secretary who shall within twenty (20) days thereafter determine whether the petition is sufficient in form and has been signed by the requisite number of qualified voters. If the petition is insufficient in form or signatures, the City Secretary shall notify the person who has filed the petition of the reason therefor, and an additional period of ten (10) days shall be allowed within which to file an amendment or supplement which will correct the deficiency. When a petition as originally filed, amended or supplemented, is found to be sufficient, the City Secretary shall certify to the Council at its next regular meeting.

When the Council receives a petition to initiate legislation which has been certified by the City Secretary to be sufficient, the Council shall either enact the legislation proposed within thirty (30) days thereafter or it shall submit the legislation proposed to a vote of the qualified voters of the City at the next permissible uniform election date, which is not less than forty-five (45) days after the date on which the election is required to be called.

When the Council receives a petition certified by the City Secretary to be sufficient, asking for a referendum on legislation which it previously enacted, it shall formally reconsider such legislation within thirty (30) days thereafter and if upon such reconsideration the legislation is not repealed submit that legislation to the qualified voters of the City, for approval or rejection, at a regular, or special election to be held on the next permissible uniform election date, which is not less than forty-five (45) days after the date on which the election is required to be called.

No legislation that has been initiated by petition and adopted at an election by the qualified voters shall be repealed within two (2) years thereafter, and no legislation enacted by the Council and thereafter rejected by the qualified voters in an election held on petition for referendum shall be re-enacted by the Council within two (2) years thereafter.

If conflicting ordinances should be approved by the qualified voters in the same election, whether submitted upon petition as authorized herein or by the Council on its own initiative, the one which receives the greatest number of affirmative votes shall prevail to the extent of such conflict.

(Ord. No. 89-17, § 3(4), 1-26-89; Ord. No. 91-95, § 3(8), 11-14-91; Ord. No. 96-59, § 7, 6-16-96)

**Section 6. Power of Recall.** The people of the City shall have the power to recall any elected officer of the City and may exercise such power by filing with the City Secretary a petition, signed by at least ten (10) per cent of qualified voters of the City for those elected officers who were elected at large or signed by at least ten (10) per cent of qualified voters of the district for those elected officers who were elected by district, demanding the removal of such officer. The petition shall be signed and verified, and the sufficiency of the petition in form and number of signatures shall be determined by the City Secretary and certified to the Council, all in the same manner as required for an initiative petition.

(Ord. No. 96-59, § 7, 6-16-96; Ord. No. 98-33, § 14, 6-3-98)

**Section 7. Procedure for Recall.** When the City Secretary shall have certified to the Council that a sufficient petition for recall has been received, the Council shall order an election to be held at the next permitted election date at which there shall be submitted to all qualified voters the question whether the designated elected officer of the city shall be removed from office. If a majority of the votes cast at this recall election shall be for the removal from office of the elected officer named on the petition and ballot, the office shall be immediately declared vacant, and shall be filled in accordance with the provisions of the Charter for the filling of vacancies. An elected officer who has been so removed from office shall not be eligible to succeed himself or herself.

(Ord. No. 89-17, § 3(5), 1-26-89; Ord. No. 96-59, § 7, 6-16-96)

**Section 8. Limitations on Recall.** No recall petition shall be filed against an elected officer within ninety (90) days after the officer has taken office, and no elected officer shall be subjected to more than one recall election during a term of office. A recall election need not be ordered by the Council if the term of office of the elected officer against whom a petition is filed is to expire within ninety (90) days after the petition is filed with the City Secretary.

(Ord. No. 91-95, § 4(6), 11-14-91; Ord. No. 96-59, § 7, 6-16-96)

**Section 9. Referendum Required For Assuming Certain Debts.** The City Council of the City of Galveston shall be prohibited from assuming the outstanding indebtedness of any political subdivision located wholly within the corporate limits of the City of Galveston without approval at an election of a majority of the qualified voters voting in such election of the City of Galveston.

(Ord. No. 73-17, § 3, 4-12-73; Ord. No. 96-59, § 7, 6-16-96)

**Section 10. Drilling in Water Areas Prohibited.** The City Council, its officers and employees are prohibited from authorizing any further drilling for oil or gas in water areas within the corporate limits of the City of Galveston until such time as a Master Plan for drilling, extraction, processing, and handling of hydrocarbons within the city limits is developed and approved by referendum of the voters of the City of Galveston.

(Ord. No. 73-17, § 3, 4-12-73; Ord. No. 77-25, § 3, 4-4-77; Ord. No. 96-59, § 7, 6-16-96)

**Section 11. Payment of Election Costs.** If an election under this Article IV is held on a date other than the date of an election called by the Council on another question or for the election of one or more Councilmembers, State law shall govern payment of the election costs.

(Ord. No. 89-17, § 3(6), 1-26-89; Ord. No. 96-59, § 7, 6-16-96)

#### ARTICLE V. - ADMINISTRATIVE ORGANIZATION

**Section 1. Council Appointees.** The Council shall appoint a City Manager, a City Attorney, a City Auditor, a City Secretary, a Collector of Taxes, and a Municipal Judge. Except for the City Manager, each may either be appointed for an indefinite term and be removed by majority vote of the entire membership of the Council, or at the Council's discretion may be appointed or contracted for a definite term not to exceed two (2) years. Provided, however, that no appointee be appointed nor awarded a contract sixty (60) days before any City Council election.

The action of the Council in suspending or removing an appointee shall be final. The compensation for an appointee shall be fixed by the Council. No member of the Council shall, during the time for which the member is elected or for two (2) years thereafter, be appointed to any of the positions set out above.

(Ord. No. 77-25, § 3, 4-4-77; Ord. No. 89-17, § 3(7), 1-26-89; Ord. No. 91-95, § 4(7), 11-14-91; Ord. No. 96-59, § 8, 6-16-96; Ord. No. 98-33, § 15, 6-3-98; Ord. No. 16-035, § 8, 5-17-16)

**Editor's note**— Ord. No. 16-035, § 8, adopted May 17, 2016, amended § 1, to read as set out herein. Previously § 1 was titled " The City Manager."

**Section 1a. The City Manager.** The Council shall appoint a City Manager, who shall be the chief administrative and executive officer of the City. The City Manager shall be chosen by the Council solely on the basis of administrative and executive training, experience and ability. The City Manager shall reside and be domiciled in the City no later than 90 days after the effective date of hire and shall continue to reside and be domiciled in the City while serving as City Manager.

The City Manager may either be appointed for an indefinite term and be removed by majority vote of the entire membership of the Council, or at the Council's discretion may be appointed or contracted for a definite term not to exceed two (2) years. Provided, however, that the City Manager shall not be initially appointed nor awarded an initial contract sixty (60) days before or after any City Council election. If the Council is renewing an appointment or contract of the person holding the position of City Manager, the sixty days constraint in the prior sentence does not apply.

The action of the Council in suspending or removing the City Manager shall be final. The compensation for the City Manager shall be fixed by the Council. No member of the Council shall, during the time for which the member is elected or for two (2) years thereafter, be chosen as City Manager.

( Ord. No. 16-035, § 8, 5-17-16 )

**Section 2. Powers and Duties of the City Manager.** The City Manager shall be responsible to the Council for the proper administration of all the affairs of the City. The City Manager shall have power and shall be required to:

- (1) Appoint and remove any officers or employees of the City except those officers appointed by the Council as otherwise provided by law or this Charter.
- (2) Prepare the budget annually, submit it to the Council for approval, and be responsible for its administration after adoption.
- (3) Keep the Council advised of the financial condition and administrative activities of the City, and make such recommendations as may seem desirable.

(4) Perform such other duties as may be prescribed by this Charter or required of the City Manager by the Council, not inconsistent with the provisions of this Charter.

(Ord. No. 91-95, § 4(8), 11-14-91; Ord. No. 96-59, § 8, 6-16-96)

**Section 3. Administrative Departments.** There shall be such administrative departments as are established by this Charter and as may be established by ordinance, and excepting where otherwise provided in this Charter, these administrative departments shall be under the control and direction of the City Manager. The Council may abolish or combine one or more of the departments created by it, and may assign or transfer the duties of any department to another department where not in conflict with other provisions of this Charter.

(Ord. No. 96-59, § 8, 6-16-96)

**Section 4. Directors of Departments.** At the head of each department there shall be a director who, unless otherwise provided in this Charter, shall be appointed, and may be removed, by the City Manager. Such directors shall have supervision and control over their respective departments, and may serve as chiefs of divisions within their respective departments. Two or more departments may be headed by the same individual, and the City Manager may head one or more departments.

(Ord. No. 96-59, § 8, 6-16-96)

**Section 5. Departmental Organization.** The work of each department shall be distributed among such divisions therein as may be established by ordinance. Pending the passage of ordinances establishing departmental divisions the City Manager may establish temporary divisions in any department.

(Ord. No. 96-59, § 8, 6-16-96)

**Section 6. Department of Law.** There shall be a Department of Law, the head of which shall be the City Attorney. The City Attorney shall be appointed by the Council, and shall be licensed to practice law in the State of Texas, and shall serve at the pleasure of the City Council. The City Attorney shall reside and be domiciled in the City no later than ninety (90) days after the effective date of hire and shall continue to reside and be domiciled in the City while serving as City Attorney.

The City Attorney shall be the legal advisor and attorney for all officers and departments of the City and shall represent the City in all litigation and proceedings, including the prosecution of cases before the Municipal Court. The City Attorney shall draft, approve, or file written legal objections to, every ordinance before it is acted upon by the Council, and shall pass upon all documents, contracts and legal instruments in which the City may have an interest.

There shall be such Assistant City Attorneys that may be authorized by the Council and appointed by the Council on the recommendation of the City Attorney. There shall be such other staff who shall be hired by and serve at the pleasure of the City Attorney. The Assistant City Attorneys may be authorized to act for and on behalf of the City Attorney in all matters wherein the City Attorney might act. The City Attorney or an Assistant City Attorney shall not engage in private practice while holding this office without first obtaining the approval from the City Council.

(Ord. No. 91-95, § 4(9), 11-14-91; Ord. No. 96-59, § 8, 6-16-96; Ord. No. 98-33, § 16, 6-3-98)

**Section 7. City Secretary.** The Council shall appoint the City Secretary, who shall serve at the pleasure of the Council. The City Secretary shall reside and be domiciled in the City no later than ninety (90) days after the effective date of hire and shall continue to reside and be domiciled in the City while serving as City Secretary. There shall be such Assistant City Secretaries as appointed by Council on the recommendation

of the City Secretary. Any Assistant City Secretary shall serve at the pleasure of the City Secretary. There shall be such other staff who shall be hired by and serve at the pleasure of the City Secretary. The City Secretary shall keep the minutes and other records of the Council, shall receive service of civil process, and shall have such other duties and responsibilities as may be assigned by this Charter, City Ordinance and/or the Council.

( Ord. No. 16-035, § 8, 5-17-16 )

**Section 8. City Auditor.** There shall be a qualified City Auditor who shall be appointed by the Council and be responsible directly to the Council. The City Auditor shall reside and be domiciled in the City no later than ninety (90) days after the effective date of hire and shall continue to reside and be domiciled in the City while serving as City Auditor. The City Auditor may be removed only by a majority of the City Council. The City Auditor shall have such duties, responsibilities and staff as determined by ordinance including the responsibility to conduct or cause to be conducted, financial, performance, investigative, and other audits following government auditing standards as promulgated by the Comptroller General of the United States. The City Auditor shall assist the City Council in establishing accountability and in improving City system and service delivery. There shall be such Assistant City Auditors as appointed by Council on the recommendation of the City Auditor. Any Assistant City Auditor shall serve at the pleasure of the City Auditor.

( Ord. No. 16-035, § 8, 5-17-16 )

#### ARTICLE VI. - MUNICIPAL COURT<sup>[2]</sup>

**Section 1. Municipal Court.** There shall be a Municipal Court of the City of Galveston, which shall have such jurisdiction, powers and duties as are given and prescribed by the Laws of the State of Texas.

(Ord. No. 96-59, § 9, 6-16-96)

**State Law reference**— Creation of court, Vernon's Ann. Civ. Stat. art. 1194.

**Section 2. Judge of the Municipal Court.** The Municipal Court shall be presided over by a Magistrate who shall be known as the Judge of the Municipal Court. The Municipal Judge shall be appointed by the City Council, and shall serve at the pleasure of the City Council. The person so appointed shall be a licensed attorney in the State of Texas and shall have been a resident of and domiciled in the City of Galveston for not less than three (3) years immediately prior to appointment and shall continue to reside and be domiciled in the City while serving as Municipal Court Judge. The Municipal Judge shall deal with the administrative services of Municipal Court solely through the Municipal Court Clerk or the City Manager. The term of the Municipal Judge's appointment shall be for two (2) years. In the event the Judge of the Municipal Court is unable to act for any reason, the Council shall appoint a qualified attorney to act in the Judge's place. The Judge, or anyone acting in the Judge's place, shall receive such compensation as may be set by the Council. The Council shall have the power to create and establish additional Municipal Courts, with the same or separate jurisdictions, and to appoint an additional Magistrate for each Court so established. The Municipal Court Judge shall not give orders to the Municipal Court Clerk or to any subordinates of City Manager.

(Ord. No. 91-95, § 3(9), 11-14-91; Ord. No. 96-59, § 9, 6-16-96; Ord. No. 98-33, § 17, 6-3-98)

**Editor's note**— In addition to altering the name, the proposition approved at the election of April 7, 1979, altered the term of the Judge.

**State Law reference**— Judge of the Municipal Court, Vernon's Ann. Civ. Stat. art. 1196.

**Section 3. Clerk of the Municipal Court.** There shall be a Clerk of the Municipal Court who shall be appointed by the City Manager for a term of two (2) years. The Clerk shall have the power to administer oaths, make certificates, affix the Seal of the Court thereto, and otherwise perform any and all acts necessary in issuing process of such Court and conducting the business thereof. Deputy Clerks shall be appointed as may be required and shall have authority to act for and on behalf of the Clerk of the Municipal Court in all matters wherein the Clerk might act. The Municipal Court Clerk shall be responsible for the receipt, disbursement and safekeeping of all funds received by the clerk's office in accordance with the directives of the Director of Finance.

(Ord. No. 91-95, § 3(10), 11-14-91; Ord. No. 96-59, § 9, 6-16-96)

**Section 4. Remission of Fines.** The Council in open meeting or the Judge of the Municipal Court in open court, and no other person, shall have the power to remit fines and penalties which have been imposed for the violation of penal ordinances of the City. Neither the Council, individual members of the Council nor any officer or employee of the City shall attempt to exert influence upon the Judge of the Municipal Court.

(Ord. No. 96-59, § 9, 6-16-96)

Footnotes:

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**Editor's note**— Article VI was amended by a proposition approved by the electorate on April 7, 1979. The election results were confirmed by Ord. No. 79-24, adopted April 9, 1979, so as to change the name from corporation court to municipal court.

**State Law reference**— Municipal court, Vernon's Ann. Civ. St. art. 1194 et seq.

## ARTICLE VII. - FINANCE

**Section 1. Department of Finance.** There shall be a Department of Finance, the head of which shall be the Director of Finance, who shall be appointed by the city manager. The Director of Finance shall have knowledge of municipal accounting and finance and shall be otherwise qualified by experience or training for this position.

(Ord. No. 96-59, § 10, 6-16-96)

**Section 2. Director of Finance.** The Director of Finance shall supervise the Department of Finance and administer all the financial affairs of the City other than the assessment and collection of taxes. The Director of Finance shall be responsible for the receipt, disbursement and safe-keeping of all City funds, establish the accounting procedures to be used in all departments, and approve all expenditures to ensure that legal requirements have been met and the budget appropriations are not exceeded.

(Ord. No. 91-95, § 4(10), 11-14-91; Ord. No. 96-59, § 10, 6-16-96)

**Section 3. Reserved.**

**Editor's note**— Ord. No. 16-035, § 8, adopted May 17, 2016, repealed § 3, in its entirety. Former § 3 pertained to " City Auditor," and was derived from Ord. No. 91-95, § 4(11), adopted November 14, 1991; Ord. No. 96-59, § 10, adopted June 16, 1996 and Ord. No. 98-33, § 18, adopted June 3, 1998.

**Section 4. Accounting.** Complete and accurate financial records and accounts shall be kept for every department, office and agency of the City and covering every receipt and expenditure of municipal funds. Such records and accounts shall be established and maintained according to standard and approved systems of accounting, and shall be designed to reflect as nearly as possible the cost of each service provided by the City, including the capital expenditures properly to be included therein.

(Ord. No. 96-59, § 10, 6-16-96)

**Section 5. Fiscal Year.** The fiscal year of the City shall begin on the first day of each October, and end on the last day of September in the succeeding calendar year.

(Ord. No. 96-59, § 10, 6-16-96)

**Section 6. Preparation of the Budget.** At least forty-five (45) days prior to the beginning of each fiscal year the City Manager shall submit to the Council a proposed budget, which shall include:

- (1) The anticipated revenues and the proposed expenditures for the year, in detail;
- (2) A statement of all capital projects proposed to be undertaken during the year, and the method of their financing;
- (3) A statement of the capital projects planned for the next succeeding five (5) fiscal years, with estimates of their costs. The budget shall be accompanied by a report from the City Manager, with supporting schedules and exhibits, setting forth a complete financial plan for operation of the City during the coming fiscal year, with suitable explanation of any major changes in the cost of operation or the financial policy.

(Ord. No. 89-17, § 3(8), 1-26-89; Ord. No. 96-59, § 10, 6-16-96)

**Section 7. Public Hearings on Budget.** When submitted to the Council the proposed budget and the budget message shall become a public record and sufficient copies shall be available for distribution to interested persons. A time and place for a public hearing on the budget shall be set by the Council and notice thereof shall be published in accordance with State law. The public hearing shall be held as required by State law. At such hearings, all interested persons shall be given the opportunity to be heard for or against any items of income or expenditure in the proposed budget, including the capital projects proposed to be undertaken.

(Ord. No. 89-17, § 3(9), 1-26-89; Ord. No. 96-59, § 10, 6-16-96; Ord. No. 98-33, § 19, 6-3-98; Ord. No. 98-66, § 6, 7-30-98)

**Section 8. Approval of the Budget.** After the public hearing thereon the Council shall approve and adopt the budget by the second regularly scheduled Council meeting in September, either in the same form as submitted by the City Manager or with such changes as the Council may find to be necessary or desirable. No budget shall be adopted or appropriation made unless the anticipated revenues for the fiscal year equal or exceed the authorized expenditures. The adoption of the budget shall require a favorable vote of at least a majority of all the members of the Council. In the event the budget has not been adopted by the beginning of the fiscal year, the latest budget proposed by the City Manager shall take and remain in effect until the budget is finally adopted by the Council.

(Ord. No. 89-17, § 3(9), 1-26-89; Ord. No. 96-59, § 10, 6-16-96; Ord. No. 16-035, § 8, 5-17-16)

**Section 9. Appropriations.** No funds of the City shall be expended nor shall any obligation for the expenditure of money be incurred unless there is an appropriation therefor in the budget as duly adopted. Expenditures appropriated in anticipation of revenues from sale of capital assets or legal settlements shall be made only after actual receipt of those revenues. At the close of each fiscal year any unencumbered balance of an appropriation shall revert to the fund from which appropriated and may be re-appropriated by the Council. During the fiscal year the Council shall have the power to transfer any unencumbered appropriation balance or portion thereof from one office, department, or agency to another, at any time, and the City Manager shall have authority, without Council approval, to transfer appropriation balances from one expenditure account to another within a single office, department, or agency of the City.

(Ord. No. 96-59, § 10, 6-16-96)

**Section 10. Emergency Appropriations.** (1) At any time in any fiscal year, the Council may, pursuant to this section, make emergency appropriations only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. Such appropriations shall be by ordinance adopted by the favorable vote of five members of the Council and shall be made only upon recommendation of the City Manager. The total amount of such emergency appropriations made in any fiscal year shall not exceed ten per centum of the tax levy for general purposes in that fiscal year. Should the unappropriated and unencumbered revenues, income and available funds of the City for such fiscal year be not sufficient to meet the expenditures under the appropriation authorized by this section, thereby creating a deficit, it shall be the duty of the Council to include the amount of such deficit in its budget and said deficit shall be paid off and discharged not later than thirty-six (36) months from the date the appropriation was made. If the Council amends the budget to meet an emergency, the Council shall file a copy of its ordinance in accordance with State law.

(2) At any time in any fiscal year, where the City has experienced a natural or man-made disaster that results in the issuance of a Proclamation of Public Disaster by the President of the United States or Governor of the Great State of Texas, the Council may make emergency appropriations to alleviate the effects of the natural or man-made disaster, and the limitations on the total amount of emergency expenditures set out in the preceding section shall not apply.

(Ord. No. 96-59, § 10, 6-16-96; Ord. No. 98-33, § 20, 6-3-98; Ord. No. 02-033, § 2, 5-4-02; Ord. No. 04-028, § 2, 2-26-04; Ord. No. 16-035, § 8, 5-17-16)

**Section 11. Borrowing to Meet Emergency Appropriations.** In the absence of unappropriated available revenues or other funds to meet emergency appropriations under the provision of the next preceding section, the Council may by resolution authorize the borrowing of money to meet such deficit by the issuance of notes, secured by ad valorem taxes which the City is authorized to levy in payment thereof, each of which shall be designated "Emergency Note" and may be renewed from time to time, but all such notes and any renewals thereof shall mature and be payable not later than thirty-six (36) months after which the emergency appropriation's debt was incurred, as provided in the last preceding section.

(Ord. No. 96-59, § 10, 6-16-96; Ord. No. 04-028, § 2, 2-26-04)

**Section 12. Borrowing in Anticipation of Taxes.** Except for borrowing to meet emergency appropriations, no loan shall be authorized or made to pay any deficiency arising from a failure to realize sufficient income from taxation to meet the amounts provided for in the budget, but the Council, during any fiscal year, may borrow money for its use in anticipation of the receipt of taxes collected or to be collected during such fiscal year, and pledge, as security, the uncollected taxes for such fiscal year; provided, that

any notes or other obligations issued hereunder shall mature and be payable not later than the end of the fiscal year in which issued.

(Ord. No. 96-59, § 10, 6-16-96; Ord. No. 04-028, § 2, 2-26-04)

**Section 13. Depository and Withdrawals.** All monies received by any person, department, or agency of the City for or in connection with affairs of the City shall be deposited promptly in the City depository or depositories, which shall be designated by the Council in accordance with such regulations and subject to such requirements as to security for deposits and interest thereon as may be established by ordinance. All checks, vouchers or warrants for the withdrawal of money from the City depositories shall be signed by the Director of Finance and countersigned by the City Manager or their designees. Provided, that the Council, under such regulations and limitations as it may prescribe, may by ordinance authorize the use of machine-imprinted facsimile signatures of said Directors of Finance and City Manager on such checks, vouchers, or warrants.

(Ord. No. 91-95, § 4(12), 11-14-91; Ord. No. 96-59, § 10, 6-16-96)

**Section 14. General Obligation Bonds.** The City shall have the power to borrow money on the credit of the City and to issue general obligation bonds for permanent public improvements or for any other public purpose not prohibited by the Constitution and Laws of the State of Texas, and to issue refunding bonds to refund outstanding bonds of the City previously issued. All such bonds shall be authorized and issued in conformity with the Laws of the State of Texas.

(Ord. No. 96-59, § 10, 6-16-96)

**Section 15. Revenue Bonds.** The City shall have power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the Constitution and Laws of the State of Texas, and to issue revenue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable solely from the properties, or interest therein, pledged, or the income therefrom, or both, and shall never be a debt of the City. All such bonds shall be authorized and issued in conformity with the Laws of the State of Texas.

(Ord. No. 96-59, § 10, 6-16-96)

**Section 15a. Limitation on Borrowing.** The City shall not borrow, or issue general obligation bonds, or any other instrument, or series of instruments to evidence the obligation created thereby unless first submitted to all of the qualified voters in the City for their approval at an election duly called and held for such purposes. This section shall not apply to borrowing to meet a natural or man-made disaster resulting in the declaration of a Proclamation of Public Disaster by the President of the United States or the Governor of the Great State of Texas, emergency appropriations, borrowing in anticipation of taxes, or borrowing as otherwise provided by the City Charter. This section shall not apply to refunding bonds of the City previously issued, so long as the issuance of refunding bonds does not result in a higher total expenditure by the City. This section shall not apply to revenue bonds or certificates of obligation which shall be issued in accordance with State law. Six (6) or more members of the Council must approve the issuance of revenue bonds or certificates of obligation.

(Ord. No. 89-17, § 3(10), 1-26-89; Ord. No. 96-59, § 10, 6-16-96; Ord. No. 98-33, § 21, 6-3-98; Ord. No. 02-033, § 3, 5-4-02; Ord. No. 16-035, § 8, 5-17-16)

**Editor's note**— Section 15a was created by an amendment approved by the electorate on January 20, 1979. The election results were confirmed by Ord. No. 79-2, adopted January 22, 1979.

**Section 16. Sale of Bonds.** All bonds shall be sold in accordance with the laws of the State of Texas.

(Ord. No. 96-59, § 10, 6-16-96; Ord. No. 16-035, § 8, 5-17-16)

**Section 17. Purchase Procedure.**

(1) All purchases made by the City, and contracts executed which will require the expenditure of City funds, shall be made pursuant to a requisition from the head of the office or department whose appropriation will be charged. No order shall be given, nor contract made, and neither shall be binding upon the City, unless the Director of Finance, or designee, shall have certified that there is to the credit of the budget appropriation to be charged a sufficient unencumbered balance to pay therefor.

(2) It shall be the policy of the City to obtain written competitive bids on purchases or contracts involving the expenditure of City funds, and such bidding shall be required when the amount involved is more than One Thousand Dollars (\$1,000.00). When bids are received the purchase or contract shall be awarded to the lowest and best bid excepting that the City shall reserve the right to reject any and all bids for cause stated.

(3) The Council may by ordinance confer upon the City Manager the power and authority to enter upon such purchases and contracts without further action of the Council where the expenditure is provided in the budget and does not exceed Fifteen Thousand Dollars (\$15,000.00). All other expenditures must have the express approval of the Council, in advance. In the event of a declared local state of disaster or emergency, the City Manager shall have the authority to enter upon purchases and contracts in an amount not to exceed ten (10) percent of the City's current annual budget in accordance with state and federal procurement laws, provided a quorum of Council is unable to be present at a meeting.

(4) Contracts for supplies, equipment or contractual services to be furnished the City shall only be made upon competitive bidding and the period of such contracts may not exceed thirty-six (36) months unless a longer term, not to exceed 60 months, is approved by five members of City Council.

(5) The requirement of competitive bidding shall not extend to contracts for personal or professional services.

(6) The requirement of competitive bidding shall not apply to purchases made at publicly advertised auctions if the items purchased do not exceed Ten Thousand Dollars (\$10,000.00) each, and items may be purchased at such auctions for amounts in excess of Ten Thousand Dollars (\$10,000.00) with the prior approval of the Council.

(Ord. No. 89-17, § 3(11), 1-26-89; Ord. No. 96-59, § 10, 6-16-96; Ord. No. 98-33, §§ 22, 23, 6-3-98; Ord. No. 02-033, § 4, 5-4-02; Ord. No. 12-009, § 2, 2-23-12)

**Section 18. Independent Audit.** At the close of each fiscal year the Council shall cause an independent audit to be made of all accounts of the City by a Certified Public Accountant. Upon completion of this audit it shall be filed in the office of the City Secretary as a public record.

(Ord. No. 96-59, § 10, 6-16-96; Ord. No. 98-33, § 24, 6-3-98)

**Section 19. Limitation on Expenditures.** The Council shall not approve a budget that exceeds more than seven (7) per cent of the budget of the prior fiscal year as to total expenditures for any and all purposes

excluding expenditures related to bond funded projects, grant funded programs, trust and agency funds, internal services fund expenditures, and any capital improvement funds appropriated in the previous fiscal year that have not been expended.

(Ord. No. 96-59, § 10, 6-16-96; Ord. No. 04-028, § 2, 2-26-04; Ord. No. 12-009, § 2, 2-23-12)

**Editor's note**— Section 19 was created by an amendment approved by the electorate on January 20, 1979. The election results were confirmed by Ord. No. 79-2, adopted January 22, 1979.

**Section 20. Capital Improvement and/or Debt Service Account.** The City shall create a "Capital Improvement and/or Debt Service Account" allocating an equivalent of 1% of the General Fund Operating Budget ("annual allocation") to such an account beginning in fiscal year 2013 and an additional 1% in each successive fiscal year thereafter until the cumulative annual allocation to the account reaches a minimum of 8% of the total General Fund Operating Budget, for either Capital Improvements or Debt Service in every year, and each year thereafter allocate at least 8% of the total General Fund Operating Budget to such account, subordinate to any deficiency in the emergency 90-day minimum reserve. For purposes of this section "Capital Improvements" shall be defined as projects above \$100,000.00.

(Ord. No. 12-009, § 2, 2-23-12)

#### ARTICLE VIII. - TAXATION

**Section 1. Department of Taxation.** There may be a department of taxation, the head of which shall be the City Collector of Taxes. The Collector of Taxes shall be appointed by the Council and shall be responsible for the collection of all taxes levied by the City of Galveston. In addition the Collector of Taxes may be made responsible for the assessment and collection of taxes levied by a School District, Navigation District, Water Control and Improvement District or other political subdivisions, if the Council has by contract with such other political subdivision so provided. Instead of creating a department of taxation and appointing a City Collector of Taxes, the City may contract to have another government entity or agency, who is qualified to perform either the collection and appraisal functions, assess or collect taxes hereunder in accordance with the requirements of the Texas Tax Code and other applicable laws.

(Ord. No. 89-17, § 3(12), 1-26-89; Ord. No. 91-95, § 4(13), 11-14-91; Ord. No. 96-59, § 11, 6-16-96)

**Section 2. Powers of Taxation.** In order to carry out its municipal purposes, the City shall have the power to levy, assess, and collect taxes of every character and type as now or hereafter authorized by the Constitution and Laws of the State of Texas. Provided, however, that until otherwise authorized by the amendment of this Charter the power of the City to levy an annual ad valorem tax upon taxable property situated within its corporate limits shall include only the following:

(1) A tax at a rate not to exceed Seventy Cents (\$0.70) on each \$100.00 of assessed valuation for general operating expenses; and for the City's contributions toward the retirement or disability pensions of City employees; and for payment on the interest on and provide for the sinking fund required by law for all outstanding general obligation bonds of the City; and at the discretion of City Council for the employment of a municipal band.

(2) Effective January 1, 1979, for the conduct, maintenance, improvement and extension of Rosenberg Library, a tax rate which will yield that amount which would be derived by the levy of a Five Cent (\$0.05) tax, or at the discretion of the City Council, an additional amount up to a maximum total of an Eight Cent (\$0.08) tax, per \$100.00 of assessed valuation based upon a one hundred (100) per cent assessment ratio.

(Ord. No. 75-18, § 3, 4-10-75; Ord. No. 79-24, § 3, 4-9-79; Ord. No. 89-17, § 3(13), 1-26-89; Ord. No. 96-59, § 11, 6-16-96; Ord. No. 98-33, § 25, 6-3-98; Ord. No. 98-66, § 7, 7-30-98)

**State Constitution reference**— Tax rate limited, Const., art. 8, § 9, art. 11, § 5; license fees limited, Const., art. 8, § 1.

**Editor's note**— The property subject to taxation is now controlled by V.A.T.C., Property Tax Code, § 11.01.

**State Law reference**— Tax for airport purposes, Vernon's Ann. Civ. St. art. 46d-8.

**Section 2(a) Tax on Occupants of Hotel Rooms.** The City Council may impose on the occupants of hotels, as that term is defined by State law, a tax as permitted by State law on the amount paid for rooms; and may provide for the collection, on behalf of the City, of such tax by the operator of the hotel from the occupant of the room, and transmittal of the proceeds of the tax to the City. The proceeds of any such tax levied at the rate of 3%, after the expense of collection, shall be appropriated by the city for the use by the beach park board of trustees for the purpose of advertising and promoting the city's recreational advantages and advertising and promoting recreational facilities under the board's supervision and control; provided, however, that no portion of the tax levied at the rate of 3% for advertising and promoting the city's recreational advantages and advertising and promoting recreational facilities shall be used by the beach park board of trustees for capital improvements nor shall such proceeds ever be pledged as security for a bond issue.

(Ord. No. 96-59, § 11, 6-16-96; Ord. No. 98-33, § 26, 6-3-98; Ord. No. 98-66, § 8, 7-30-98)

**Editor's note**— Section 2(a) of Article VIII of the Charter was adopted at a regular city election held April 11, 1967. The election results were confirmed by Ord. No. 67-23, § 3, adopted April 20, 1967.

**Section 2(b) Limitation on Taxation.** The City Council shall not make, permit, or approve any increase in ad valorem taxes on any taxable property in the City in any one year exceeding five (5) per cent of the City's immediate prior year's ad valorem tax, subject, however, to the total tax limitation in the City Charter. Such five (5) per cent limitation shall not prevent increased market valuation and taxation of taxable property when subsequent improvements are made. Provided further; that the proceeds of the one-half of one per cent (½%) sales tax adopted by the City shall be used to reduce the ad valorem tax rate on the basis of one dollar for each dollar received from the additional sales tax based on the sales tax received by the City from the most recent twelve month period that ends on June 30<sup>th</sup> to the extent required by Article VIII, Section I and Article VII, Section 19, of this Charter. This limitation shall not prevent increased market valuation and taxation of taxable property when subsequent improvements are made.

(Ord. No. 89-17, § 3(14), 1-26-89; Ord. No. 96-59, § 11, 6-16-96; Ord. No. 02-033, § 6, 5-4-02)

**Editor's note**— Section 2(b) was created by an amendment approved by the electorate on January 20, 1979. The election results were confirmed by Ord. No. 79-2, adopted January 22, 1979.

**Section 3. Appraisal of Property for Tax Purposes.** All property real, personal or mixed, having a situs within the corporate limits of the City of Galveston on January 1st of each year, not expressly exempted by law, shall be subject to taxation by the City of Galveston for such year. If the State requires appraisals of property, those appraisals will be made in accordance with State laws.

(Ord. No. 89-17, § 3(15), 1-26-89; Ord. No. 96-59, § 11, 6-16-96)

**State Law reference**— Tax assessment, Vernon's Ann. Civ. St., art. 7181a et seq.; listing of property for taxation, Vernon's Ann. Civ. St., art. 7151.

**Section 4. Tax Payments.** All taxes due the City of Galveston shall be payable at the office of the City Tax Collector in accordance with State law. The City shall assess penalties and interest in accordance with State law.

(Ord. No. 89-17, § 3(17), 1-26-89; Ord. No. 96-59, § 11, 6-16-96)

**Section 5. Tax Liens and Liabilities.** All property, real, personal and mixed, situated in the City of Galveston on the 1st day of January of each year shall stand charged with a special lien in favor of the City from said date for the taxes due thereon. The liens provided herein shall be superior to all other liens, excepting where otherwise provided by law, regardless of when such other liens were created. All persons purchasing any of said property after the 1st day of January of any year shall take the same subject to the liens herein provided. In addition to the liens against property as herein provided, the owner on the 1st day of January of any year of property subject to taxation by the City shall be personally liable for taxes due thereon for such year. The City shall have the power to sue for and recover personal judgement for taxes without foreclosure, or to foreclosure its lien or liens, or to recover both personal judgement and foreclosure. In any such suit where it appears that the description of any property in the City tax rolls is insufficient to identify such property, the City shall have the right to plead a good description of the property intended to be assessed, to prove the same, and to have its judgement foreclosing the tax lien or for personal judgement against the owner for such taxes.

(Ord. No. 89-17, § 3(18), 1-26-89; Ord. No. 96-59, § 11, 6-16-96)

**Sections 6 and 7. Reserved.**

**Editor's note**— Former § 6, tax liens and liabilities, has been amended and renumbered as § 5. Former § 7, joint interest in property, has been repealed in its entirety. The aforesaid amendments were enacted by Ord. No. 89-17, § 3(18), (19), adopted January 26, 1989.

**Section 8. Arrears of Taxes Offset to Debt Against City.** The City shall be entitled to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation that is in arrears to the City of Galveston for taxes, in the amount of taxes so in arrears, and no assignment or transfer of such debt, claim, demand or account after the said taxes are due, shall affect the right of the City to so offset the said taxes against the same.

(Ord. No. 96-59, § 11, 6-16-96)

**Section 9. Disposition of Unappropriated Delinquent Taxes.** The Council shall be authorized to appropriate all delinquent taxes against which no demands are outstanding, and after the purposes for which said taxes were levied have been fulfilled and satisfied, to any proper municipal purpose, and the Council shall be empowered at the end of the fiscal year to declare such residue of all said delinquent taxes a surplus fund, and to direct that the same when collected be carried as a surplus account subject to the further appropriation by said Council for proper municipal purposes.

(Ord. No. 96-59, § 11, 6-16-96)

ARTICLE IX. - PERSONNEL

**Section 1. Appointments and Promotions.** Appointments and promotions in the administrative service of the City shall be made according to merit and fitness, to be ascertained so far as practicable, by competitive examination. To carry out this purpose the Council shall be empowered to provide by ordinance a system for the classification of employees and rules for the appointment and promotion of employees within such classifications.

(Ord. No. 96-59, § 12, 6-16-96)

**Section 2. Classified Service.** No officer, employee, member of a board, or other person, who is to be appointed by the Council under this Charter, and no department head, shall be included within the classified service of the City, but all other persons in the administrative services of the City shall be included therein unless specifically excluded therefrom by the ordinance providing for a system of classified services.

(Ord. No. 96-59, § 12, 6-16-96)

**Section 3. Prohibited Acts.** (a) No person appointed by the Council to any board, commission, committee, or agency of the City and no person employed in the administrative service of the City, or who seeks an appointment thereto, shall be appointed, promoted, reduced, removed, or in any way favored or discriminated against because of sex, race or political or religious opinions or affiliations.

(b) No paid appointive officer or employee of the City shall continue in such position after becoming a candidate for nomination or election to any public office.

(c) No appointive officer or employee of the City shall make a contribution to the campaign fund of any person seeking election to a City office or to any political party supporting a candidate for election to a City office, nor shall the officer or employee be solicited for this purpose, but the right to express an opinion or cast a vote as a citizen shall not be limited.

(d) No person seeking appointment to or promotion in the administrative service of the City shall either directly or indirectly give, render, or pay any money, service, or other valuable thing to any person for or on account of or in connection with the appointment or promotion, or any examination conducted therefor.

(e) Any person who either alone or with others willfully violates any provision of this section shall be ineligible for appointment or election to a position in the City for a period of four years, and if the person is an officer or employee of the City the person shall immediately forfeit the office or position he or she holds.

(Ord. No. 89-17, § 3(20), 1-26-89; Ord. No. 91-95, § 4(14), 11-14-91; Ord. No. 96-59, § 12, 6-16-96; Ord. No. 12-009, § 2, 2-23-12)

**Section 4. Employee Pensions and Insurance.** All rights and obligations under any plan for the payment of retirement benefits, pensions, or disability benefits to any City employee which is in force upon the effective date of this Charter shall be unaffected by the adoption thereof. The Council shall have the power, in its discretion and subject to such regulations and limitations as it may deem proper, to create, operate, and contract plans or insurance which will provide health, life, accident, medical and hospital benefits, or any of these, for all or any group of City employees, and to pay or contribute toward the cost of such plan or insurance out of funds available for that purpose.

(Ord. No. 96-59, § 12, 6-16-96)

**Cross reference**— Taxation for pension plans, Art. VIII, § 2(e)(5).

**Section 5. Reserved.**

**Editor's note**— Section 5 of Article IX was repealed by approval of Proposition 5 at a city charter amendment election held April 8, 1968. The results of the election were confirmed by Ord. No. 69-35, enacted April 17, 1969. Section 5 which pertained to wages and compensation of the police and fire department, was adopted at an election held April 11, 1967, the results being confirmed by Ord. No. 67-23 enacted April 20, 1967.

#### ARTICLE X. - PLANNING

**Section 1. Organization.** There shall be established a Planning Commission that shall consist of seven (7) citizens of the City of Galveston. The City Council shall appoint one of its members to serve as ex-officio to the Commission. Ex-officio members shall not have the power to vote. The members of said commission shall be appointed by the Council for a terms [term] of three (3) years, except that of the seven (7) members first appointed two (2) shall be appointed for a term of one (1) year, two (2) for a term of two (2) years, and three (3) for a term of three (3) years. Such appointees shall serve without compensation and may not hold any elective office of the State of Texas or any political subdivision thereof. The Commission shall elect a chairman from among its official members and shall meet not less than once each month. A vacancy in an unexpired term shall be filled by the Council for the remainder of the term.

(Ord. No. 96-59, § 13, 6-16-96; Ord. No. 02-033, § 7, 5-4-02)

**Section 2. Powers and Duties.** The Planning Commission shall have the following powers and duties:

- (1) Make, amend, extend, or add to a Master Plan for the physical development of the City;
- (2) Recommend to the Council approval or disapproval of proposed changes in the zoning plan;
- (3) Approve or disapprove the platting or subdividing of land within the corporate limits of the City and within adjacent areas as permitted by law;
- (4) Reserved;
- (5) Require information from the other departments of the City government in relation to its work;
- (6) Reserved;
- (7) Recommend to the Council approval or disapproval of plans for slum clearance, public housing, and urban re-development and renewal projects.

The Commission shall be responsible to and act as an advisory body to the Council on all other appropriate matters and shall perform such additional duties and exercise such additional powers as may be prescribed by ordinance of the Council not inconsistent with the provisions of this Charter.

(Ord. No. 96-59, § 13, 6-16-96; Ord. No. 04-028, § 2, 2-26-04)

**State Law reference**— Zoning, generally, Vernon's Ann. Civ. St. art. 1011a et seq.

**Section 3. Director of Planning.** There shall be a Director of Planning who shall be appointed by the City Manager, and who shall be qualified by special training and experience in the field of City Planning. The Director of Planning shall serve as the regular technical adviser of the Planning Commission, shall have the status of a director of a department, and shall have such other duties and responsibilities as the City Council may establish.

(Ord. No. 96-59, § 13, 6-16-96)

**Section 4. The Master Plan.** The Master Plan for the overall physical development of the City shall contain the commission's recommendations for growth, improvement and beautification of the City. A copy of the Master Plan, or any part thereof, shall be forwarded to the City Manager who shall thereupon submit such 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 to the Council from any City department affecting the Master Plan must be accompanied by a recommendation from the Planning Commission.

(Ord. No. 91-95, § 4(15), 11-14-91; Ord. No. 96-59, § 13, 6-16-96)

**Section 5. Legal Effect of Master Plan.** Upon adoption of the Master Plan by the Council, no subdivision, street, park, nor any public way, ground or space, public building or structure and no public utility, whether publicly or privately owned that 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 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 or the appropriate office, department, or agency shall have power to proceed. The widening, narrowing, relocation, vacating or change in the use of any street or watercourse, or other public way or ground or the sale of any public building or real property shall be subject to similar submission and approval, and failure to approve may be similarly overruled by the Council. The failure of the Commission to act within thirty (30) days after the date of official submission to the Commission shall be deemed approval, unless a longer period be granted by the Council or the submitting official.

(Ord. No. 96-59, § 13, 6-16-96)

#### ARTICLE XI. - FRANCHISES AND PUBLIC UTILITIES

**Section 1. Inalienability of Public Property.** The right of control and use of the public streets, highways, sidewalks, alleys, parks, public squares, waterways, public places, and other real property of the City is hereby declared to be inalienable by the City, except by ordinances not in conflict with the provisions of this Charter. No act or omission by the Council or any officer or agent of the City shall be construed to grant, renew, extend, or amend by estoppel or indirection any right, franchise or easement affecting said public streets, highways, sidewalks, alleys, parks, public squares, waterways, public places and other real property.

(Ord. No. 96-59, § 14, 6-16-96)

**Section 2. Power to Grant Franchise.** The Council shall have the power by ordinance to grant, renew, and extend all franchises of all public utilities of every character operating within the City, and, with consent of the franchise holder, to amend the same. No franchise shall be for a term of more than fifty (50) years from the date of its grant, renewal or extension.

(Ord. No. 96-59, § 14, 6-16-96)

**Section 3. Ordinance Granting Franchise.** Every ordinance granting, renewing, extending or amending a public utility franchise shall be read at three regular meetings of the Council, and shall not be finally acted upon until thirty (30) days after the first reading thereof. Within five (5) days following each of the three readings of the ordinance, the full text thereof shall be published one time in the official newspaper of the

City, and the expense of the such publication shall be borne by the prospective franchise holder. No such ordinance shall become effective until the expiration of sixty (60) days following the date of its final adoption by the Council, and every such ordinance shall be subject to the referendum procedures provided by State Law and this Charter.

(Ord. No. 96-59, § 14, 6-16-96)

**Section 4. Transfer of Franchise.** No public utility franchise shall be transferred by the holder thereof, except with the approval of the Council expressed by ordinance; provided, however, that such approval of the Council shall not be withheld with respect to a transfer of a franchise incident to the creation or foreclosure of a mortgage, or other instrument of security, executed in good faith for the purpose of financing or refinancing the public utility operations of the franchise holder.

(Ord. No. 96-59, § 14, 6-16-96)

**Section 5. Regulation of Franchise.** Every public utility franchise, whether so provided therein or not, shall be subject to the right of the Council:

(1) To forfeit any such franchise by ordinance at any time for failure of the holder thereof to comply with the terms of the franchise, such power to be exercised only after notice and hearing, and a reasonable opportunity to correct the default.

(2) To impose reasonable regulations to insure safe, efficient and continuous service to the public.

(3) To require such expansion and extension of plants and facilities as are reasonably necessary to provide adequate service to the public.

(4) To require every franchise holder to furnish to the City, without cost to the City, full information regarding the location, character and extent of all facilities of such franchise holder in, over and under the streets, alleys, and other public property of the City, and to regulate and control the location, relocation, and removal of any part of such facilities whenever required in the public interest.

(5) To collect from every public utility operating in the City such proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, alleys, bridges, culverts, viaducts and other public places of the City as represents the increased cost of such operations resulting from the occupancy of such public places by such public utility, and such proportion of the costs of such operations as results from the damage to or disturbance of such public places caused by such public utility, or to compel such public utility to perform, at its own expense, such operations as above listed that are made necessary by the occupancy of such public places by such utility or by damage to or disturbance of such public places caused by such public utility.

(6) To require every franchise holder to allow other public utilities holding a franchise from the City to use its tracks, poles, or other facilities, including bridges and viaducts, wherever in the judgement of the Council such use shall be in the public interest, provided that in such event a reasonable compensation shall be paid such owner of facilities for such use. Provided further, that inability of such public utilities to agree upon the compensation to be paid for use of such facilities shall not be an excuse for failure to comply with such requirement by the Council.

(7) (a) To require the keeping of accounts in such form as will accurately reflect the cost of the property of each franchise holder which is used and useful in rendering its service to the public and the expense, gross receipts and profits of all kinds of such franchise holder; provided, however, that any utility which keeps its books in accordance with a standard system of accounts or those prescribed by a Federal or State regulatory agency will be considered to have complied with any Council order passed under this section.

- (b) To examine and audit at any time during business hours the accounts and other records of any franchise holder relevant to the City's right of regulation.
- (c) To require annual and other reports on the local operations of the utility, which shall be in such form and contain such information relevant to the City's right of regulation as the Council shall prescribe.
- (8) To require and collect any tax, compensation, and rental not now or hereafter prohibited by the laws of this State.
- (9) To require such franchise holders who request an increase in rates, charges or fares, to reimburse the City for reasonable expenses incurred in employing rate consultants to conduct investigations, present evidence and advise the Council on such requested increase.

(Ord. No. 96-59, § 14, 6-16-96)

**Section 6. Regulation of Rates.** The Council shall have full power after notice and hearing to regulate by ordinance the rates, charges and fares of every public utility franchise holder operating in the City. Provided that no such ordinance shall be passed as an emergency measure. Any franchise holder requesting an increase in its rates, charges, or fares shall have, at the hearing on such request, the burden of establishing by clear and convincing evidence the fair value of the property of such franchise holder devoted to furnishing service to the City or the inhabitants thereof, and the amount and character of its expenses and revenues. The Council shall act on any request for a change in rates, charges, or fares within a reasonable time after such request has been presented. No franchise holder shall institute any legal action to contest any rate, charge, or fare fixed by the Council until such franchise holder has filed a motion for rehearing with the Council specifically setting out each ground of its complaint against the rate, charge, or fare fixed by the Council, and until the Council shall have acted upon such motion. Such motion shall be deemed overruled unless acted upon by the Council within a reasonable time, not to exceed sixty (60) days from the filing of such motion.

(Ord. No. 96-59, § 14, 6-16-96)

## ARTICLE XII. - GALVESTON WHARVES

**Section 1. Designation as a Separate Utility.** The Wharf and Terminal properties belonging to the City of Galveston, as set forth and described in that certain ordinance adopted on the 17th day of October, 1940, authorizing the issuance of City of Galveston Wharf and Terminal Facilities Revenue Bonds and execution of a trust indenture securing the same, together with all additions, improvements, or extensions of such properties, and the accumulated income and increment thereof, as heretofore or hereafter acquired by the City, are set apart and designated as a separate utility of the City, to be known as "Galveston Wharves" and to be managed, maintained, operated and controlled as herein provided.

(Ord. No. 96-59, § 15, 6-16-96)

**Section 2. Board of Trustees.** The Galveston Wharves, and the income and revenue therefrom, shall be fully managed, controlled, maintained and operated by a Board of Trustees to be known as "Board of Trustees of the Galveston Wharves." One member of such board shall be the ex officio representative of the City's Council and shall be elected by the Council from their own number to serve as such Trustee during a term contemporaneous with the term of the Council electing him. The four members of the Board of Trustees of the Galveston Wharves other than the ex officio member thereon who are serving in this capacity on the effective date of this Charter, by prior appointment, shall continue to hold such office until the several expirations of the terms for which they were appointed. On or after the 1st day of January, 1962, the Council shall appoint three additional Trustees to serve for terms of one (1), two (2) and three (3) years thereafter and these three Trustees, with the three remaining holdover Trustees then having unexpired terms of one (1), two (2) and three (3) years respectively shall, with the ex officio member, constitute a

board of seven (7) Trustees. All appointments thereafter shall be for terms of three (3) years, excepting an appointment to fill a vacancy occurring before the expiration of a term that shall be only for the unexpired term, with two regular appointments of Trustees being made by the Council on or after January 1st of each year so that the total membership of the said Board of Trustees will be fixed and shall remain at seven.

(Ord. No. 96-59, § 15, 6-16-96)

**Section 3. Qualification of Trustees.** At the time of appointment, each Trustee shall be a citizen of the United States and shall have resided in the City of Galveston for at least one year immediately prior thereto. With the exception of the ex officio member no Trustee shall hold an elective public office, and no Trustee shall be appointed who is an employee of the City or of the Galveston Wharves. A Trustee who ceases to possess any qualification required for appointment as Trustee shall automatically vacate the office as a Trustee.

(Ord. No. 91-95, § 4(16), 11-14-91; Ord. No. 96-59, § 15, 6-16-96)

**Section 4. General Powers of Board of Trustees.** The Board of Trustees shall have those powers which are necessary or proper to the discharge of their responsibilities including, but not being limited to, the election of a Chairman, the employment of a general manager for Galveston Wharves and such subordinate officers and employees as may be required for the proper conduct of the Galveston Wharves, the preparation of budgets, the fixing of charges, the authorization of expenditures, the acquisition of properties, the determination of policies, and, in general, the complete management and control of the Galveston Wharves and the income and revenue thereof, subject only to the special limitations herein provided. All meetings of the Board of Trustees shall be open to the public excepting only for executive sessions held to discuss personnel appointments or to discuss or act upon matters of concern to the competitive position of the Galveston Wharves as a port facility.

**State Law reference—** Open meetings art., Vernon's Ann. Civ. St. art. 6252-17.

All of the area lying in the City and County of Galveston, Texas, commonly referred to as Pier 19, and described by metes and bounds as follows:

Beginning at a point on the northerly edge of a concrete street near the middle of 20th Street, said point bears N 22° 38' W a distance of 336.9 feet from the northwest corner of City Block 679;

Thence N 18° 27' W from said beginning point along a line parallel with and 6 inches easterly of a chain link fence, a distance of 243.8 feet to the edge of the ramp to Pier 19;

Thence N 64° 10' E along the edge of said ramp a distance of 30.4 feet to the Northeast corner of said ramp;

Thence S 30° 21' E along the edge of said ramp a distance of 18.4 feet to a point for corner;

Thence N 58° 32' E along the northerly face of a line of power poles, a distance of 609.6 feet to the easterly face of Pier 19;

Thence N 31° 28' W along the easterly face of Pier 19 a distance of 37.2 feet to a point for corner;

Thence N 58° 32' E a distance of 50.0 feet to a point for corner;

Thence N 31° 28' W a distance of 29.6 feet to a point for corner;

Thence N 57° 17' E across the mouth of the slip a distance of 191.5 feet to the northwest corner of Pier 18;

Thence S 34° 31' E along the westerly face of Pier 18 a distance of 176.8 feet to an angle to the right in the pier face;

Thence S 7° 08' E along the harbor side of the curb on Pier 18 a distance of 117.7 feet to a point for corner;

Thence N 35° 44' E along a line parallel with and 6 inches southerly of a chain link fence, a distance of 73.8 feet to a point for corner;

Thence S 42° 15' E inside of fence a distance of 81.0 feet to a point for corner;

Thence S 26° 28' E inside of fence a distance of 50.9 feet to a point for corner;

Thence S 16° 05' E a distance of 92.4 feet to a point 6 inches west of a gate post and on the northerly edge of the previously mentioned concrete street;

Thence S 16° 42' E a distance of 24.5 feet crossing said concrete street to a point on south edge of said concrete street;

Thence S 73° 18' W along said concrete street edge a distance of 63.12 feet to a point of curvature;

Thence southwesterly along a curve to the left with radius of 395.16 feet to a distance of 80.5 feet to the point of tangency;

Thence S 61° 38' W continuing along the edge of the concrete street a distance of 211.3 feet to a point for corner;

Thence S 66° 13' W a distance of 47.4 feet to a point for corner;

Thence N 23° 47' W a distance of 20.0 feet to the place of beginning and containing 7.09 acres more or less;

which is owned by the City of Galveston and is under the management of the Board of Trustees of the Galveston Wharves is dedicated to be used, rented or leased exclusively as boat slips, berths or docks for shrimp boats, party boats, fishing boats, retail and commercial fish-sales outlets and fuel docks and public parking relating to all such uses, including existing railroad use. The tenants of said Pier 19 area as well as the public, shall have free and full access to such dedicated area, not rented or leased, on and over 20th Street north of The Strand and on and over a right-of-way easement for vehicular and pedestrian traffic being twenty (20) feet wide, starting at the intersection of 20th Street and the southeasterly side of the Pier 19 area continuing through the Pier 19 area and existing at the point Port Industrial Boulevard exits from Pier 19 area.

The Board of Trustees shall make, or shall authorize to be made, such expenditures for the maintenance and repair of the entire dedicated area as may be reasonably required to maintain all of the dedicated uses of this area; and the rental or lease payments to be charged for the use of any of the facilities in this dedicated area shall not be excessive, but shall be reasonable and in such amounts as will be competitive with similar charges made in such other public areas on the Texas coast.

Nothing contained herein shall be construed, either by the Board of Trustees or the Council, as an impediment to the rights of the holder of any of the city's bonds or as any diminishment of the city's obligations under any such bonds; rights of the holders of any of the city's bonds or as any and only to the extent that any other provision of this Charter or any provision of any city ordinance be in conflict herewith is any such provision of this Charter or of any ordinance hereby repealed.

(Ord. No. 77-4, § 3, 1-17-77; Ord. No. 79-24, § 3, 4-9-77; Ord. No. 96-59, § 15, 6-16-96)

**Section 5. Contracts.** The Board of Trustees shall have the power to contract in the name of the Galveston Wharves for all essential purposes, but shall have no power to contract in the name of the City of Galveston, and no undertaking, contract, action or inaction by the Board of Trustees individually or collectively, or under their authority, shall render the City liable for damages, indemnity or compensation or shall be binding other than on the properties, income and revenue of the Galveston Wharves.

(Ord. No. 96-59, § 15, 6-16-96)

**Section 6. Records.** All books, documents and records of the Galveston Wharves including the minutes of the proceedings of the Board of Trustees, shall at all reasonable times be open to inspection by the Council or its authorized representative. The books of account and other records shall be kept as nearly as practicable according to the procedure prescribed by the Interstate Commerce Commission or other regulatory authority having jurisdiction over the Galveston Wharves and shall adequately show all matters necessary to correctly present the condition of the property, and the income and expense of its operation. An annual audit shall be made by a Certified Public Accountant and a copy of this audit shall be filed with the City Secretary as a public record.

(Ord. No. 96-59, § 15, 6-16-96)

**Section 7. Appropriations.** The Board of Trustees shall make or authorize to be made such expenditures for the maintenance, repair, replacement and improvement of the properties under its management and control as are necessary or desirable to establish and preserve the Galveston Wharves as an efficient and valuable wharf and terminal facility, and to this end shall be empowered to establish and maintain reserves for depreciation, working capital, and future additions and improvements.

(Ord. No. 96-59, § 15, 6-16-96)

**Section 8. Competitive Bidding.** In the purchase of equipment, supplies and materials and the awarding of contracts for construction and repair of the properties or for other purposes the Board of Trustees shall, whenever practical, follow the policy of soliciting competitive bids and shall comply with the competitive bidding requirements of State law.

(Ord. No. 89-17, § 3(21), 1-26-89; Ord. No. 96-59, § 15, 6-16-96)

**Section 9. Payments to the City.** From the annual net income remaining in each fiscal year after payment of all current maintenance and operating expenses the Galveston Wharves shall pay to the City of Galveston the sum of one hundred sixty thousand dollars (\$160,000.00) of which amount twenty-five and thirty-nine one hundredths per cent (25.39%) shall be paid over to the Galveston Independent School District and the remainder thereof shall be for general City purposes. All other net revenues of the Galveston Wharves shall be retained thereby for the betterment and extension of this utility to the benefit and advantage of the City, provided, this shall not prevent the Board of Trustees from agreeing and contracting to pay the City at a reasonable and proper rate for such special services furnished by the City to Galveston Wharves as would not customarily be furnished to other businesses or utilities or if so furnished would not be furnished without a charge being made therefor.

(Ord. No. 73-17, § 3, 4-12-73; Ord. No. 96-59, § 15, 6-16-96)

**Section 10. Interest in Contracts.** No member of the Board of Trustees, and no officer, employee or agent of the Galveston Wharves shall have an interest, direct or indirect, either for the person or as agent for any other person, in any contract for work to be done for, or supplies or equipment to be furnished to, the Galveston Wharves. No trustee shall have the right to vote on any contractual matter in which the

Trustee is financially interested, directly or indirectly. The position or employment of any person violating this provision shall automatically be terminated.

(Ord. No. 91-95, § 4(17), 11-14-91; Ord. No. 96-59, § 15, 6-16-96)

**Section 11. Reports to the City.** The Board of Trustees shall file with the Council at the end of each fiscal year an annual report showing in detail the operations for the year past, including, but not being limited to, the volume of business, the gross receipts and the operating expenses. The Council shall be entitled at any time to require, and the Board of Trustees shall thereupon furnish, any information that the Council may deem proper in order to fully understand the physical and financial condition of the Galveston Wharves and the results of its operations. The reports so filed shall be retained by the City Secretary as public records, provided only that the Council may order parts of any report or other information provided to be a closed record when that may be deemed necessary to protect the competitive position of the Galveston Wharves as a port facility.

(Ord. No. 96-59, § 15, 6-16-96)

**Section 12. Employment Contracts.** No employment contract shall be made by the Board of Trustees for a term to exceed five (5) years except with the consent of the Council of the City of Galveston.

(Ord. No. 96-59, § 15, 6-16-96)

**Section 13. Compensation of Trustees.** Members of the Board of Trustees shall receive no salary or compensation as such but each member shall be entitled to a fee of Ten Dollars (\$10.00) for each meeting of the board attended. A member of the Board of Trustees shall also be entitled to the reimbursement of the Trustee's expenses, if any, incurred by the Trustee in the performance of the Trustee's duties as trustee.

(Ord. No. 91-95, § 4(18), 11-14-91; Ord. No. 96-59, § 15, 6-16-96)

**Section 14. Depository.** All monies of the Galveston Wharves shall be deposited in a depository or depositories to be selected by the Board of Trustees in accordance with the procedures prescribed by law and under this Charter for the selection of the City depository, and no monies shall be withdrawn therefrom except in accordance with the regulations therefor established by the Board of Trustees.

(Ord. No. 96-59, § 15, 6-16-96)

**Section 15. Construction of article.** The provisions of this article shall be construed as setting forth the provisions for the management, control, maintenance and operation of the Galveston Wharves and the income and revenues therefrom and shall constitute exceptions to the other provisions of this Charter in these respects.

(Ord. No. 96-59, § 15, 6-16-96)

#### ARTICLE XIII. - SUCCESSION IN GOVERNMENT

**Section 1. When Charter Takes Effect.** For the purpose of electing the members of the Council the provisions of this Charter shall be in effect for a regular City election to be held with that purpose on the second Tuesday in April, 1961. For all other purposes this Charter shall be in effect from and after the Tuesday following the second Tuesday in May of 1961, and such shall be deemed the "effective date" of this Charter as that term is used hereinafter.

(Ord. No. 96-59, § 16, 6-16-96)

**Editor's note**— Section 1a, created by Ord. No. 63-12, § 2, adopted on April 11, 1963 dealt with the effective date of the 1963 charter amendments; such section has been deleted as obsolete.

**Section 2. The First Fiscal Year.** The first full fiscal year under this Charter shall be the fiscal year beginning on the 1st day of October, 1961; but provided that after the effective date of this Charter the Council shall be empowered to make such amendments to the budget in force for the fiscal year ending on the 30th day of September, 1961, as may be required by and are consistent with the provisions of this Charter.

(Ord. No. 96-59, § 16, 6-16-96)

**Section 3. Continuance of Status of Officers and Employees.** All persons holding administrative office or employment with the City upon the effective date of this Charter shall continue in such office or employment and in the performance of their duties until appropriate provision in respect thereto has been made by the Council. Any office, department or agency provided for in or established pursuant to this Charter with powers and duties the same or substantially the same as those of an office, department or agency heretofore existing shall be deemed to be a continuation of such office, department or agency. Nothing in this Charter contained, except as specifically provided, shall effect or impair the rights and privileges of officers and employees of the City as existing on the effective date hereof, or any provision of law in force at such time which is not inconsistent with the provisions of this Charter, in relation to the appointment, rank, grade, tenure, promotion, removal, pension and retirement rights, Civil Service status, or any other rights and privileges of such officers and employees.

(Ord. No. 96-59, § 16, 6-16-96)

**Section 4. Effect of Charter on Existing Laws.** All ordinances, resolutions, rules and regulations in force in the City on the effective date of this Charter, and not in conflict with this Charter, shall remain in force until altered, amended, or repealed by the Council. All taxes, assessments, liens, incumbrances, claims and demands, of, by, or against the City, fixed or established before the effective date of this Charter, or for the fixing or establishing of which proceedings have begun at such a date, shall be valid when properly fixed or established either under the law in force at the time of the beginning of such proceedings or pursuant to the provisions hereof.

(Ord. No. 96-59, § 16, 6-16-96)

**Section 5. Contracts, Franchises and Bonds.** All authorizations for the issuance of bonds and all rights and obligations under contracts and franchises, which were lawfully made, granted, or established prior to the effective date of this Charter shall be preserved and continued thereafter in full force and effect.

(Ord. No. 96-59, § 16, 6-16-96)

#### ARTICLE XIV. - GENERAL PROVISIONS

**Section 1. Publicity of Records.** All records and accounts of every office, department or agency of the City shall be open to inspection by any citizen, any representative of a citizen's organization, or any representative of the press at all reasonable time, excepting only that records or documents the disclosure of that would tend to defeat the lawful purpose which they are intended to accomplish may be closed to inspection in accordance with State law.

(Ord. No. 96-59, § 17, 6-16-96; Ord. No. 04-028, § 2, 2-26-04)

**State Law reference**— Public records act, Vernon's Ann. Civ. St. art. 6752-17a.

**Section 2. Personal Interest in City Contracts.** (a) No member of the Council, and no Officer or Employee of the City who is concerned with the procurement of land, materials, supplies, or services for the use of the City, shall have a personal financial interest in any Contract with the City or in the Sale to the City of any land, material, supplies or services. The foregoing shall not apply where such financial interest is only through the ownership of stock in a corporation provided the holder of the stock is not active in the management of the corporation and discloses the person's interest as a stockholder before any action is taken.

(b) No member of City Council whose employer has a contract with the City shall participate in discussions or vote on any other Councilmember's employer's contract with the City. No member of City Council who is related to a person who has a contract with the City shall participate in discussions or vote on any contract in which that contract involves a person related to any other Councilmember. As used in the preceding sentence, the term "related" means a person related to a Councilmember in the second degree if related by marriage and in the third degree if related by blood.

(Ord. No. 91-95, § 4(19), 11-14-91; Ord. No. 96-59, § 17, 6-16-96; Ord. No. 12-009, § 2, 2-23-12)

**Section 3. Interest in Franchises.** No member of the Council or elected or appointed officer or employee of the City shall be directly or indirectly in the employ of any person, firm or corporation holding or seeking to hold any franchise from the City, or shall receive or accept from such person, firm or corporation any compensation, commission, fee or gift.

(Ord. No. 96-59, § 17, 6-16-96)

**Section 4. Malfeasance in Office.** Any member of the Council or elected or appointed officer or employee of the City who shall willfully violate any provision of this Charter shall be guilty of misconduct in office and shall be subject to review by the Ethics Commission. The Mayor or any member of the City Council who shall have been convicted of any felony shall immediately forfeit his or her office.

(Ord. No. 91-95, § 4(20), 11-14-91; Ord. No. 96-59, § 17, 6-16-96; Ord. No. 98-33, § 27, 6-3-98; Ord. No. 98-66, § 9, 7-30-98)

**Section 5. Oath of Office.** Every person elected or appointed to any office in the City shall, before entering upon the duties of the office, take and subscribe to the oath of office prescribed by the constitution or laws of the State of Texas.

(Ord. No. 91-95, § 4(21), 11-14-91; Ord. No. 96-59, § 17, 6-16-96)

**State Constitution reference**— Oaths, Cons. Art. 16, § 1.

**State Law reference**— Taking of oath required Vernon's Ann. Civ. St. art. 993.

**Section 6. Nepotism.** No person who is related by affinity or consanguinity (marriage or blood) as defined by State law, to a member of the Council or other elected official, or to a department head, or to the City Manager, shall be appointed to any office, clerkship or other paid position with the City, but this prohibition shall not apply to officers or employees who have been employed by the City continuously for more than

two years prior to the elections of such member of council or other elected official. No department head, or other City employee who is related by affinity or consanguinity (marriage or blood) as defined by State law, to a City employee, shall supervise that employee. "Defined by State law" shall mean the degree of affinity or consanguinity prohibited by State law for State officials.

(Ord. No. 96-59, § 17, 6-16-96; Ord. No. 98-33, § 28, 6-3-98; Ord. No. 98-66, § 10, 7-30-98)

**Section 7. Notice of Claims.** The City of Galveston shall never be liable for damages for the death or personal injuries of any person or for the damages or destruction of property of any kind, which does not constitute a taking or damaging of property under Article I, Section 17, Constitution of Texas, unless the person injured, if living, or the person's representatives, if deceased, or the owner, the person's attorney, or the person's agent of the property damaged or destroyed, shall give the City Council a notice in writing, duly verified by affidavit, of such death, injury, damage or destruction, within one hundred eighty (180) days after the same has been sustained, unless a longer notice period is otherwise provided by applicable state or federal law. The written notice shall specifically state when, where, and how the death, injury, damage or destruction occurred, the apparent extent of any such injury, the amount of damages sustained, the actual residence of the claimant by street and number at the date the claim is presented, the actual residence of such claimant for six months immediately preceding the occurrence of such death, injury, damage or destruction, and the names and addresses of all witnesses upon whom the claimant relies to establish the claim for damages. Failure to notify the city council within the time and manner specified herein shall exonerate, excuse and exempt the City of Galveston from any liability whatsoever. This provision shall not shorten the notice period provided in Section 101.101 of the Texas Civil Practice and Remedies Code, as amended, or in a successor statute, nor shall this provision govern notice of any claim brought under federal statute or require the giving of notice by a person incapable of managing his or her own affairs by reason of minority or physical or mental incapacity.

(Ord. No. 89-17, § 3(22), 1-26-89; Ord. No. 91-95, § 4(22), 11-14-91; Ord. No. 96-59, § 17, 6-16-96)

**Editor's note**— Section 7 of Article XIV of the charter was originally amended by the approval of Proposition No. 6 at a city charter amendment election held April 8, 1969. The results of the election were confirmed by Ord. No. 69-35, enacted April 17, 1969. The amendment changed the time for filing claims from 90 days to 45 days; deleted notice to the city manager; deleted provisions relating to actual notice by the city council or city manager and the waiver of notice by the city council.

**Section 8. Limitation of City's Liability.** The City of Galveston shall not be liable for damages to anyone, on account of any defect in, obstruction on, or anything else in connection with any sidewalk in the City.

(Ord. No. 96-59, § 17, 6-16-96)

**Section 9. Security or Bond Not Required.** It shall not be necessary in any action, suit, or proceeding in which the City is a party for any bond, undertaking or security to be demanded or executed by or on behalf of the City. The City shall have all remedies of appeal provided by law to all courts in this state without bond or security of any kind, but shall be liable in the same manner and to the same extent as if such bond, undertaking, or security had actually been executed or given.

(Ord. No. 96-59, § 17, 6-16-96)

**Section 10. Assignment, Execution, and Garnishment.** The property, real and personal, belonging to the City shall not be liable for sale or appropriation under any writ of execution. The funds belonging to the

City, in the hands of any person, firm, or corporation, shall not be liable to garnishment, attachment, or sequestration; nor shall the City be liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the City nor any of its officers or agents shall be required to answer any such writ of garnishment on any account whatever. The City shall not be obligated to recognize any assignment of wages or funds by its employees, agents or contractors.

(Ord. No. 96-59, § 17, 6-16-96)

**Section 11. Boards, Commissions, Committees, Corporations, and Political Subdivisions Created by the City.** Excepting where otherwise required by this Charter, laws of the State of Texas, or Articles of Incorporation or By-laws, all boards, commissions, committees, corporations, and political subdivisions created by the City ("boards") shall have the powers and duties prescribed for them by the Council, and the members of such boards shall be appointed by the Council; No citizen shall be appointed to serve as a member of any board if that person has not been a resident of and domiciled in the City for at least one (1) year immediately preceding the appointment; The residency and domicile requirements for City Council set forth in this Charter shall be applicable to board domicile requirements for City Council set forth in this Charter shall be applicable to board members; No person shall serve as a member of any advisory board who holds an elective public office unless the person is a member ex officio of such board; No person shall be reappointed to the same board if that person has served six (6) consecutive years, unless such person has been off the board for the length of the term of appointment; No member of any board, committee, or commission shall, during the time for which the member is appointed or for two (2) years thereafter, be employed by the entity on which the member serves; All meetings of boards shall be open to the public excepting only for executive sessions held to discuss personnel appointments or to discuss matters of competitive concern to the City wherein no formal action is taken; No member of any City Board, including the Park Board of Trustees, The Board of Trustees of the Galveston Wharves, and the Galveston Housing Authority, who has a contract with the member's board shall participate in discussions or vote on any other member's contract with the same board; No member of any City Board, including the Park Board of Trustees, The Board of Trustees of the Galveston Wharves, and the Galveston Housing Authority, whose employer has a contract with the member's board shall participate in discussions or vote on any other member's contract with the same board; No member of any City Board, including the Park Board of Trustees, The Board of Trustees of the Galveston Wharves, and the Galveston Housing Authority, who is related to a person who has a contract with the member's board shall participate in discussions or vote on any other member's contract with the same board. As used in the preceding sentence "related to a person" means a person related to a member in the second degree if related by marriage and in the third degree if related by blood.

(Ord. No. 91-95, § 4(23), 11-14-91; Ord. No. 96-59, § 17, 6-16-96; Ord. No. 98-33, § 29, 6-3-98; Ord. No. 98-66, § 11, 7-30-98; Ord. No. 02-033, § 8, 5-4-02; Ord. No. 12-009, § 2, 2-23-12)

**Editor's note**— Ord. No. 12-009, § 2, adopted February 23, 2012, changed the title of section 11 from "Administrative and Advisory Boards" to "Boards, Commissions, Committees, Corporations, and Political Subdivisions Created by the City." The historical notation has been preserved for reference purposes.

**State Law reference**— Open meeting act. Vernon's Ann. Civ. Stat. art. 6252-17.

**Section 12. Publications.** The Council shall have power to designate by ordinance a newspaper of general circulation in the City as the official newspaper. The City shall cause to be published all ordinances, notices and other matters which are required by this Charter, the ordinance of the City, or the constitution or laws of the State of Texas, to be officially published in the manner prescribed by law.

(Ord. No. 96-59, § 17, 6-16-96; Ord. No. 16-035, § 8, 5-17-16)

**Editor's note**— Ord. No. 16-035, § 8, adopted May 17, 2016, amended § 12, to read as set out herein. Previously § 12 was titled " Official Newspaper."

**Section 13. Storm Protection.** For the protection of persons and property against high winds and water the Council shall be empowered to enact ordinances:

- (1) Determining the elevations and grades for properties in the different areas of the City, and requiring the establishment and maintenance thereof;
- (2) Prohibiting the erection or removal of structures outside of the seawall without a special permit first obtained from the City;
- (3) Regulating the construction of buildings and all other types of improvements.

(Ord. No. 96-59, § 17, 6-16-96)

**Section 14. Limitation on Charges for Use of the Sewer System.** The Council shall be empowered to fix and collect reasonable charges for the use of the public sewer system of the City and to use or pledge the revenue therefrom for the operation, maintenance and improvement of the sewer system, including the payment of the principal and interest of bonds issued for the purpose of providing facilities for the collection and disposal of sewage, but no charges for use of the public sewer system shall be made or collected for any other purpose.

(Ord. No. 96-59, § 17, 6-16-96)

**Section 15. Official Bonds.** The Tax Collector, the Director of Finance, and such other officers or employees as the Council may by general ordinance require so to do, shall give bond in such amount and with such surety as may be approved by the Council. The premiums on such bonds shall be paid by the City.

(Ord. No. 96-59, § 17, 6-16-96)

**Section 16. Sale of Property.** No City property shall be sold or otherwise disposed of without the prior approval of the Council. The Council may by ordinance give authority to the City Manager for the routine sale or other disposition of personal property without further action by the Council where the value of the property does not exceed One Thousand Dollars (\$1,000.00) and provided that the sale or disposition is reported to the next meeting of the Council.

(Ord. No. 89-17, § 3(23), 1-26-89; Ord. No. 96-59, § 17, 6-16-96)

**Section 17. Judicial Notice.** 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 thereof shall be taken in all Courts and places without further proof.

(Ord. No. 96-59, § 17, 6-16-96)

**Section 18. Rearrangement and Renumbering of Charter Provisions.** To preserve the unity and arrangement of this Charter the Council shall have the power, by Ordinance, to rearrange and renumber all Articles, Sections, and Subparagraphs of this Charter and any Amendments thereto, as may be appropriate; upon the passage of any such Ordinance a copy thereof Certified by the City Secretary shall be forwarded to the Secretary of State for filing.

(Ord. No. 96-59, § 17, 6-16-96)

**Section 19. Separability Clause.** If any Section or part of a Section of this Charter is held to be invalid or unconstitutional by a Court of competent jurisdiction, the same shall not invalidate or impair the validity, force, or effect of any other Section or part of a Section of this Charter.

(Ord. No. 96-59, § 17, 6-16-96)

**Section 20. Neutral Gender References.** All references to persons in this Charter shall be neutral as to gender. Prior to the next printing of this Charter after January 21, 1989, the City Attorney shall change to a neutral form all gender references not previously changed. All future amendments referring to persons shall be made neutral at the time of enactment.

(Ord. No. 89-17, § 3(24), 1-26-89; Ord. No. 96-59, § 17, 6-16-96)

**Section 21. Ethics Commission.** Recognizing that public office is a public trust and that all public officials, city employees, and members of committees, commissions or boards should act in a manner that does not conflict with proper public interest, City Council shall adopt a "Code of Ethics" and appoint an Ethics Commission. The Ethics Commission shall be comprised of seven residents, appointed by City Council in accordance with the "Code of Ethics." The Ethics Commission shall monitor and enforce the "Code of Ethics," which shall apply to all elected and appointed officials, members of committees, commissions, or boards, whether such officials or members are paid or unpaid, and to all city employees. The Ethics Commission shall investigate any alleged violation of The City Charter.

(Ord. No. 96-59, § 17, 6-16-96; Ord. No. 98-33, § 30, 6-3-98)

**Section 22. Transfers from Enterprise Fund to General Fund.** Any transfer, loan, advance or other allocation of enterprise fund revenue or fund balance to the general fund during the fiscal year in excess of seven (7) per-cent of the actual fiscal year revenue of such enterprise fund shall operate to require a corresponding reduction in the ad valorem tax rate in an amount necessary to offset the transfer, loan, advance or other allocation credited to the general fund when such ad valorem rate is adopted for the next fiscal year.

(Ord. No. 04-028, § 2, 2-26-04)

**Section 23. Transfers from Enterprise Fund to Enterprise Fund.** The portion of any transfer, loan, advance or other allocation of the revenue or fund balance of one or more enterprise funds (including to, from or within any combined enterprise funds) made to another enterprise fund (hereinafter termed the borrowing enterprise fund) that remains on the accounts of the City for a period in excess of twelve (12) months, shall be deemed and become an obligation of the general fund, and shall be offset by a corresponding reduction in the ad valorem tax rate in an amount necessary to offset the transfer, loan, advance or other allocation credited to the borrowing enterprise fund, when such rate is adopted for the next fiscal year commencing after the expiration of the twelve month period, unless during the next fiscal year commencing after the expiration of the twelve month period, the general fund makes a transfer to clear such account.

(Ord. No. 04-028, § 2, 2-26-04)

January 28, 1960.

To the Mayor-President and Board of Commissioners,  
City of Galveston, Texas.

Sirs:

In the election held on the 12th day of May, 1959, the voters of the City of Galveston voted affirmatively on the question "Shall a Commission be Chosen to Frame a New Charter." Members of the Charter Commission elected at that time, and who thereafter qualified by taking the oath of office, were:

Edward Schreiber, Theodore B. Stubbs, H. E. Kleinecke, Jr., Mrs. Harris L. Kempner, Mrs. A. R. Schwartz, Leroy E. Brown, Jean Edmond Hosey, Dr. Edgar F. Jones, Jr., Dr. Sidney R. Kay, Maco Stewart, Richard Thornton, Mrs. Lewis Harris, Dr. Oscar T. Kirksey, Edward W. Watson, Robert Rourke, Al West, Robert H. Albright, Irving David Clark, Raymond G. Reesby, and A. W. McDonald.

After organizing, this Charter Commission adopted by-laws and elected the following permanent officers:

Chairman:	Edward	Schreiber.
Vice Chairman:	Theodore B.	Stubbs.
Secretary:	Mrs. Lewis Harris.	

Meeting[s] were thereafter held from time to time, all meeting[s] being open to the public. After full consideration of the many problems and of the ends sought to be accomplished, the Charter Commission has prepared and given its final approval to a new Charter, a copy of which is hereto attached, for submission to the qualified voters of this City in an election to be held for that purpose.

Pursuant to the obligations imposed on this Charter Commission by law it has determined, and hereby certifies:

1. That the annexed Charter is a true and correct copy of the Charter prepared by this Charter Commission.
2. That in the submission of this Charter to the voters it would be impracticable to segregate each subject for a separate vote thereon, for the reason that the Charter is so constructed that in order to enable it to work and function it is necessary that it should be adopted in its entirety. Therefore, it is to be submitted so as to be voted on as a whole.
3. That the election for this purpose is to be held in the City of Galveston on the 19th day of April, 1960.
4. That the Charter Commission completed its work on the 25th day of January, 1960, which is within 90 days of the date set for such election.

The members of the Charter Commission have also voted to express their appreciation for the cooperation which was given them at all times by officials of the City in the accomplishment of their work.

Respectfully submitted,

(s) *Edward Schreiber.*

Edward Chairman, Charter City of Galveston.	Commission	of	Schreiber, the
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Attested:

(s) *Mrs. Lewis Harris,*

Mrs. Secretary.	Lewis	Harris,
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**Appendix A**

On May 2, 1998, the voters of the City of Galveston, Texas, approved Proposition No. 10, Proposition No. 11, and Proposition No. 12. The ballot language for Proposition 10 read as follows:

"Shall the voting districts of the City Council be changed from six to four, and shall one member of Council be elected from each of the four districts, and shall the Mayor and two members of Council be elected at large, and shall qualified voters be entitled to vote for one candidate who runs in the district in which the voter lives, and for one candidate who runs in the at-large position A, and for one candidate who runs in the at-large position B, and for one candidate for Mayor? (Art. III, sec. 2)."

The ballot language for Proposition 11 read as follows: "Shall the voting district lines be drawn north to south and shall the population of each district be as equal as possible? (Art. III, sec. 2(a))."

The ballot language for Proposition 12 read as follows: "Shall the candidate for Mayor and the candidates for each Council position who receive fifty percent of the votes plus one vote be declared elected? (Art. III, sec. 2(c))"

Upon the voters approving Proposition Numbers 10, 11, and 12, the City Council of the City of Galveston, Texas, adopted Ordinance No. 98-33 on May 14, 1998, and Ordinance No. 98-66 on July 23, 1998, amending The City Charter to reflect the voters approval of the Propositions. Pursuant to the voter's adoption of Proposition Numbers 10, 11, and 12, Article III, section 2, "Election of Mayor and Councilmembers" was amended to read and provide as follows:

"Section 2. Election of Mayor and Councilmembers. The City shall be divided into four (4) districts. The Mayor shall be elected at large. One member of Council shall be elected from each of the four (4) districts. Two (2) members of Council shall be elected at-large from two (2) at-large positions, position "A" and position "B." The mayor and all members of Council shall be elected at a regular City election, to be held for such purpose on the first Saturday in May in every even-numbered year.

(a) It shall be the duty of the City Council to establish the boundaries of districts covering the entire City for the purpose of electing District Councilmembers. Such boundaries shall be established by Ordinance, which shall be final for the purposes of this Charter. The boundary lines of each district shall be drawn from North to South, and shall follow an existing City street even if the street does not run the entire width of the City from North to South, and the population of each district shall be as equal as possible with only minor variations depending upon the streets selected for district boundaries. Any subsequent establishment shall be made when required by this Charter. Except as changed hereby, all other provisions of the City Charter relating to elections of the members of the City Council shall remain unchanged.

(b) Promptly following the addition of territory to the City by a boundary change, the City Council shall, by Ordinance, add such territory to an adjacent district or districts. The Mayor shall be elected at large and four (4) Councilmembers shall be elected from districts, and two (2) councilmembers shall be elected from two at-large positions. The districts from which Councilmembers shall be elected shall be designated by City Council as Districts 1, 2, 3, and 4, according to the boundaries of these districts, as established by Ordinance, in accordance with this Section. The at-large Council positions shall be designated by City Council as Position A and Position B. At each election, candidates shall be voted upon and be elected separately from each Councilmember district, and from the two at-large positions.

(c) Any qualified person who desires to become a candidate for the office of Mayor or Councilmember shall file with the City Secretary, no earlier than seventy-five (75) days nor less than forty-five (45) days prior to the election, a signed application for the candidate's name to appear on the ballot, specifying the office and position for which the candidate is filing. The order of the ballot of the names of the candidates for each office shall be determined by lot in a drawing to be held under the supervision of the City Secretary. Every qualified voter shall be entitled to vote for Mayor and for one (1) candidate for Councilmember who runs for the district in which the voter lives, and for one candidate who runs for at-large position "A," and for one candidate who runs for at-large position "B." The City Council shall be the judge of the election and qualifications of Councilmembers, subject to review by the courts in case of contest. Each district Councilmember shall be elected by the qualified voters of each respective district. Each at-large Councilmember shall be elected by the qualified voters of the City.

The candidate for Mayor and the candidate for each Councilmember district and for each Councilmember at-large who shall receive fifty (50) percent of the votes plus one (1) vote shall be declared elected. A candidate for Mayor shall not be a candidate for Councilmember at the same election and a person may not be a candidate for more than one (1) Councilmember position or district at the same election.

(d) All candidates elected at the regular City election shall, upon being sworn, take office on the first Thursday following the election."

Although the election changes complied with State law, on December 14, 1998, the United States Department of Justice issued an "Objection Letter" stating that it objected to Proposition Numbers 10, 11, and 12. As a matter of Federal law, the language existing prior to the election held on May 2, 1998, remains in effect until the Department of Justice withdraws its objections or the United States District Court for the District of Columbia issues a declaratory judgment that the changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Because of the upcoming year 2000 censuses, the City Council of the City of Galveston, Texas, deems it not to be in the public interest to challenge the "Objection Letter" at this time. Therefore, the City of Galveston, Texas, cannot implement the election changes and the language amending **The City Charter** to reflect those election changes is legally unenforceable. Consequently, the language amending **The City Charter** to reflect those election changes must be removed and replaced with the language existing prior to the May 2, 1998 election. A copy of the December 14, 1998, "Objection Letter" submitted by the Department of Justice is included in, and is to be considered part of, this Appendix A."

Civil Rights Division

*Office of the Assistant Attorney General*

*Washington, D.C. 20035*

December 14, 1998

Barbara	E.	Roberts,	Esq.
City			Attorney
P.O.	Box		779
Galveston, Texas 77553-0779			

Dear Ms. Roberts:

This refers to amendments to the city charter that provide for a change in the method of election for the city council from six single-member districts to four single-member districts and two at large with numbered posts, a change from a plurality to a majority vote requirement, redistricting criteria and revised recall procedures for the City of Galveston in Galveston County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our August 17, 1998, request for additional information on October 15, 1998.

The Attorney General does not interpose any objection to the specified recall procedures. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining specified changes, we cannot come to the same conclusion. We have carefully considered the information you provided, as well as Census data, and information in our files and from other interested parties. According to 1990 Census data, the city's total population is 28 percent black and 21 percent Hispanic. Under the existing system, six councilmembers are elected from single-member districts and the mayor is elected at large. Two of the single-member districts have black population majorities and have elected black representatives to the city council. This method of election and districting plan were adopted in settlement of a vote dilution lawsuit filed by minority residents against the city in

Arceneaux v. City of Galveston, No. G-90-221 (S.D. Tex.), and received preclearance under Section 5 for use on an interim basis on April 29, 1993, and for use on a permanent basis on January 27, 1994.

Prior to the adoption of a single-member district method of election, the city sought preclearance for a method of election similar to the plan currently under review. It provided for the election of four councilmembers from single-member districts, two councilmembers elected at large by numbered position and the mayor elected at large with a plurality vote requirement. This 4-2-1 method of election was proposed as a replacement for the at-large method of election that was the subject of the vote dilution lawsuit. On December 14, 1992, the Attorney General precleared the use of a plurality vote requirement, but interposed an objection under Section 5 to the proposed 4-2-1 method of election and to the use of numbered posts for the at-large seats because the city had not met its burden under Section 5 of demonstrating the absence of a discriminatory purpose and effect. Our conclusion in this regard was premised upon a number of factors.

First, our analysis of the at-large system indicated that voting in municipal elections was racially polarized and that minority-supported candidates had very limited success under the at-large system. Second, the districting plan that accompanied the 4-2-1 method of election did not include a single district in which black or Hispanic voters constituted a majority of the population; instead, the plan included two districts in which black and Hispanic voters combined constituted a majority. The city failed, however, to provide evidence of cohesion between black and Hispanic voters in municipal elections, rendering it doubtful that either minority group under this plan would elect a candidate of choice to a council seat. Third, the city maintained its preference for the 4-2-1 plan over the opposition of the minority community and the Arceneaux plaintiffs, who favored the adoption of a six single-member district plan with two districts in which black voters would constitute a majority of the population. Fourth, the city chose to maintain two at-large positions on the city council, in addition to the mayoral seat, and to add numbered posts. Given the existence of racially polarized voting in municipal elections, we concluded that these features of the proposed electoral system would limit the ability of minority voters to elect their candidates of choice to the city council. Finally, given all of the circumstances described above, we determined that the city had not provided legitimate, nonracial justifications for its choices regarding the 4-2-1 method of election and its adoption of numbered posts. It is against this backdrop that we must view the city's current request for preclearance of the 4-2-1 plan, with numbered posts, as well as the proposed return to the use of a majority vote requirement.

In light of the Attorney General's prior objection to virtually identical voting changes, and the requirement of Section 5 that the submitting authority carries the burden of demonstrating that proposed voting changes are free of discriminatory purpose and effect—see 28 C.F.R. 51.52(a)—we have examined the information provided to determine whether new factual or legal circumstances exist which would lead to the conclusion that voting changes that did not satisfy the nondiscrimination requirement of section 5 in 1992 will satisfy the same requirement under Section 5 today. Central to our consideration of this issue is the presence today in the City of Galveston of a method of election which fairly reflects minority voting strength, a circumstance which did not exist when the 1992 objection was interposed.

Our examination of city election returns since 1991 indicates that racial bloc voting continues to play a significant role in city elections. This year's mayoral election in which the Hispanic candidate was successful appears to have been an instance where Hispanic and black voters did vote together, along with a number of Anglo crossover voters. However, this cohesion between minority voters appears to have been a departure from the norm, as evidenced by the results in other recent elections. Of particular note is the fact that the proposed majority vote requirement, had it been in effect in this year's election, could well have changed the outcome of the mayoral race since the majority of the votes cast were for candidates favored by the Anglo voting majority. We find it significant that the city has provided no information or analysis in support of the proposed changes regarding racial bloc voting or cohesiveness between black or Hispanic voters, factors which were critical in our 1992 examination of the 4-2-1 method of election and which are no less important today.

While the city council has not yet adopted a redistricting plan for the proposed method of election, we understand that three alternative plans were developed by an appointed redistricting committee and they are currently before the council. We understand that all three plans are based on 1990 Census data and that this data continues to be the most accurate available information on the city's demographics. As was

the case in 1992, we are informed that none of these plans provide for a single-member district in which Hispanic persons constitute a majority of the population or more than one district in which black persons constitute a majority. If this information is correct, it would appear to confirm that the proposed method of election, under current circumstances, cannot produce an electoral system that recognizes minority voting strength as fairly as does the current system. Therefore, the proposed 4-2-1 method of election with numbered posts for the two at-large seats and a majority vote requirement would lead to a retrogression in minority voting strength prohibited by Section 5. See *Beer v. United States*, 425 U.S. 130, 141 (1976) ("the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise"); 28 C.F.R. 51.54.

We have considered the impact of the proposed redistricting criteria on the city's ability in the future to draw districts that fairly recognize minority voting strength. Our analysis has been hampered by the lack of information from the city regarding these criteria and how they are to be interpreted and applied. For reasons that the city does not explain, these criteria place what appear to be significant restrictions on the ability of the city to draw racially fair redistricting plans. The criteria specify that city districts be drawn from north to south and that districts "be as equal as possible with only minor variations depending upon the streets selected for district boundaries." The latter criterion appears to be significantly more exacting than the plus or minus 10 percent deviation standard approved by the federal courts for local jurisdictions to satisfy the one person, one vote requirement of the Constitution. If we understand these criteria correctly, had they been in effect in 1993 they would not have permitted the existing districts to be drawn, and their future application could hamper the ability of the city to draw nonretrogressive redistricting plans in compliance with Section 5.

Although city officials and members of the charter review committee established in 1997 presumably were aware of the prior history of litigation under the Voting Rights Act and the Attorney General's 1992 objection, the information provided by the city in support of its application for preclearance of the instant changes contains remarkably little acknowledgement of these past events or their relevance to our review under Section 5 of the city's preclearance request. For example, the city council, which appointed the charter review committee, apparently provided little direction to the committee regarding factors that should be considered in proposing changes that would affect voting, such as whether its proposals complied with Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and satisfied the nonretrogression standard of Section 5. In response to a specific inquiry on this subject, you informed us simply that "the Charter Review Committee did not discuss in depth the Attorney General's 1992 objection." These facts, viewed in light of the position adopted by the council before the committee began its work that it would put before the voters any proposed charter change approved by a majority of the committee, support an inference that the council gave very little independent consideration to the serious voting rights issues implicated by the charter committee's work and the potential impact of its efforts on the political participation opportunities of minority voters.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election to four single-member districts and two at-large seats, the adoption of numbered posts for the at-large seats, the adoption of a majority vote requirement for the election of city officers, and the proposed redistricting criteria.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgement from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Galveston plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

Bill  
Acting  
Attorney  
Civil Rights Division

Lann

Lee  
Assistant  
General

U.S.  
Civil Rights Division

Department

of

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Office  
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Dear Mr. Heath:

This refers to your request that the Attorney General reconsider and withdraw the December 14, 1998, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to charter amendments that provide for a change in the method of election for the city council from six single-member districts to four single-member districts and two elected at large with numbered posts, a change from a plurality to a majority vote requirement, and redistricting criteria for the City of Galveston in Galveston County, Texas. We received your request on December 5, 2001.

Your letter also requests that if the Attorney General withdraws the objection to the above charter changes, the Attorney General should then proceed with his analysis of the city's proposed 2001 redistricting plan (identified in your letter as Plan Z) which the city proposes to use in connection with the four single-member, two at large framework.

Your letter acknowledges that if the Attorney General declines to withdraw the December 14, 1998, objection, Redistricting Plan Z will be moot. Accordingly, the city has also presented for Section 5 review a 2001 redistricting plan (Plan C) for use under the six single-member district method of election.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files and comments received from other interested persons. Based on this review we have concluded that the charter amendment requiring a majority vote for the election of the mayor and city council would not have a retrogressive effect on the ability of minority voters to elect candidates of their choice.

Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5, the objection interposed to the majority vote requirement for the election of the mayor and members of the city council is hereby withdrawn. However, we note that failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See 28 C.F.R. 51.41.

We cannot reach a similar conclusion with regard to your request for reconsideration of the remaining changes.

The city's prior history with regard to the enforcement of the Voting Rights Act is generally set out in our December 14, 1998, objection letter and need not be repeated in depth here. The record shows that it was not until the replacement in 1993 of the at-large election system by the court ordered single-member district system that African-American voters achieved a significant level of representation on the city council reflective of their voting strength in the city which continues to this day.

While our procedural guideline states that a submitting authority may request reconsideration of an objection "at any time," it recommends that such requests "should contain relevant information or legal argument." Procedures for the Administration of Section 5 (28 C.F.R. 51.45).

In support of your request for reconsideration, your letter notes the following changed circumstances since the 1998 objection, which you request that the Attorney General consider: (1) the availability of more current demographic data as a result of the release of the 2001 Census; and (2) the occurrence of a city election in which the incumbent Hispanic mayor was reelected.

We certainly agree that the most recent census data is critically important in evaluating the current impact of proposed voting changes, and of redistricting plans in particular. Our review of the census data has confirmed the accuracy of your statistics for the existing plan and the alternative plans you have presented. We also note your statement that the 2001 Census revealed that in the ten years since the 1990 Census, Hispanics supplanted African-Americans as the predominant minority group in the city. However, your letter does not explain the significance of this demographic shift with regard to the essential question in the Section 5 analysis: Do the proposed changes reflect a purpose to retrogress minority voting strength, and do they result in retrogression?

Similarly, the results of the 2000 city election, while certainly relevant to our analysis, would be significant if they indicated that racial bloc voting was no longer an operative factor in city elections. However, Mayor Quiroga's reelection, when considered together with our previous analyses of racial bloc voting in the city (referred to in our December 14, 1998, objection letter) fails to persuade us that voting in the City of Galveston is no longer racially polarized.

In light of these considerations, I remain unable to conclude that the City of Galveston has carried its burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52.

Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the charter amendments that provide for a change in the method of election for the city council from six single-member districts to four single-member districts and two elected at large with numbered posts and the redistricting criteria.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed changes continue to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Your request that the Attorney General review for preclearance the city's proposed six single-member districting plan if he declines to withdraw the objection to the charter changes will be addressed in a separate letter.

Sincerely,

/s/ Ralph F. Boyd, Jr.

Assistant  
Civil Rights Division

Attorney

General

CHARTER COMPARATIVE TABLE

The original charter, Articles I through XIV, is set out as adopted on January 28, 1960. The following table shows the disposition of amendments thereto.

Ordinance Number	Date	Section	Disposition
63-13	4-11-63	2	Art. II, §§ 1, 7 Art. III, § 2
73-17	4-12-73	3	Art. VII, § 9
75-17	4-12-73	3	Art. IV, §§ 9, 10
75-18	4-10-75	3	Art. III, §§ 2, 4, Art. VII, § 2
77-4	1-17-77	3	Art. VII, § 4
77-25	4- 4-77	3	Art. II, §§ 1—3, 7, 10, 16 Art. III, §§ 2, 4, Art. IV, § 10 Art. V, § 1
87-5	1-22-87	1	Art. III, §§ 5, 6
87-47	9- 3-87	1	Art. III, § 2
89-17	1-26-89	3(1)	Art. II, § 11
		(2)	Art. IV, § 2
		(3)	Art. IV, § 3
		(4)	Art. IV, § 5
		(5)	Art. IV, § 7

		(6)	Art. IV, § 11
		(7)	Art. V, § 1
		(8)	Art. VII, § 6
		(9)	Art. VII, §§ 7, 8
		(10)	Art. VII, § 15(a)
		(11)	Art. VII, § 17(2), (3), (6)
		(12)	Art. VIII, § 1
		(13)	Art. VIII, § 2(4)
		(14)	Art. VIII, § 2(b)
		(15)	Art. VIII, § 3
		(16) Rpld	Art. VIII, § 4
		(17) Rnbd	Art. VIII, § 5
		as	Art. VIII, § 4
		(18) Rnbd	Art. VIII, § 6
		as	Art. VIII, § 5
		(19) Rpld	Art. VIII, § 7
		(20)	Art. IX, § 3
		(21)	Art. XII, § 8
		(22)	Art. XIV, § 7

		(23)	Art. XIV, § 16
		(24) Added	Art. XIV, § 20
91-95	11-14-91	3(1)	Preamble
		3(2)	Art. II, § 1
		3(3)	Art. II, § 2
		3(4)	Art. II, § 7
		3(5)	Art. II, § 16
		3(6)	Art. III, § 2
		3(7)	Art. II, § 13
		3(8)	Art. IV, § 5
		3(9)	Art. VI, § 2
		3(10)	Art. VI, § 3
		3(11)	Art. II, § 10
		4(1)	Art. II, § 6
		4(2)	Art. II, § 7(b)–(e)
		4(3)	Art. II, § 12
		4(4)	Art. II, § 15
		4(5)	Art. III, § 4
		4(6)	Art. IV, § 8
		4(7)	Art. V, § 1

		4(8)	Art. V, § 2
		4(9)	Art. V, § 6
		4(10)	Art. VII, § 2
		4(11)	Art. VII, § 3
		4(12)	Art. VII, § 13
		4(13)	Art. VIII, § 1
		4(14)	Art. IX, § 3(e)
		4(15)	Art. X, § 4
		4(16)	Art. XII, § 3
		4(17)	Art. XII, § 10
		4(18)	Art. XII, § 13
		4(19)	Art. XIV, § 2
		4(20)	Art. XIV, § 4
		4(21)	Art. XIV, § 5
		4(22)	Art. XIV, § 7
		4(23)	Art. XIV, § 11
91-105	12-12-91	2	Art. III, § 2(note)
93-108	11-11-93	3	Art. III, § 2
96-59	6-16-96	4—17	Arts. I—XIV
98-33	6- 3-98	4	Art. II, § 2

		5	Art. II, § 4
		6, 7	Art. II, § 7(a), (e)
		8	Art. II, § 9
		9	Art. II, § 11
		10	Art. III, § 2
		11	Art. III, § 6
		12	Art. IV, § 2
		13	Art. IV, § 4
		14	Art. IV, § 6
		15	Art. V, § 1
		16	Art. V, § 6
		17	Art. VI, § 2
		18	Art. VII, § 3
		19	Art. VII, § 7
		20	Art. VII, § 10
		21	Art. VII, § 15a
		22, 23	Art. VII, § 17(2), (3)
		24	Art. VII, § 18
		25	Art. VIII, § 2
		26	Art. VIII, § 2(a)

		27	Art. XIV, § 4
		28	Art. XIV, § 6
		29	Art. XIV, § 11
		30	Art. XIV, § 21
98-66	7-30-98	2	Art. II, § 2
		3	Art. II, § 4
		4	Art. II, § 11
		5	Art. III, § 2
		6	Art. VII, § 7
		7	Art. VIII, § 2
		8	Art. VIII, § 2(a)
		9	Art. XIV, § 4
		10	Art. XIV, § 6
		11	Art. XIV, § 11
99-09	1-28-99	2	Art. III, § 2 Appendix A
02-033	5- 4-02	1	Art. III, § 2(c)
		2	Art. VII, § 10
		3	Art. VII, § 15a
		4	Art. VII, § 17(3)

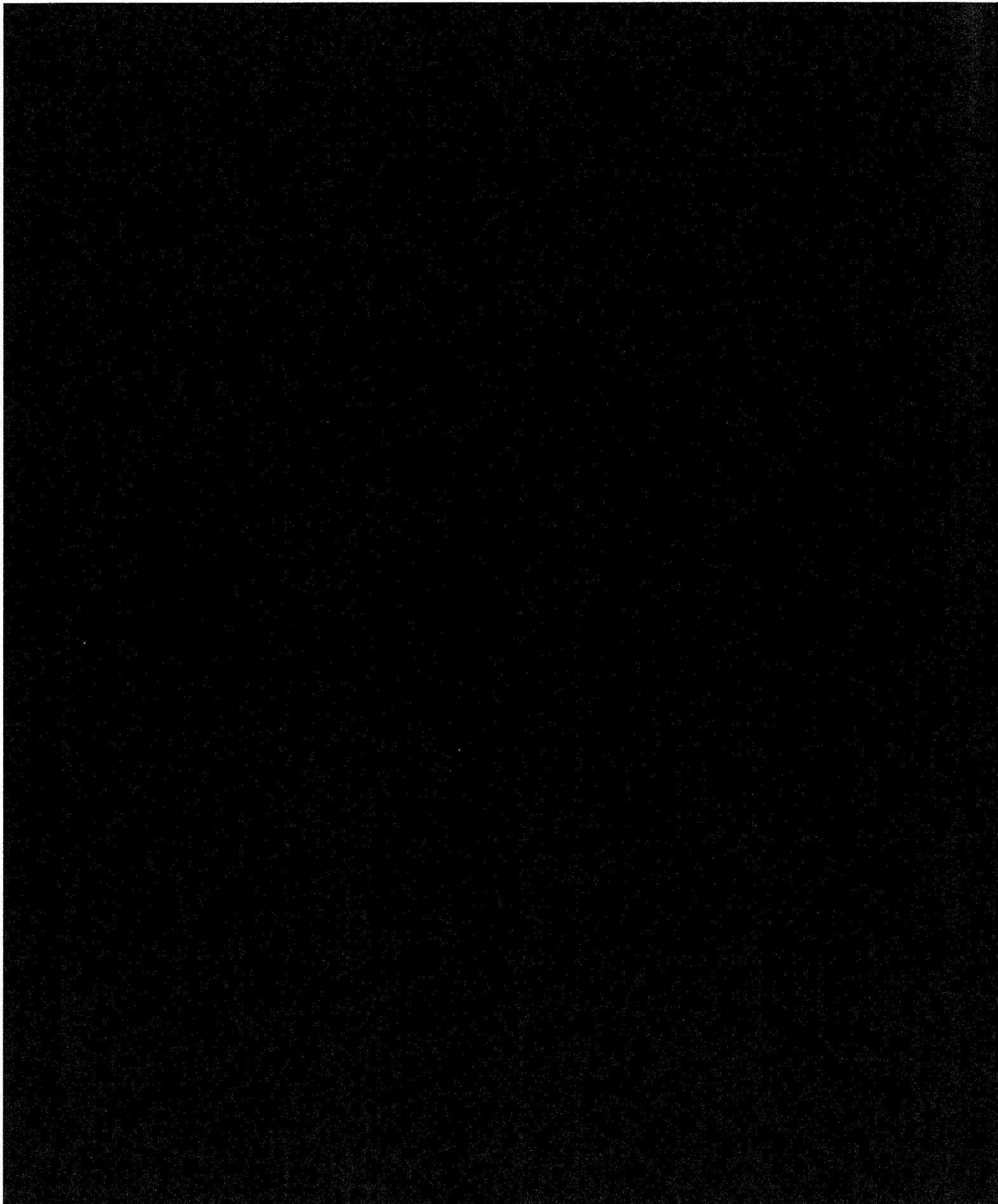
		6	Art. VIII, § 2(b)
		7	Art. X, § 1
		8	Art. XIV, § 11
04-028	2-26-04	2	Art. III, § 2(c)
			Art. VII, §§ 10–12
			Art. VII, § 19
		Rpld	Art. X, §§ 2(4), 2(6)
			Art. XIV, § 1
		Added	Art. XIV, §§ 22, 23
04-035	5-26-04	2 Added	Art. III, § 7
12-009	2-23-12	2	Art. II, § 2
			Art. II, §§ 15, 16
		Added	Art. II, § 17
			Art. III, § 2
			Art. III, § 4
			Art. VII, § 17
			Art. VII, § 19
		Added	Art. VII, § 20
			Art. IX, § 3
			Art. XIV, § 2

			Art. XIV, § 11
<u>16-035</u>	5-17-16	8	Art. II, §§ 2,
			4,
			7(b),
		Rpld	Art. II, § 9
			Art. II, §§ 13,
			15—17
			Art. V, § 1
		Added	Art. V, § 1a
			Art. V, §§ 7, 8
		Rpld	Art. VII, § 3
			Art. VII, §§ 8,
			10,
			15a,
			16
			Art. XIV, § 12

# HOW CITIES WORK



  
**TML**  
**T E X A S**  
**MUNICIPAL LEAGUE**





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# TEXAS CITIES LEAD THE WAY

By **Bennett Sandlin**, TML Executive Director



As you read this publication of *How Cities Work*, the 85<sup>th</sup> Texas Legislature has convened and is hard at work. The 2017 regular session will not end until Monday, May 29, 2017. Between now and then, lawmakers will consider thousands of bills. Unfortunately, many of those bills would, if enacted, erode municipal authority or otherwise limit the ability of Texas cities to carry out the important functions and provide the vital services expected by municipal residents.

Cities, the government closest to the people, embody the idea that “We the people” should be in control. Cities provide the services that we cannot do without. Those services reflect the will of the local taxpayers. They are not the kind of services people think of when they say they want less government. City services are the nuts and bolts of our society.

Starting with Texas' independence in 1845, the legislature began creating cities to do its local work. The Texas

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Municipal League now represents more than 1,150 cities of every size, shape, and service level. The locally-elected city councils in those cities decide how to provide appropriate services based on the wants of their citizens.

Texas cities provide police and fire protection, the roads we drive on, local business development, the utilities we need to survive and prosper, the protection of property values through thoughtful rules that benefit everyone, and much more. It costs money to provide these services, but keeping taxes low while meeting citizens' demand for services is a core value of city officials.

Cities don't typically seek funding from the state, and they receive virtually nothing from the state. What cities need in lieu of state funding is to be treated as partners in keeping Texas great. City officials want to continue providing local services in the way they were elected to do.

*How Cities Work* is a tool to help city officials explain how Texas cities are powerful engines of economic growth, as well as safe and pleasant places for people to grow up, raise families, and retire.

In this publication, we highlight:

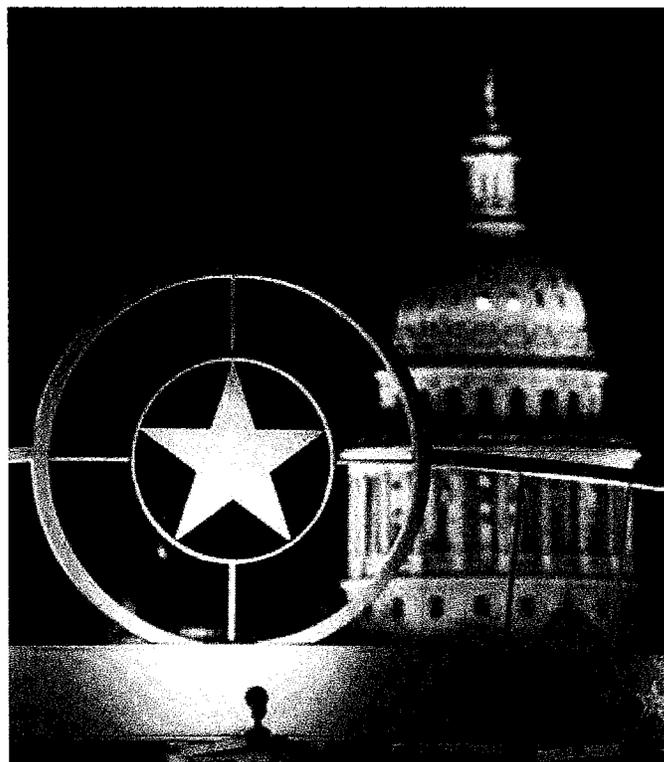
- The sources of municipal revenue and the ways in which the legislature can damage that revenue.
- The value of building codes.
- Municipal economic development efforts and the ways in which property tax caps threaten those efforts.
- The status of municipal solid waste programs.
- Municipal transportation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

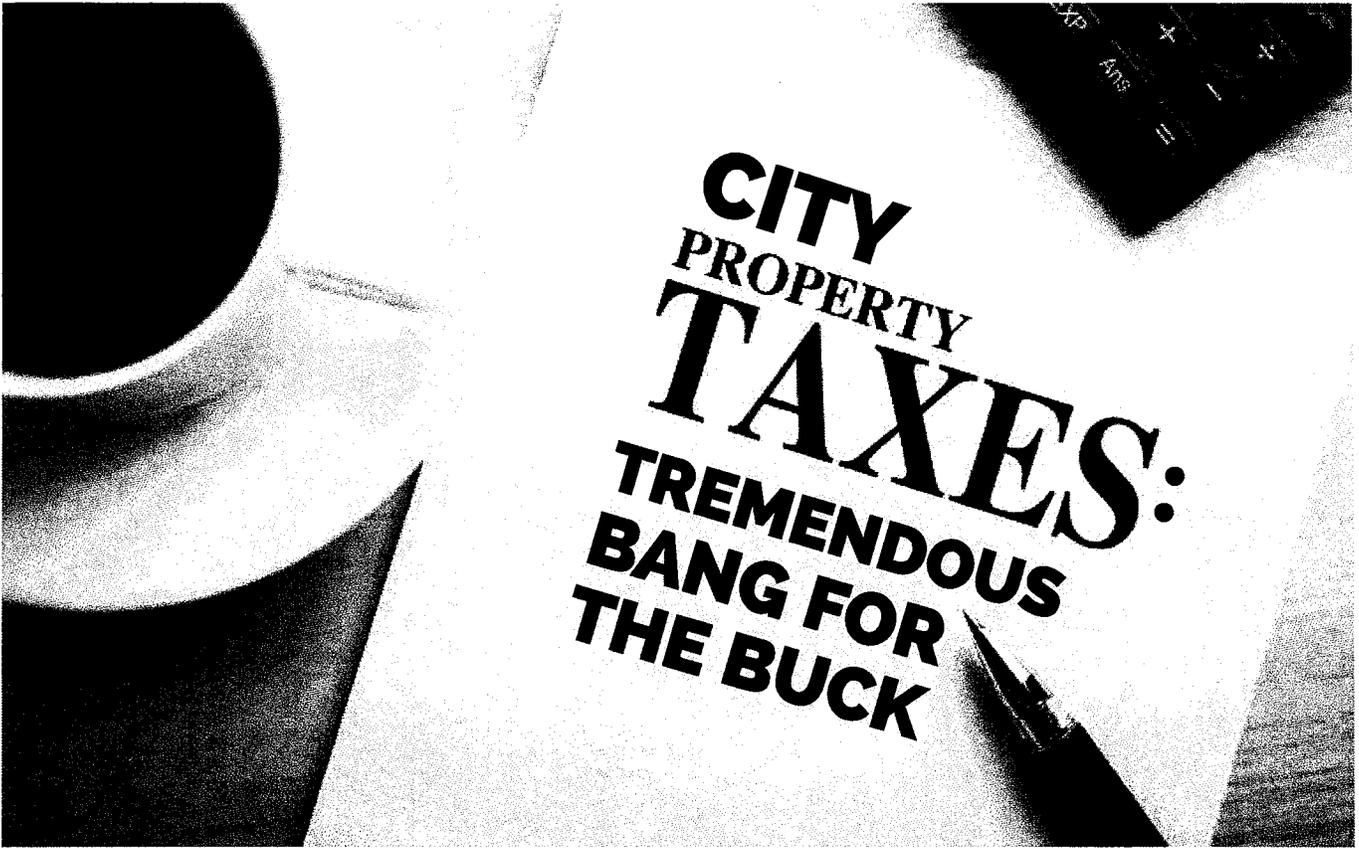
- The ways in which zoning authority protects citizens and their property values.
- The importance of libraries and library funding.
- The value of municipal parks and recreation programs.

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

We look forward to working with all of you in these important months ahead as we advocate for municipal government in Texas. If you have any questions, please feel free to contact a member of the TML legislative department.

Thank you, in advance, for your support and assistance. ★



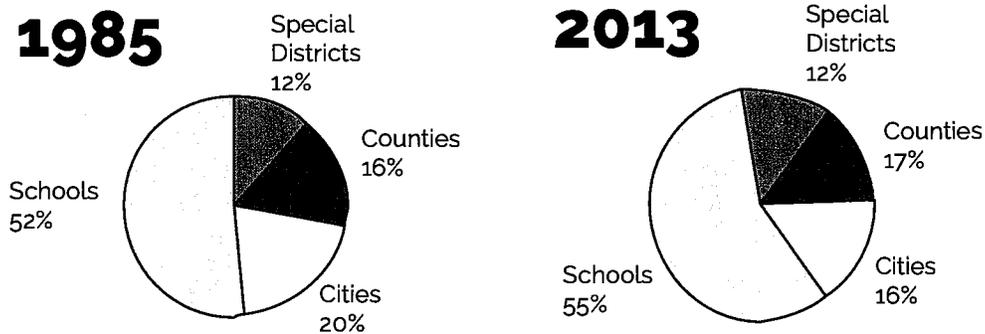


Texas cities depend heavily on property tax revenue. Property taxes help fund many of the services that residents demand including police, fire, streets, and parks. But as Chart 1 shows, city property taxes constitute a small portion of a typical homeowner's property tax bill.

## Chart 1

### Distribution of Property Tax Collections

Source: Texas Comptroller's Biennial Property Tax Report



How do Texas cities provide so many services with such a small share of a typical property tax bill? Is it with financial help from the state? Not quite.

Unlike other states, Texas provides no general-purpose state aid to cities to help pay for streets, public safety, or other city services. The state forces cities to generate their

own revenue. That's why (as the chart below shows) per capita state tax revenue is relatively low, while per capita local tax revenue is comparatively high.

**Chart 2**  
 State and Local Government Tax Revenue, 2013  
 Source: U.S. Census Bureau

	U.S.	Texas
Per capita state and local	\$4,604	\$3,871 (31st)
Per capita state	\$2,681	\$1,955 (42nd)
Per capita local	\$1,923	\$1,915 (17th)
Percent local	41.8%	49.5%

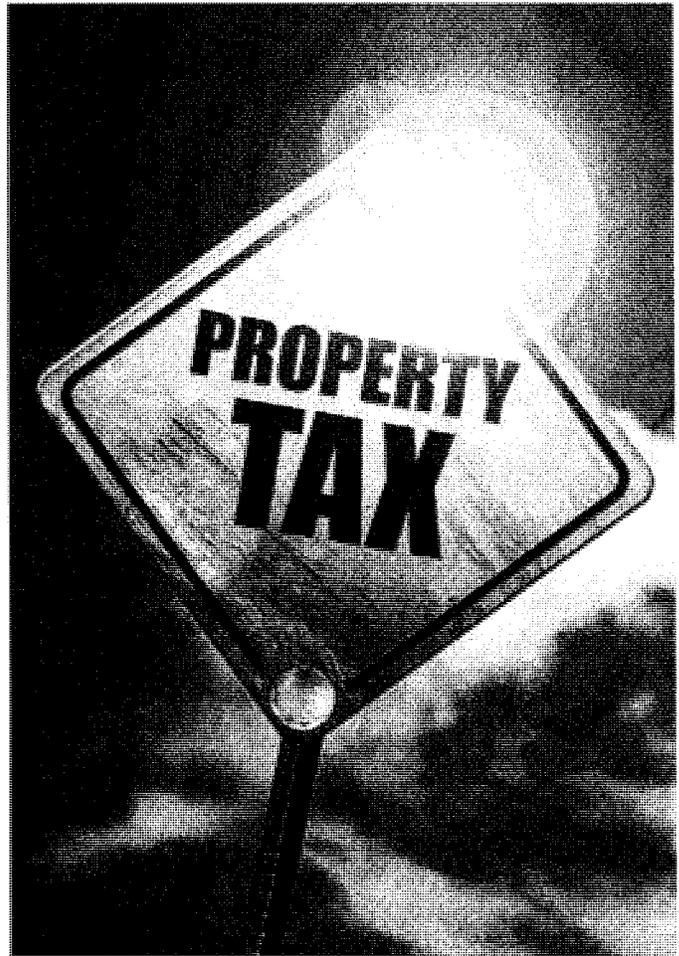
But Chart 2 focuses on "local governments" (cities, counties, schools, and districts). What about cities only? For this information, we turn to a publication of the National League of Cities (NLC), *Cities and State Fiscal Structure*.

One section of this report tabulates, for each state, a statistic the authors refer to as "own-source capacity." This is a measurement of the extent to which decisions made by city officials actually determine the city's fiscal direction. Since Texas cities take care of themselves without inter-governmental aid, it comes as no surprise that Texas ranks second the nation in municipal own-source capacity.

The flip side of that coin, however, is the report's measure of state aid to cities. Here again, the NLC report replicates previous research: Texas trails only Georgia, Oklahoma, and West Virginia in state aid—the share of municipal revenue that comes from state government sources.

These two findings of the NLC report once again establish these facts: (1) the State of Texas relies very heavily on Texas cities to generate the revenue necessary for municipal facilities and services; (2) the state gives cities the capacity to generate that revenue; but (3) the state gives cities virtually no state financial aid.

In addition to forcing local governments to generate comparatively large amounts of tax revenue, the State of Texas also forces those local governments to rely too heavily on property taxes. It does this by denying them other revenue sources. While this is especially true for public schools which rely almost exclusively on the property tax, it is also true for cities and counties. In fact, of the \$1,915 shown in Chart 2 as per capita local government tax revenue in 2013 in Texas, a whopping \$1,563 (81.6 percent) came from the property tax.



These two fiscal conditions, which create the property tax mess in Texas, are unlikely to change unless the State of Texas takes one (or both) of two actions:

1. Inject more state money into public services and facilities, especially public schools. This means even more state revenue than was provided through the public school funding reforms of 2006.
2. Open more revenue sources for counties and cities.

Any other attempts to reduce the property tax burden in Texas will either be ineffective or will create unintended, negative consequences.

In a nutshell:

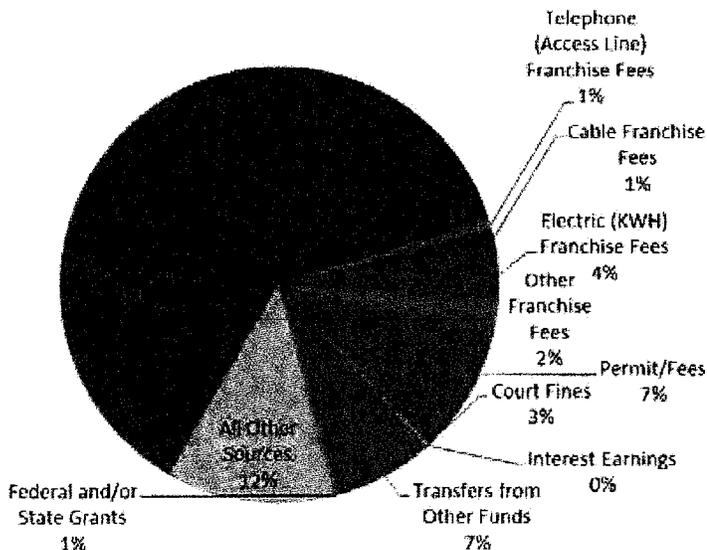
- (1) Texas cities provide vital services that benefit their citizens;
- (2) Texas cities provide those services with less aid from the state, as compared to other states; and
- (3) Texas cities manage all this despite a very small share of the total property tax levy and with reasonable annual increases in those taxes. ★

# WHERE DO TEXAS CITIES GET THEIR MONEY?

City government is where the rubber meets the road. Cities pave our streets, fight crime and fires, prepare us for disaster, bring water to our taps, take our trash away, build and maintain our parks—the list goes on and on. These services cost money. This article describes the sources of municipal revenue and expenditures.

A 2015 TML survey shows that municipal general fund revenue in Texas is made up of the following sources:

## General Fund Revenue



Conspicuously absent from this list is financial assistance from the state. This is unusual—most states provide direct financial assistance to cities in recognition of the fact that cities provide basic services on which the entire state depends. (See the article on "Reverse Intergovernmental Aid" in this publication.)

Instead of revenue, Texas cities receive something equally important from the state—broad authority to govern themselves, including the authority to raise their own revenue. This local authority has worked to the benefit of cities and the state for many decades and should continue into the future.

Here's more information on each source of municipal revenue:

### Property Taxes

Property taxes are the leading source of city revenue. Though crucial to city budgets, city property taxes make up just a fraction of a property owner's total property tax bill.

Most cities under 5,000 population have statutory authority to levy property taxes at a rate of up to \$1.50 per \$100 of assessed value. Most cities over 5,000 population have

statutory authority to levy property taxes at a rate of up to \$2.50 per \$100 of assessed value. Despite this broad authority, the average city property tax rate was only \$.52 for tax year 2015.

City property tax levies are tied by law to fluctuating property tax values. As values increase, the city must adjust its rate or face potential rollback elections. In reality, such tax rollback elections are rare. City rates have held relatively steady for years, both in terms of actual rates and in terms of total levy as adjusted for inflation and rising income.

### Sales Taxes

Sales taxes are a major source of city revenue. Nearly 93 percent of Texas cities levy a basic one-cent city sales tax. The revenue can be used for any purpose other than payment of debt. Many cities, though not all, also impose additional sales taxes in varying amounts of up to one cent. These additional sales taxes are known as dedicated taxes, because their proceeds may be spent only for certain purposes. Some popular dedicated sales taxes include mass transit, economic development, street maintenance, property tax relief, and sports venue taxes. All city sales taxes, including the basic one-cent sales tax, require a local-option election of the citizens. Collection of sales taxes is performed by the Texas comptroller, who "rebates" the city share on a monthly basis. The comptroller retains a small portion of the city tax revenue to cover the state's administrative costs.

### Right-of-Way Rentals

When utilities and other industries use city property to distribute their services, cities are permitted by law to collect rental fees, also known as "franchise" fees, for the use of public property. Franchise fees are calculated by various methods, depending on industry type.

### Did You Know?

Many people mistakenly believe that cities derive substantial general revenue from their courts. In reality, the first \$84 of most traffic tickets goes directly to the state. What's left over, if any, can be used by the city. Unfortunately, city courts are increasingly being used as a backdoor revenue source for the state.

### Permits and Fees

Cities may collect fees for issuing permits for building construction, environmental regulation, and for other services. Because cities incur costs to regulate in these areas, the permit fees must be tied to the cost of providing the service.

### Court Fines

A city that operates a municipal court may impose fines for violations of traffic laws and city ordinances. Maximum

fines typically range from \$200 for traffic violations, and up to \$2,000 for city ordinance violations relating to health and safety. Much of a city's fine revenue offsets the costs of law enforcement and operation of the municipal court system.

### Interest Earnings

When a city invests its funds, it must closely follow the mandates of the Public Funds Investment Act. Because of the twin concerns of safety and liquidity, investment income is a relatively small source of city revenue.

### Transfers from Other Funds

Many cities operate utilities and other optional services that generate substantial gross revenues. By law, the fees for such services must closely offset the cost of providing the service. In addition to the cost factor, cities are permitted to retain a reasonable "return," which can then be transferred to the general fund. This return amounts to less than six percent of overall city revenue.

### Other Sources

City revenue can take various other forms, including user fees for some services, amusement taxes, and hotel occupancy taxes.

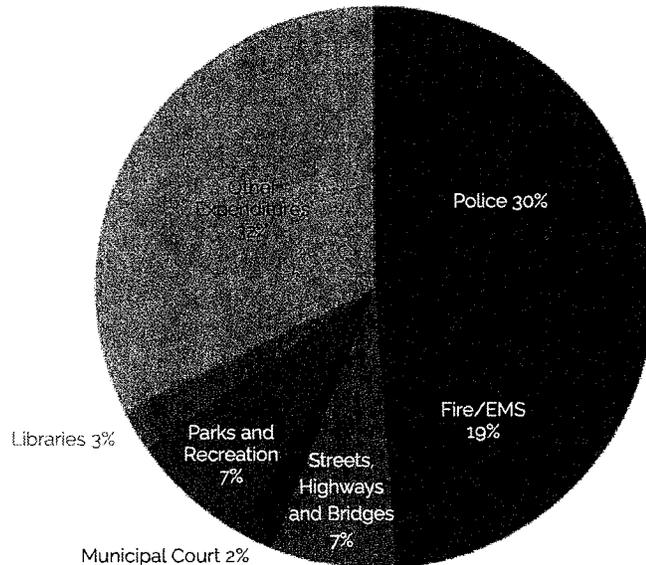
### The Bottom Line

The state could put municipal revenue at risk in at least two ways. First, the state could increasingly look to cities for revenue to fund state programs. When a state provides direct financial assistance to its cities, such trading of revenue might be workable. Texas is not such a state. Texas cities receive virtually no direct funding from the state, and cannot afford to fund the state's obligations. Second, the state could erode the statutory authority under which cities raise their own revenue. While cities are indeed subservient to the state, city officials hope that the respectful nature of the fiscal relationship between Texas cities and the state will continue for years to come.

### Expenditures

Core city services like police, fire, and EMS account for the majority of expenditures in a survey conducted by TML. In addition, cities spend revenue on streets, municipal courts, parks, and libraries. "Other Expenditures" in the survey include primarily administrative and personnel costs.

## General Fund Expenditures



## Putting Local Debt in Context

The story about debt coming out of certain Austin think tanks goes something like this: the state has its fiscal house in order, but local governments are greedy, profligate spenders running up the taxpayers' credit card. It's a powerful narrative, but it isn't true.

A recent report issued by the Texas Bond Review Board shows total outstanding state and local debt for the past few years. From 2011-2015, total outstanding local debt increased from \$192.74 billion to \$212.44 billion, a 10.2 percent increase. Meanwhile, total outstanding city debt increased from roughly \$63 billion to \$70 billion, an 11 percent increase during the same time frame. For the same period, total outstanding state debt increased from \$40.5 billion to \$47.09 billion, a 16.2 percent increase. In other words, local debt (and city debt) is increasing at a significantly slower rate than state debt in recent years.

At \$212 billion, the amount of total local debt is certainly significant. However, only a small portion of that—\$29 billion—is tax-supported city debt. Another \$40 billion is city debt supported by the revenues of city utilities and not by property taxes. The largest portion is tax-supported school district debt, at \$72 billion.

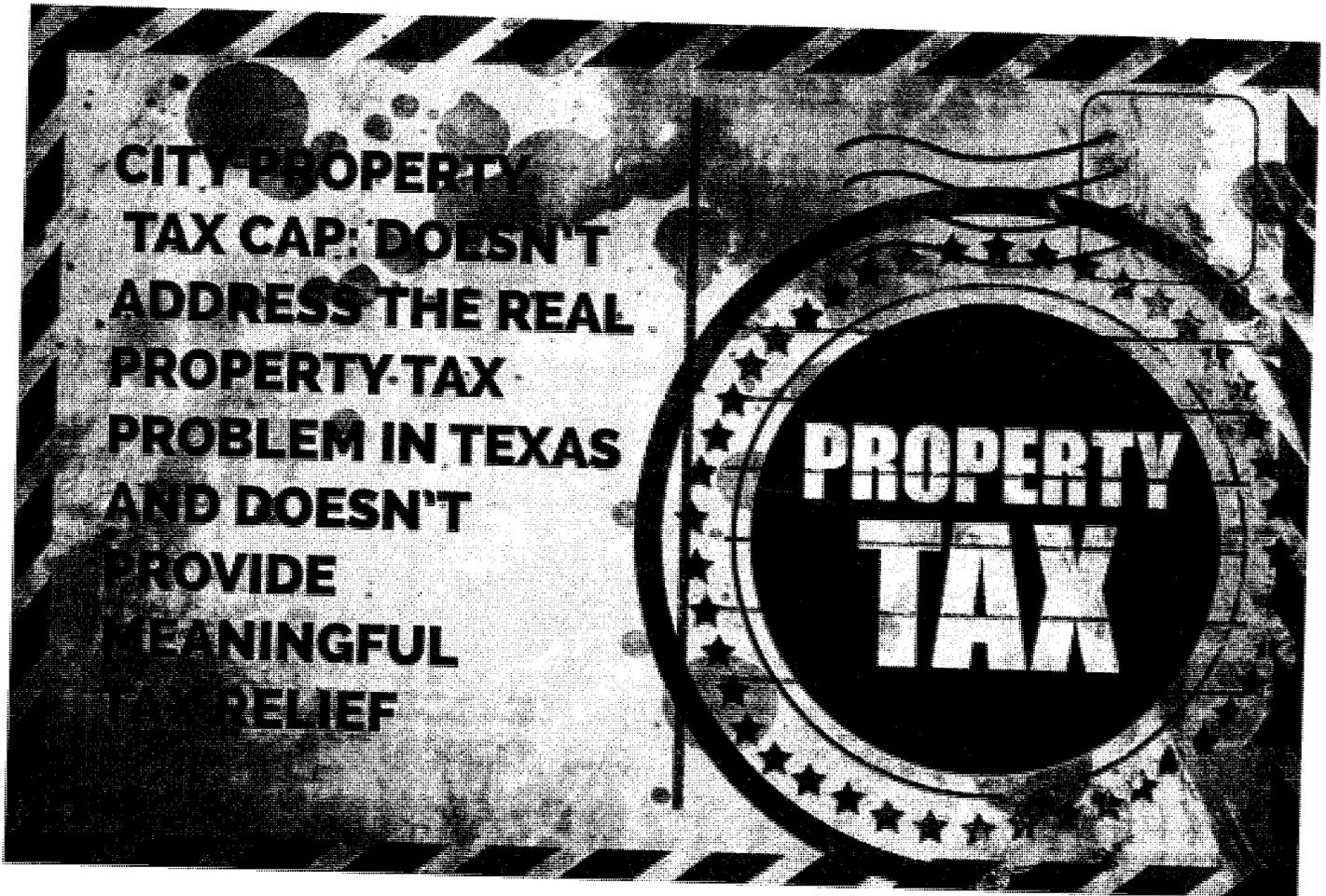
School funding is a constitutional obligation of state government. The state has chosen to discharge that obligation by creating local school districts that levy the

needed taxes. In reality, the \$72 billion of school district debt ought to be thought of as a state debt because that's how the state has chosen to fund schools. Shift that \$72 billion over to the state debt column and a vastly different picture about which governments may be falling dangerously into debt emerges. In any event, the numbers show it clearly isn't Texas cities.

The recent focus on local debt (despite the fact that state debt is growing faster) likely relates to the reality that Texas state government, for better or worse, has gotten out of the business of building new state infrastructure with state dollars. Instead, locals are expected to pick up the slack for things like roads and reservoirs.

Consider the recent water funding proposition that passed in November 2014 – it ultimately spends zero state dollars. Instead, through the use of a revolving fund, it *encourages cities to take on debt* to build our state's important reservoirs and other water projects. This is a perfect example of the state essentially forcing locals to take on debt to do the state's work, then blaming the same locals for having taken on the debt in the first place.

Texas cities are willing to partner with state government to build infrastructure in our great state, but should not be considered scapegoats within that partnership. ★



Everyone who loves living in Texas has his or her own list of things that make our state a great place. For some, it's the people and our vibrant cities – along with the barbeque and breakfast tacos – that rise to the top of the list.

One thing that's often mentioned as an attraction for businesses and people moving to Texas is our low taxes and, of course, no income tax. The latest state rankings from the Tax Foundation listed Texas as 46<sup>th</sup> in the amount of combined state and local taxes paid by residents.

Even though the overall tax burden is low in Texas, there is one tax that has always drawn the most complaints from Texans: the property tax. A statewide poll last year found the property tax was the most unpopular of the major state and local taxes with 54 percent saying they were "dissatisfied" with the amount of property taxes Texans pay.

Last year, Lieutenant Governor Dan Patrick appointed a special Senate committee to examine property taxes in Texas and make recommendations for reforming and reducing property taxes. The committee has spent most of this year holding hearings in cities all across the state.

In Texas, most of the revenue from property taxes, about 55 percent according to the State Comptroller, goes to school districts. Cities only collect about 16 percent of property taxes. But the Senate committee has refused to consider or even discuss ways to reduce school property taxes and they have pretty much ignored the fastest growing category of property taxes, which is taxes levied by the more than 2,000 special purpose taxing districts created by the legislature.

Instead of focusing on the real causes of high property taxes in Texas, Lieutenant Governor Patrick and the chair



of the Senate committee, Senator Paul Bettencourt of Houston, have made it clear they want to impose statewide restrictions on city property taxes and effectively put a state cap on the annual budgets of all Texas cities.

Because their proposed solution – a four percent cap on city property tax revenue increases contained in S.B. 2 – does not address the real cause of property tax increases, it will not provide real tax relief. If a four percent cap had been in effect over the past decade, the average homeowner in San Antonio would have seen a reduction in city taxes of only \$44 per year – or \$3.67 per month. Any legislator who tries to convince Texas homeowners that this is real tax relief will end up looking foolish.

Remember, city property taxes, on average, make up only 16 percent of property tax bills statewide. And city property taxes are not "skyrocketing" as some state leaders want you to believe. From 2009 to 2014, the total amount of property taxes levied by Texas cities increased by only 19 percent while state revenue collections increased by 46 percent during the same period, according to the State Comptroller.

The Senate committee has been a font of misleading information about city taxes. Earlier this year, Senator Bettencourt wrote in a column for a major daily: "In San Antonio between 2005 and 2014, city tax levies have grown 55 percent while median household income has grown only 22 percent." That statement is true on its face but the comparison is misleading. "City tax levies" refers to the total amount of taxes on all property in the city and that amount increases from year to year as the population grows, as new areas are annexed into the city and as new construction adds more homes and buildings to the tax rolls. San Antonio is one of the fastest growing major cities in the country so its total property tax collections will obviously increase from year to year.

But Senator Bettencourt carried his misleading comparison to the extreme by writing: "In other words, an average family faces a tax bill that is increasing two-and-a-half times as fast as income." That qualifies as "pants on fire." When a new office building is constructed in San Antonio and begins paying city property taxes, it increases the total amount of taxes levied and collected by the city but it does not increase the tax bill of the average family or any other family.

Such attempts to mislead and scare Texans about the tax bills on their homes just distracts us and legislators from the real problem which is the way Texas depends on property taxes to pay for public education.

The state legislature depends on high school property taxes to reduce the amount of state funds it has to spend on schools. A recent headline from the *Texas Tribune* tells the real story: "Rising local school property taxes ease state budget woes." Under the state's "Robin Hood" school finance scheme, 230 school districts were required to send part of their local property tax receipts to the state treasury this year.

For example, this year the state "recaptured" more than \$29 million in property taxes from the Alamo Heights School District which is about 40 percent of the taxes paid to the district. The Texas Education Agency has estimated that the amount of local property taxes sent to the state will increase from \$3.7 billion in the current state budget to \$5.1 billion in the next budget.

The League is not an expert on the school finance system, but we do understand that the current system grew out of the need to equitably distribute education funding and that is an important goal.

But when the legislature is using local school property taxes to balance the state budget, it explains why state lawmakers want to divert public attention from the school finance system and try to blame Texas cities for high property taxes.

Imposing a statewide cap on city budgets will not solve the problem of high property taxes and it will create other serious problems.

Public safety – police, fire and EMS – is the largest item in every city's budget. A cap would prevent cities from hiring additional personnel, raising salaries and benefits, acquiring new technology (like body cameras) or dealing with underfunded pension systems. A cap would force cities to focus on funding basic, vital services and eliminate non-essential, non-mandated spending like the economic development incentives that helped attract the Toyota plant to San Antonio and thus would reduce job creation and damage the state's economic growth. It would also make our traffic problems worse by limiting the amount of money cities voluntarily contribute to state highway construction projects which amounts to well over \$100 million per year.

Decisions about city taxes and city budgets should continue to be made by local voters and their locally elected officials. This obviously is working well as businesses and people from all over the world continue to flock to Texas cities because of the economic opportunities and quality of life they offer. Texans would be better served if state lawmakers focused their efforts on their own budget. ★



**REVERSE  
INTERGOVERNMENTAL AID:  
CITIES SUPPORT  
STATE PROGRAMS**

Regular readers of the Texas Municipal League's *Legislative Update* newsletter will recognize this article. It first ran in 2008, and is updated annually. The 2015 state fiscal year numbers show that cities are still net donors of money to the state. The State of Texas, unlike almost all other states, provides virtually no financial assistance to its cities. State aid, defined as a grant made by the state to cities from revenue generated by the state, is practically non-existent in Texas. Research conducted by numerous entities over many years has shown this to be true. The most recent study, released in 2015 by the National League of Cities, found that Texas leads only Georgia, Oklahoma, and West Virginia in state aid to cities.

State aid flows readily in other states, particularly in populous states. For instance, it is not uncommon for states to share state gasoline tax revenue with cities, or to split other sources of state general revenue with municipal governments.

While city officials in Texas have seldom asked for state financial aid, they are increasingly aware of the numerous ways in which they are compelled to share city-generated revenue with the state in what can be described as a system of *reverse* intergovernmental aid. That's not necessarily a problem, so long as the legislature continues to treat cities as partners in keeping Texas great.

Of the numerous ways in which cities transfer revenue to the state, three stand out:

1. The state's charge for administering the municipal sales tax.
2. "Local participation" in the cost of building and improving the state highway system.
3. State fees imposed on municipal court convictions.

### **The State's Charge for Administering the Municipal Sales Tax**

When a Texan purchases a product that is subject to the state and local sales tax, the merchant collects the entire tax due and remits it to the state comptroller. The comptroller, in turn, remits the local share back to the appropriate local government (city, metropolitan transit authority, county, and/or special district). For providing this service and for performing other administrative, enforcement, and reporting duties, the comptroller deducts two percent of the local share of the sales tax and deposits that amount in the state's general revenue fund.

The two-percent fee is high compared to the same fee in other states. Many states charge one percent or less; five states impose no charge at all. In Texas, the two-percent fee generated over **\$164 million** in 2015, of which cities paid

more than **\$107 million**.

In 2008, the Texas Municipal League (TML) undertook an effort to determine how much the comptroller's office spends annually to provide sales tax services to local governments. The comptroller's office informed TML that "(t)here can be no separate accounting of what costs are ultimately attributable to local tax administration that would not be arbitrary and potentially misleading." A TML committee was then formed to try to estimate the cost of collection to the state. The committee's estimate was at most \$27.7 million per year, far less than the \$107 million paid by cities, generating a "profit" of more than \$79 million to the state.

The comptroller's baseline budget is in the neighborhood of \$290 million per year. Thus, the total local government fee of more than \$164 million is enough to cover almost 57 percent of the entire agency's total expenses.

### **Local Participation in State Highway Projects**

The best way to describe "local participation" is to quote from a state document titled "Background and Need for Partnering." This state document makes the case that the Texas Department of Transportation (TxDOT) faces a funding shortfall because growth in population, vehicle-miles per capita, and total vehicle miles have grown at faster rates than growth in the highway system and growth in revenue available for highway projects. Those trends, according to the document, will continue.

To help address this dilemma...

*TxDOT continues to seek additional ways to fund the state transportation program. For years, TxDOT has partnered with local public agencies to make transportation improvements on state highways. This local participation has come in many forms, including provision of right-of-way, financial contributions, maintenance agreements and other forms... Cooperative partnering between state and local agencies will be needed to meet future transportation needs. TxDOT will depend on local and regional leaders to provide both leadership and commitment to help carry projects forward...TxDOT is currently suggesting to local agencies that they consider increasing their participation in TxDOT projects in order to expedite scheduling of locally desired projects.*

In short, "local participation" may become a "pay-to-play" system imposed by TxDOT on local governments that wish to see highway projects in their area move forward.

How much do cities annually contribute in local participation? Over the last couple of years, cities pitched in more than \$100 million in cash and much more in right-of-way donations and in-kind services each year. In addition, the state gasoline tax paid by cities accounts for many more millions of dollars paid by cities for the state transportation system.

Here's the bottom line. In most states, the state government makes grants to cities to help those cities build and maintain city streets. In Texas, city governments transfer municipal revenue to the state to help pay for the state highway system.

### State Fees on Municipal Court Fines

Municipal courts in Texas collect funds on behalf of the state for a wide variety of state programs. These state programs range from the Criminal Justice Planning Fund to the Crime Victims' Compensation Fund. In most cases, the fees are imposed on persons convicted of any criminal offense. For these collection efforts, cities are generally allowed to keep some small amount of revenue as reimbursement for the costs incurred to collect the fees and remit them to the state.

Many city officials contend that state court costs adversely impact municipal courts in two ways. First, the state's court costs are complicated to administer. While cities can keep a small percentage of the costs as an administrative fee, that amount is not sufficient to reimburse the cities for the bookkeeping and administrative problems connected with this function. Second, when setting an appropriate fine for an offense, a judge must consider the fact that the defendant will also be paying state court costs. As a result, municipal fine revenue is often lower than it would otherwise be because the judge has considered the state court costs when setting a defendant's total fine.

Municipal court clerks also point out that the state requires that in the event of a partial payment, the state court costs must be paid first before the city can keep any of the fine. This means that cities must do all the work collecting fines, but are not allowed to keep any money until the state court costs have been fully satisfied.

In recent years, the number and amount of state fees collected by municipal courts have grown rapidly. For example, on a typical traffic offense conviction, a municipal court defendant must currently pay \$84 in state-imposed fees before any city fine is collected. The following chart is a comparison of the present situation with fees imposed just 14 years ago.

In many ways, municipal court collection of state fees is similar to the state's collection of municipal sales tax. In each case, one level of government is processing a tax or fee levied by another level of government, is remitting it, and keeping a fee for providing those services.

While there are similarities, there are also substantial differences.

For example, the state doesn't really "collect" the municipal

	January 2002	January 2016
<b>Crime Victim Compensation</b>	\$15.00	\$15.00
<b>Judicial/Court Personnel Training</b>	\$ 2.00	\$ 2.00
<b>Fugitive Apprehension Fund</b>	\$ 5.00	\$ 5.00
<b>Consolidated Court Costs</b>	\$17.00	\$17.00
<b>Juvenile Crime/Delinquency (Prairie View A&amp;M)</b>	\$ 0.50	\$ 0.50
<b>Correction Management Institute (Sam Houston State)</b>	\$ 0.50	\$ 0.50
<b>State Traffic Fine</b>	--	\$30.00
<b>Jury Pay</b>	--	\$ 4.00
<b>State Judges' Salaries</b>	--	\$ 6.00
<b>Indigent Defense</b>	--	\$ 2.00
<b>Truancy Prevention Fund</b>	--	\$ 2.00
<b>Total</b>	<b>\$40.00</b>	<b>\$84.00</b>



sales tax; it's collected by the merchant. With regard to state fees on municipal court fines, however, a municipal court employee actually collects the fees and bears the brunt of any resulting fee-payer anger.

Second, the state controls the level of the municipal sales tax, but cities certainly don't control the level of state fees on municipal fines. So while cities can't unilaterally raise the city sales tax without permission from the state, the state can (and frequently does) increase the amount of state fees that cities must collect and remit.

How much state fee/fine revenue do municipal courts collect annually? For 2015, the amount was just over \$217 million.

### **Conclusion**

What's the grand total amount of reverse intergovernmental aid in Texas? After making various adjustments, the annual total is more than \$250 million, just from these three sources of reverse intergovernmental aid. (Please note that simply adding the totals from the previous sections yields a much higher amount. Certain adjustments were made to that number in relation to sales tax administration and court fees to arrive at \$250 million.)

And why does this transfer of revenue from cities to the state matter? It matters because these transfers of resources result in either reductions in municipal services or increased local fees or taxes—most often the local property tax, which is the only general-purpose municipal tax that a city council can easily raise or lower.

Texas taxpayers remain concerned about property taxes. It is clear that some of the pressure on the property tax results from reverse intergovernmental aid, a system under which governments that must depend on the property tax (cities) transfer revenue to a level of government (the State of Texas) that has many revenue sources.

It's easy to grasp why some state legislators are tempted to turn to cities and ask them to generate revenue for the state. It's much harder to understand why some of those same legislators have been trying for several years to limit the revenue-generating capacity of cities by placing caps on the municipal property tax. ★

# CRACKING THE CODE: CITIZEN SAFETY AND PROTECTION OF PROPERTY VALUES

The building code of 4,000 years ago was simple but brutal. According to an ancient Hammurabi code, "If a builder builds a house and does not make its construction firm, and the house collapses and causes the death of the owner, that builder shall be put to death."

The first building codes in the United States, established in 1625, addressed fire safety and specified materials for roof coverings. In 1630, Boston outlawed wooden chimneys and thatch roof coverings. In the late 1770s, George Washington recommended height and area limitations on wood frame buildings in his plans for the District of Columbia. In 1788, the nation's first-known formal building code was written in Winston-Salem, North Carolina. Larger cities in the United States began establishing building codes in the early 1800s.

Today, most populous cities in Texas have adopted modern construction codes. The professionals enforcing current building codes in Texas maintain the vigilance of the ancient code of Hammurabi, but with a significantly more civilized approach that emphasizes knowledge and education. Building code regulations enforced in Texas cities ensure minimum standards for safe homes, schools, workplaces, and other buildings.

Scott McDonald, the City of Amarillo's director of the Office of Strategic Initiatives and the Building Officials Association of Texas representative on the Texas Municipal League Board of Directors, points out that "during these tough economic times, the enforcement of construction codes is even more important." According to McDonald, "The active enforcement of construction codes not only provides a minimum standard for the structural and life safety components of the homes, schools, churches, and businesses, it can also provide energy efficiency standards."

"Buildings constructed to meet updated codes and energy efficient standards protect property values for years into the future, and they provide a sustainable stock of housing and commercial options in a community," he adds.

Prior to 2001, Texas had no statewide standard for any residential or commercial buildings. Each city chose which, if any, building codes to adopt for construction within the city limits, and each city amended its code to meet local concerns.

In 2001, the Texas Legislature adopted the International

Residential Code and the National Electrical Code as the standard building codes for residential construction in Texas cities. Under the statute, cities are authorized to make amendments to these codes to meet local concerns. The legislature also adopted requirements that homes and buildings meet energy conservation standards.

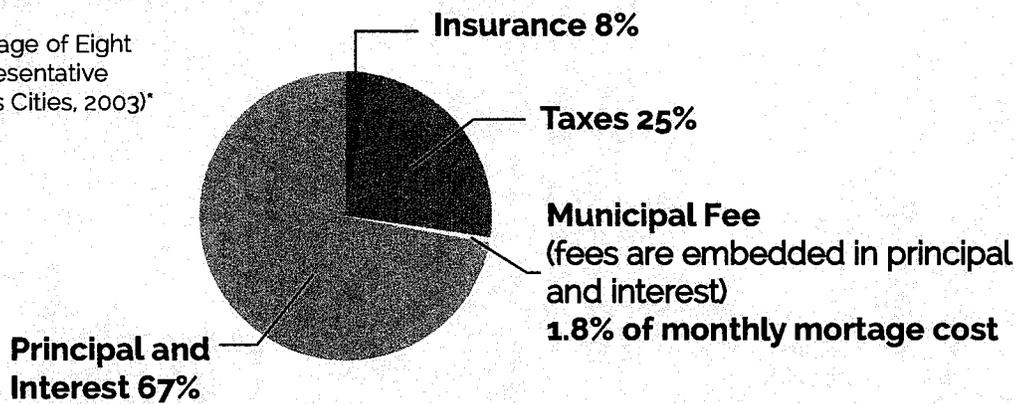
In 2005, the Texas Legislature adopted the International

structure must apply for a permit. City officials review the necessary information and issue a permit if the structure complies with that city's regulations. The amount of time needed to review the permit application varies from city to city and from project to project based on several factors, including the complexity of the city's code and the project. Because of many issues affecting each individual city and building project, a blanket requirement that a permit

## Chart 1

### The Role of Municipal Fees in Monthly Mortgage Costs

(Average of Eight Representative Texas Cities, 2003)\*



Building Code for most commercial and multi-family construction, but nothing in the bill prohibits a city from adopting local amendments to the International Building Code. Later sessions included revisions to the International Energy Conservation Code.

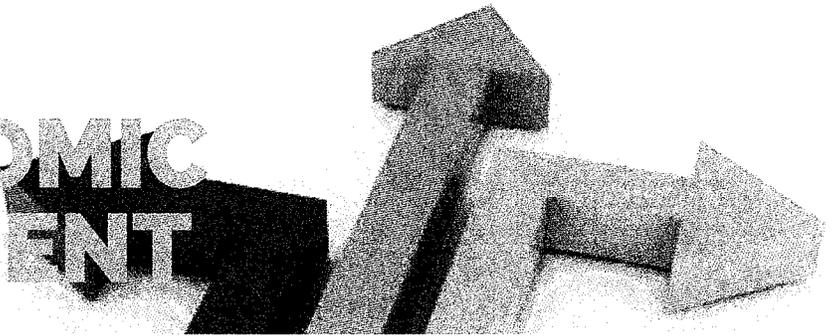
Uniform building codes can make construction and inspection easier and more cost-effective. However, because Texas is a vast state with many different climates and topographical features, uniform codes serve only as standards, and each city is allowed to amend codes to meet that city's needs. In 2009, the legislature added procedures that larger cities must follow when reviewing or amending their building codes.

Under most cities' codes, a person who wishes to build a

be issued in a certain amount of time would place an untenable burden on city building officials.

Similarly, a city is not limited by statute as to the amount the city can charge for building and related permits. Fees vary widely based on several factors, including the number and type of inspections and the sophistication of the city's permitting process. While some have claimed that city fees are responsible for the rising costs of housing in Texas, a survey commissioned by the Texas Municipal League shows that building and inspection fees constitute only a tiny fraction of a homebuyer's mortgage payment (see Chart 1). ★

# CITY ECONOMIC DEVELOPMENT



Texas cities are the first—and often only—engine of economic development in the state. Until the controversial Texas Enterprise Fund was created, only cities routinely granted incentives necessary to attract new business to the state. With the Enterprise Fund up and running, larger cities have partnered with the state to attract such major developments as a Texas Instruments facility and a Toyota plant. Smaller cities are usually on their own to attract business.

Until the late 1980s, using city resources to attract business was arguably unconstitutional. In 1987, Article 3, Section 52-a of the Texas Constitution was added to make it clear that economic development serves a public purpose. From that point on, three major channels of city economic development began to open for cities: Chapter 380 agreements; the Type A/Type B economic development sales tax; and property tax incentives.

## Chapter 380 Agreements

Chapter 380 of the Local Government Code authorizes cities to establish programs for grants and loans of city resources for economic development purposes. Though it is the broadest economic development tool for cities, Chapter 380 is often overlooked in favor of other incentives. Cities using 380 agreements must be careful not to simply present a blank check to business and industry prospects. A program providing for checks and balances on a business's use of Chapter 380 money is required by law. Examples of these checks and balances might be performance agreements tying grant money to the creation of a certain number of jobs, or requiring the business to stay in the city for a certain length of time.

## Type A/Type B Economic Development Sales Tax

More than 500 Texas cities have adopted a Type A or Type B economic development sales tax. Some cities have both taxes. The tax was created in 1989 and authority to spend Type A/Type B tax money gradually expanded over the next decade to cover all forms of commercial, retail, and traditional industrial economic development. An important bill, H.B. 2912, passed in 2003. H.B. 2912 scaled back the authority of some Type A and Type B economic development corporations. Following the passage of H.B. 2912, the sales tax could no longer be spent on retail, commercial, or service industries. Instead, the tax could be

spent on basic industrial and manufacturing businesses, among a limited amount of other authorized expenditures. The authority for some, but not all, Type B corporations to engage in retail, commercial, and service economic development was restored in 2005.

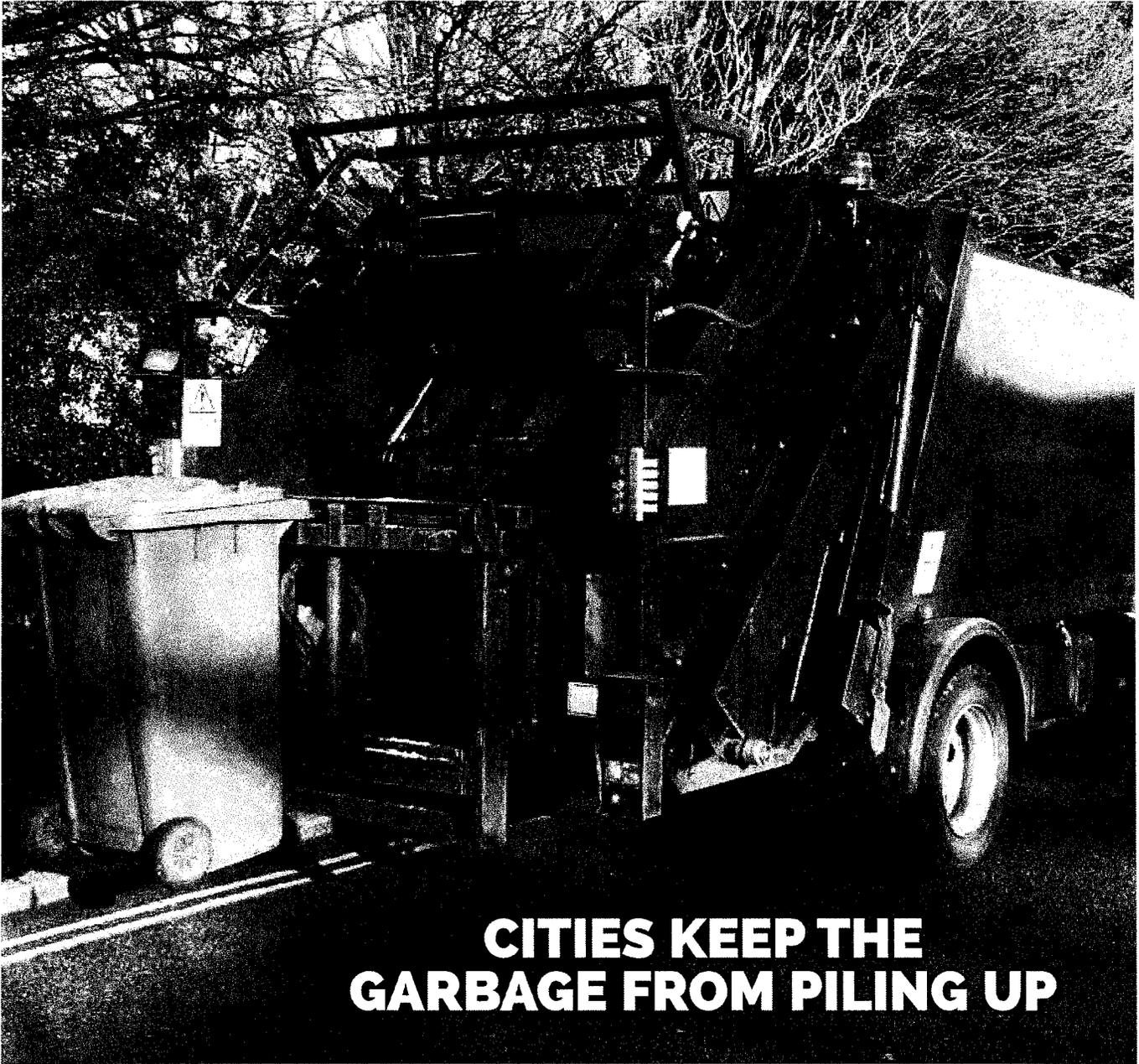
The Type A/Type B sales tax remains an important economic development tool for many cities that have the available land and workforce to attract industry. Additionally, instead of a Type A or Type B economic development sales tax, some cities have adopted a municipal development district (MDD) sales tax that may be levied in a specified area in the city or in the city's extraterritorial jurisdiction. The MDD sales tax closely resembles the traditional economic development sales tax, but the scope of projects that may be funded with an MDD tax is slightly broader.

## Property Tax Incentives

Property taxes may be directly tapped to promote economic development in two ways: tax abatement and tax increment financing. Both function either by forgiving (abatement) or by dedicating to improvements (increment financing) any **net increase** in property tax revenue as a result of a business moving to town or upgrading existing facilities. Property tax incentives can never forgive or decrease the present taxable value of the land and facilities upon which they are granted. This key feature of the incentives—that all current taxes must continue to be paid—belies the common stereotype that tax incentives are “giveaways.” On the contrary, when done properly, tax incentives create new taxable value that never would have come to town absent the incentive, thus lowering the overall tax burden on other properties.

## Tax and Appraisal Caps Threaten Economic Development

Proposals to cap, limit, or freeze municipal property tax revenue or property appraisals will have the unfortunate side effect of undermining the rationale behind many economic development tools. While the purpose of economic development is often to put new taxable value on the rolls, tax caps will ensure that this cannot happen. Tax and appraisal caps restrict the very growth in appraised value that tax incentives are designed to generate, undermining the important role that cities play in facilitating job creation in Texas. ★



## CITIES KEEP THE GARBAGE FROM PILING UP

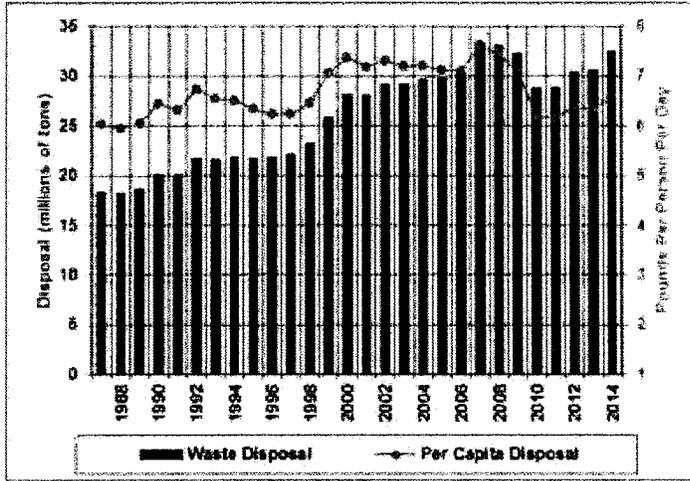
Collection and disposal of garbage is one of the most recognizable and widely used city services. This vital service protects the public health and environment. A city can choose to operate its own garbage collection and disposal system or grant a franchise to a private company (or companies) to handle those tasks.

Waste generation is a function of two variables – population and economy

– both of which are growing in Texas. In Texas, "municipal solid waste" is defined to include waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities including garbage, rubbish, ashes, street cleanings, dead animals, abandoned autos, and all other solid waste other than industrial solid waste. According to the Texas Commission on Environmental Quality (TCEQ), Texans

disposed of approximately 32.37 million tons of municipal solid waste in 2014. That's about 6.58 pounds per person per day, an increase over the 2013 rate of 6.33 pounds. During this period, the state's population increased 1.9 percent.

## Texas Total and Per Capita for MSW Landfill Disposal



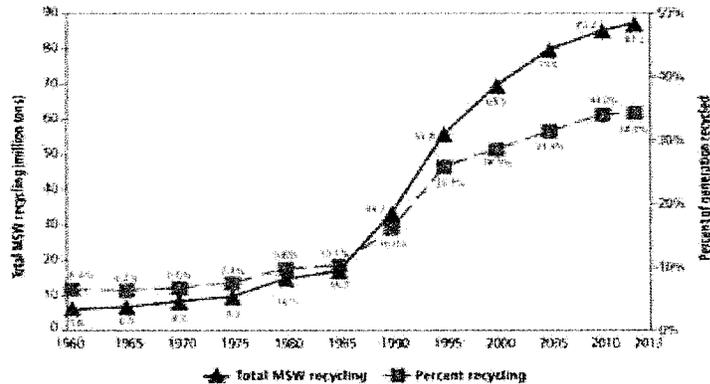
Source: TCEQ, Municipal Solid Waste in Texas: A Year in Review - FY2014 Data Summary and Analysis (October 2015)

## Did You Know?

Texas cities have been authorized to provide, or contract with a private company to provide garbage collection services within city limits since 1971. Texas law recognizes that this authority is important to preserve the public health and safety of all the residents of a city. Uncollected garbage can easily result in various health problems. This law routinely comes under attack from certain groups, but the bottom line is that timely, efficient, and effective garbage collection through city service prevents problems from occurring. Open piles of garbage attract disease-carrying rodents and insects and often wash into drainage systems where they contribute to floods and waterborne disease.

Cities have statutory authority to offer recycling programs to their citizens. Recycling helps reduce the production of solid waste that must be disposed of by a city and reduce the costs of operating a municipal solid waste disposal system. Recycling may also create more jobs than disposal. Of course, statewide recycling mandates wouldn't take into account the various factors that make different parts of Texas unique. Recycling should be implemented locally in a way that is appropriate for each city. ★

1960-2013



## Recycling of Municipal Solid Waste (MSW) in the United States

Source: EPA, Advancing Sustainable Materials Management: 2013 Fact Sheet (June 2015)

## Where Does It Go After I Place It at the Curb? How Much Does This Service Cost?

After household garbage is collected, it often goes to a facility known as a transfer station, where waste is consolidated into larger loads for shipment to its ultimate destination: a landfill or a waste-to-energy plant. Recyclables go to processing facilities where they become raw materials for new products.

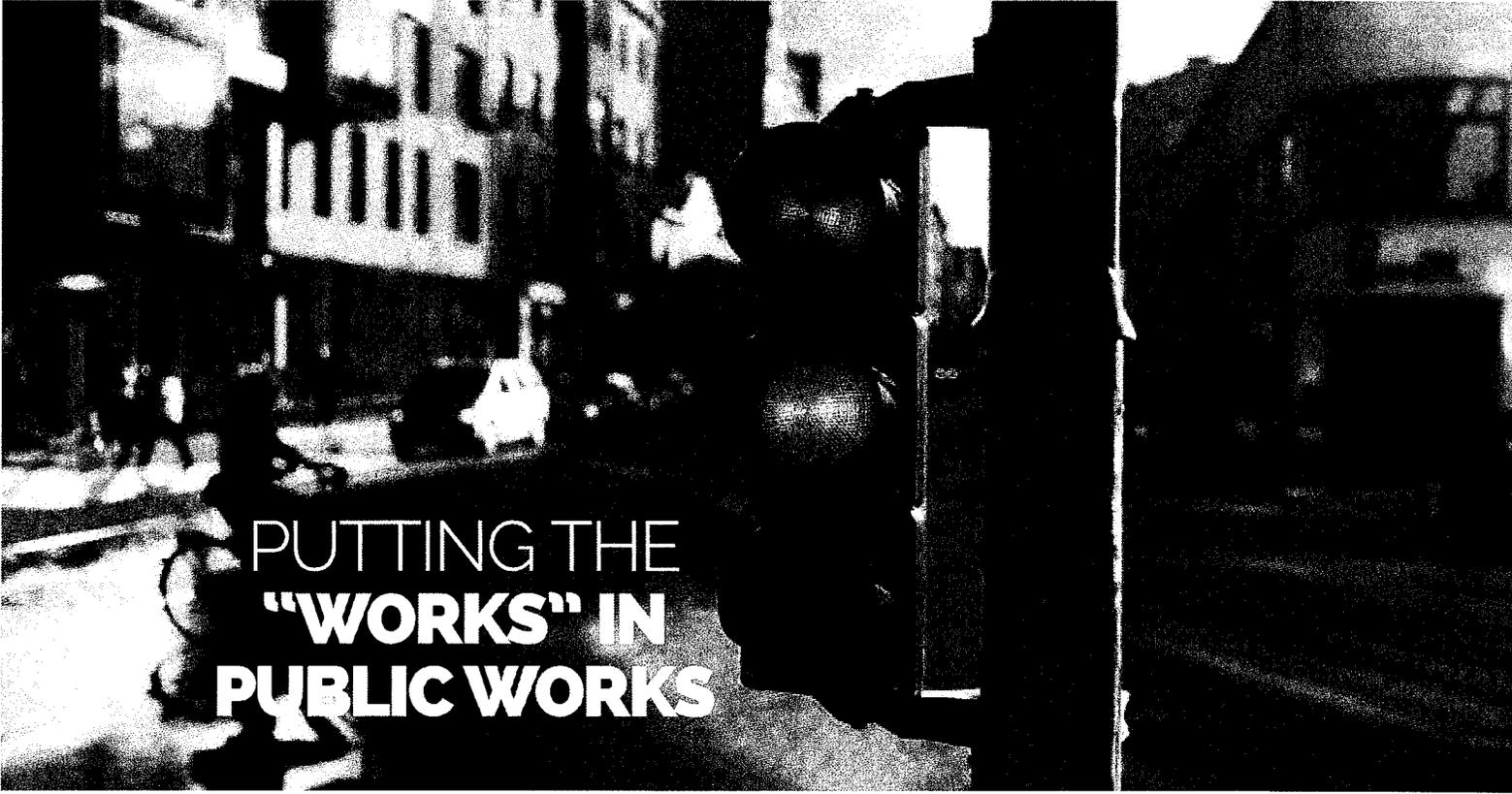
In 2013, 52.8 percent of municipal solid waste generated in the U.S. was ultimately disposed of in landfills; 12.9 percent was disposed of through waste incineration with energy recovery; and 34.3 percent was recovered for recycling or composting.

According to data collected by the National Solid Wastes Management Association, the typical U.S. monthly household bill for waste collection in 2003-04 ranged between \$12 and \$20 per month. Collection and disposal costs have gone up in some communities for various reasons including the rising costs of fuel and equipment, as well as the rising costs of complying with new environmental regulations. Despite these increases, residential trash collection and disposal is still a bargain for U.S. consumers when compared to other utilities and services like cellular phone and cable television service.

Sources:

EPA, Advancing Sustainable Materials Management: 2013 Fact Sheet (June 2015)

National Solid Wastes Management Association, Residential Trash Collection: An Essential Service at a Bargain Price



# PUTTING THE "WORKS" IN PUBLIC WORKS

## Streets and Traffic

Citizens expect to travel easily from one place to another. They want their drive to work to be problem-free. A city's public works department makes that possible. Public works employees are constantly striving to keep driving conditions safe by building, maintaining, and repairing city streets. In addition, public works employees maintain and repair street lights, sidewalks, and other infrastructure. The task of funding the maintenance of city transportation facilities, which benefits the entire state's economy, is a difficult one for Texas cities. Unlike many other states, Texas cities receive no state aid to offset the benefits that city streets provide. Other states return a portion of vehicle registration fees or gasoline taxes to cities for this purpose, but Texas doesn't. However, the Texas Legislature has granted Texas cities the authority to impose a street maintenance sales tax to be used to maintain city streets. Many cities have adopted this tax.

## Right-of-Way Authority and Utilities

Many Texas cities are experiencing an unprecedented level of activity in their streets and rights-of-way (ROWs). This is the result of an explosion in new communications technology, the growth of competition in the telecommunications industry, and the expansion of electric distribution lines to newly developing areas.

With this activity sometimes comes a detrimental effect on public safety, traffic flow, city infrastructure, and efficient city administration. Major water lines have been breached during excavations. Traffic in many cities has become so heavy and ensnarled due to activities in the ROWs that the stories have been front-page news. Other cities have experienced the cutting of utility lines. City streets are being barricaded and torn up repeatedly, significantly shortening their life expectancies and suitability for traffic.

Additionally, some utilities have taken the position that a city cannot require a utility to relocate facilities in the ROWs at their own expense for public works projects such as drainage or street construction. That position clearly contravenes the public interest, as well as established law, because the primary purpose of streets and ROWs is transportation. The ability of a city to adequately regulate activities in its ROWs is paramount to the safety of residents.

## Right-of-Way Compensation

Texas law prohibits a city from allowing the use of its ROWs for free. Thus, cities collect compensation in the form of rent (based on various state and federal statutes) from utility providers such as video, telecommunications, and electric companies. Some have attempted to characterize this rent as a "tax." That characterization is incorrect. Rather, the rent is a cost

of doing business for a utility that uses a city's property. (Just as a utility would have to rent property or obtain an easement from a private landowner.) Utilities such as satellite providers do not pay the rent when they have no facilities on city property. In any case, the compensation is authorized by law and provides significant revenue for cities.

### **Local Participation: Cities Help Pay for State Highways**

The best way to describe "local participation" is to use a quote from a state document titled "Background and Need for Partnering." This state document makes the case that the Texas Department of Transportation (TxDOT) faces a funding shortfall because growth in population, vehicle-miles per capita, and total vehicle miles have grown at faster rates than growth in the highway system and growth in revenue available for highway projects. Those trends, according to the report, will continue.

To help address this dilemma "TxDOT is currently suggesting to local agencies that they consider increasing their participation in TxDOT projects in order to expedite scheduling of locally desired projects."

In short, "local participation" may become a "pay-to-play" system imposed by TxDOT on local governments that wish to see highway projects in their area move forward. Cities pitch in more than \$100 million annually in cash and much more in right-of-way donations and in-kind services. In addition, the state gasoline tax paid by cities accounts for many more millions of dollars paid by cities for the state transportation system.

## **FEDERAL STORM WATER MANDATES AND MUNICIPAL DRAINAGE UTILITIES**

### **Federal Storm Water Mandates**

During rainfall, storm water runs off impervious areas such as paved streets, parking lots, and rooftops. The storm water contains pollutants that may adversely affect water quality. Thus, the federal Clean Water Act requires cities to obtain a permit from the United States Environmental Protection Agency (EPA) before allowing the discharge of storm water from a storm sewer system into rivers and lakes. In Texas, the EPA has delegated the administration of the storm water permitting program (known as the "National Pollution Discharge Elimination System" or "NPDES") to the Texas Commission on Environmental Quality (TCEQ).

Most medium and large cities in Texas currently operate under a "Phase I" permit. These cities include Dallas,

Houston, San Antonio, Austin, Abilene, and several others. Beginning in the early 1990s, these cities were required to develop a storm water management program that would reduce storm water pollutants. Many other Texas cities are subject to the "Phase II" general permit. The Phase II program began in 1999 and requires more than 400 of the state's smaller cities to develop storm water management programs as well. At a minimum, the programs must include public education and participation, detection of unwanted discharges into sewers, construction site storm water runoff controls, and pollution prevention measures. In addition, cities operating under the Phase II permit must issue an annual report to the TCEQ that includes information regarding the status of compliance with permit conditions, an assessment of the appropriateness of best management practices, a description of progress toward reducing the discharge of pollutants to the maximum extent practicable, the measurable goals for each of the minimum control measures, and an evaluation of the program's progress. TCEQ, in compliance with federal law, reissued the Phase II general permit for small cities in 2013.

All Texas cities subject to the NPDES program are required to identify and apply a number of best management practices to reduce storm water pollution. Obviously, the monetary costs of implementation of this unfunded mandate are high. ★

### **Municipal Drainage Utilities**

As a means to protect citizens from the devastating effects of flooding and to offset the costs of unfunded federal storm water mandates, the Local Government Code authorizes Texas cities to establish municipal storm water drainage utilities. The utilities are generally funded by fees on properties that are benefited by the improvements. The fees must be nondiscriminatory and must be directly related to drainage.

In 2003, the Texas Legislature enacted a law that exempted state colleges and universities from paying municipal storm water utility fees. The rationale for that exemption (presumably) was that a taxpayer-funded entity shouldn't be required to pay a fee to another taxpayer-funded entity. In 2007, private universities sought and obtained the same exemption. The exemption of private colleges and universities has had detrimental effects on some cities. These private entities benefit from the flood prevention and storm water control provided by storm water utilities, and both public and private universities generally have very large areas of impervious cover that contribute to runoff. The exemptions have resulted in a cost shifting to residents and businesses.



# THE GROWING NEED FOR WATER AND WASTEWATER SERVICES

The population in Texas is expected to grow to 50 million by 2070. Additionally, by 2070, municipal water use is expected to constitute the highest demand of all water users. Providing safe, clean, and reliable drinking water to meet this demand presents a challenge for Texas cities. Investments in drinking water and wastewater systems protect public health, aid in protecting the environment, provide fire protection, and ensure that there is an adequate water supply to support the state's growing population, businesses, and industries.

Adequate water supply is often a determining factor in economic development opportunities. Businesses and industries are going to choose locations with a stable and sufficient water supply over those states or regions without quality water supplies.

A recent wastewater survey found that America's drinking water systems alone will have to invest up to \$322 billion over the next 20 years in order to keep up with the growing demand for drinking water and the nation's aging drinking water infrastructure. Over the next decade, Texas cities will have to expend millions of dollars on waste and wastewater systems to keep pace with the tremendous population growth in Texas. In addition to meeting the growing demands for water services and replacing aging infrastructure, the investment is also necessary to ensure compliance with the federally-mandated Clean Water Act and Safe Water Drinking Act.

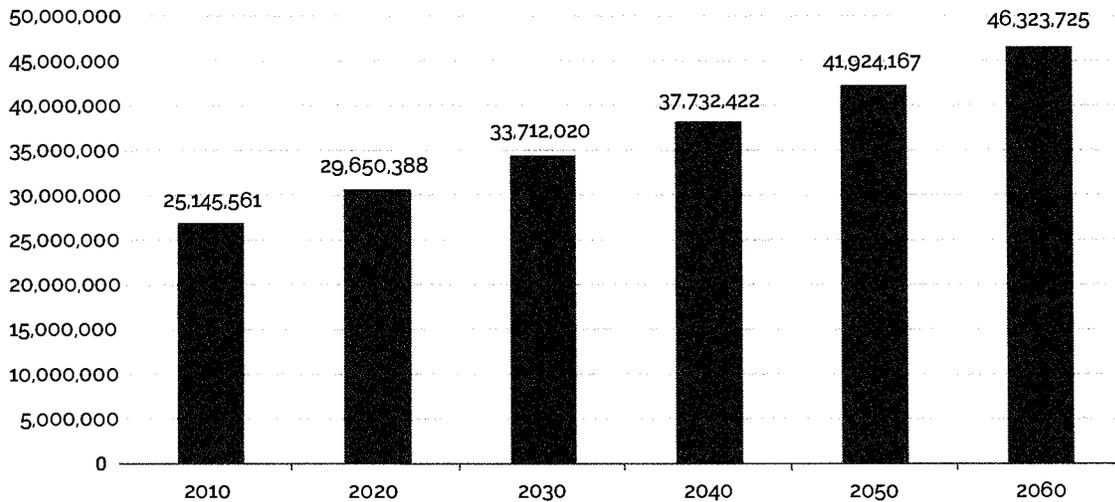
Many water utilities in Texas were built decades ago. Some systems have come to the end of their useful life span, and upgrades may no longer be sufficient. Some cities are even faced with having to completely replace these essential utilities. Upgrading or replacing a water and wastewater system is an extremely expensive undertaking that requires the commitment of large sums of capital investment. However, the return is generally well worth the large expenditure.

Municipal wastewater treatment plants prevent billions of gallons of pollutants from reaching our rivers and lakes each year. In addition, the provision of safe drinking water to our suburban areas has allowed our state to grow at unprecedented levels.

Unfortunately, many Texas cities are struggling to keep up with the costs of complying with increasingly stringent federally and state mandated regulations. The budget pressures associated with meeting these new standards or facing stiff fines from regulating agencies often force cities to delay needed expansion of their water utility systems. ★

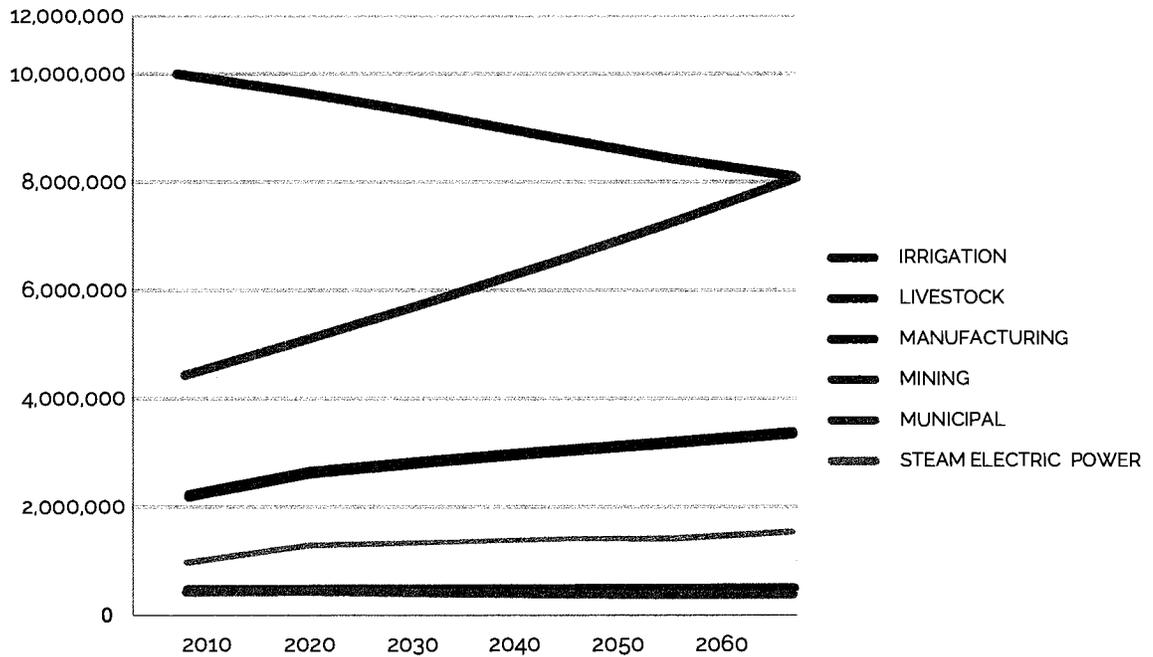
See Funding the State Water Plan article on page 28 for how some of these needed improvements should be funded.

## TEXAS ★ Population Projections



2010 population is the official population count from the U.S. Census Bureau  
2020-2060 represent projected population used in the 2012 State Water Plan.

## WATER DEMAND ★ Projections



Water demand projections for the livestock and mining water use categories are similar enough to be indistinguishable at this scale.

Source: Texas Water Development Board, State and Regional Population Projection for 2020-2070



# WATER CONSERVATION

The heart of the water conservation issue is that, while everyone agrees that water conservation is important for Texas, city officials have traditionally resisted the imposition of a uniform, statewide program that does not take into account the needs, financial and otherwise, of different parts of the state.

In past years, the legislature has enacted numerous bills related to statewide water conservation standards. The requirement that cities draft, implement, and submit drought contingency and water conservation plans comes from bills passed by the legislature in recent years. Additionally, the legislature created the Water Conservation Advisory Council (WCAC) tasked with, among other responsibilities, developing numerous Best Management Practices (BMPs),

including municipal BMPs, which are available at [www.savetexaswater.org](http://www.savetexaswater.org).

Another conservation issue relates to mandatory conservation water rates. Cities have the exclusive authority to set water rates within city limits. Though there has been proposed legislation in the past related to water rates, no such legislation has passed. The ability to set water rates remains with each city's governing body, which comports with the Texas Municipal League's members' view that local control is best.

In recent years, bills have passed requiring that the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ) develop a uniform, consistent methodology and guidance for calculating

water use and conservation to be used by a city in developing water conservation plans and preparing certain reports required by state law. The methodology and guidance include: (1) a method of calculating total water use, including water billed and nonrevenue water used; (2) a method of calculating water use for each sector of water users; (3) a method of calculating total water use by a city in gallons per capita per day; (4) a method of classifying water users within sectors; (5) a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in gallons per capita per day; (6) a method of calculating water use in the industrial, agricultural, commercial, and institutional sectors that is not dependent on a city's population; and (7) guidelines on the use of service populations by a city in developing a per-capita-based method of calculation, including guidance on the use of permanent and temporary populations in making calculations.

The resulting "Guidance and Methodology for Reporting on Water Conservation and Water Use" is intended to guide water providers through the process. This guidance is available at <http://www.twdb.state.tx.us/conservation/doc/SB181Guidance.pdf>.

While water was one of the main topics of the 2013 legislative session, fewer water-related bills were filed in the 2015 legislative session. Leading up to the 2017 legislative session, the only interim charge relating to water conservation was for the House Natural Resources Committee and the Committee on Agriculture and Livestock to examine current water delivery methods and water conservation goals for agricultural use and evaluate whether there are more efficient and effective water-usage management practices that could be employed in the agricultural industry.\*

Water restrictions, conservation education, and higher prices have achieved the result of Texans using less water. According to the League's survey, the average monthly residential consumption is decreasing each year (with a few outliers), averaging a total of 6,404 gallons in 2016 compared to 8,581 in 2002. Which method of addressing water shortages—restricting usage, repairing/replacing inefficient infrastructure, or scarcity pricing—is the best? Whatever a city council decides is right for its city is usually the correct method. In other words, local control is the best method.

Interestingly, one side effect of lower use is a loss of millions of dollars in anticipated revenue to some cities. For example, the City of Wichita Falls has reported that conservation efforts have resulted in water revenue down nine million dollars from fiscal year 2012-2013 to fiscal year 2013-2014. Anticipated water revenue is generally

budgeted to pay for fixed or infrastructure costs and in certain cases, to pay off debt. In some cases, the debt was issued to finance new wastewater plants or water-related projects.

Each city has a unique perspective and resulting priorities for expending resources to save water. Climate, population density, availability of water resources, and the ratio of industrial to residential water use in the city are but a few of the various factors that affect conservation decisions across the state. Water conservation continues to be a major issue in many cities in Texas. Cities should continue implementing the water conservation strategies appropriate for their specific community. ★

\*Interim Charge House Natural Resources: Determine the sources of water used by Texans in the production of food and fiber, and, and determine the impact of crop insurance requirements on producers. (Joint charge with the House Committee on Agriculture & Livestock)



Cities offer a variety of different programs to encourage water conservation.

For example, the City of San Marcos offers:

**Tiered Water Rate System**

Water rates increase as consumption increases.

**Rebate/Incentive Programs**

The City of San Marcos provides rebates to those customers who purchase and install qualifying water conserving items.

**Irrigation System Evaluations**

Free irrigation system check-ups for both residential and commercial water customers.

**Indoor Water Surveys**

Free indoor water surveys to customers who would like to save water and money. City staff will evaluate your home or business to make sure you are using water as efficiently as possible.

**Public and School Education Programs**



# FUNDING THE STATE WATER PLAN

The Texas State Water Plan is designed to provide for the orderly development, management, and conservation of water resources in the state. The plan is intended to provide that sufficient water will be available at a reasonable cost to ensure the public health, further economic development, and protect the agricultural and natural resources of the entire state. The State Water Plan is the culmination of a regional planning process that the Texas Legislature established in 1997. Every five years, 16 planning groups – one for each regional water planning area – assess the projected population, water demands, and water supplies in their area for the next 50 years. Each planning group holds public hearings and meetings to develop its regional water plan, which lists the water supply projects needed to meet their water shortages.

Once a regional water planning group adopts its regional water plan, the plan is then sent to the Texas Water Development Board (TWDB) for approval. The TWDB ulti-

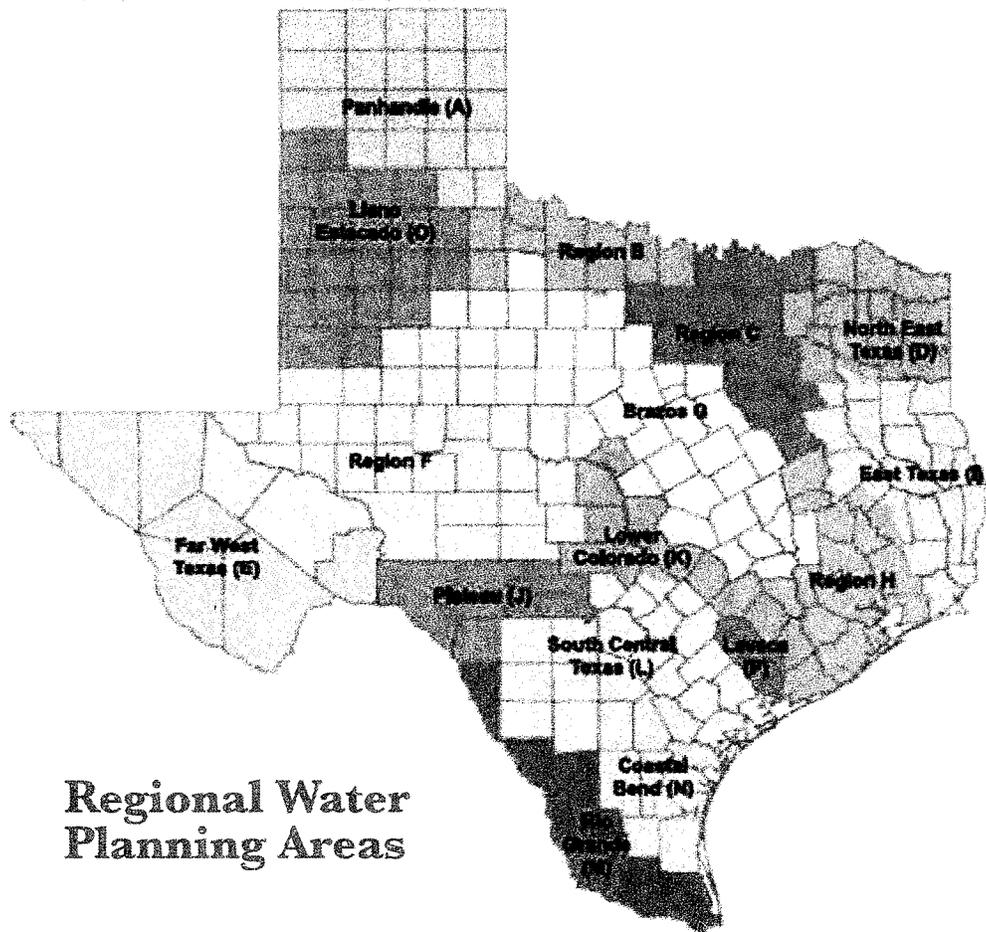
mately compiles the information to make the state water plan. The most recent iteration is the 2017 State Water Plan, which was adopted on May 19, 2016.

The 2017 State Water Plan tells us that our population will continue its rapid growth. Texas' population is expected to increase more than 70 percent between 2020 and 2070, from 29.5 million to 51 million, with more than half of this growth occurring in Regions C and H. Water demands are projected to increase less significantly, by approximately 17 percent between 2020 and 2070, from 18.4 million to 21.6 million acre-feet per year. Texas' existing water supplies – those that can already be relied on in the event of drought – are expected to decline by approximately 11 percent between 2020 and 2070, from 15.2 million to 13.6 million acre-feet per year. Water user groups face a potential water shortage of 4.8 million acre-feet per year in 2020 and 8.9 million acre-feet per year in 2070 in drought of record conditions.

The 2017 State Water Plan provides a roadmap for how to address the water needs that accompany our expected growth by identifying water management strategies and their associated costs for communities all across the state. Approximately 5,500 water management strategies that are recommended in the 2017 plan would provide 3.4 million acre-feet per year in additional water supplies to water user groups in 2020 and 8.5 million acre-feet per year in 2070. The estimated capital cost to design, construct, and implement the approximately 2,400 recommended water management strategy projects by 2070 is \$62.6 billion. Water management strategies can include conservation, drought management, reservoirs, wells, water reuse, desalination plants, and others.

The information in this plan is critical to ensuring that Texas has adequate and affordable water supplies both now and in the future. If strategies are not implemented, approximately one-third of Texas' population would have less than half the municipal water supplies they will require during a drought of record in 2070. If Texas does not implement the state water plan, estimated annual economic losses resulting from water shortages would range from approximately \$73 billion in 2020 to \$151 billion in 2070.

For more information on the 2017 State Water Plan as well as resources on how to get involved with your regional planning group and financial assistance for cities, visit the Texas Water Development Board at <http://www.twdb.texas.gov/>. ★



## Regional Water Planning Areas

# THE CONNECTION BETWEEN INFRASTRUCTURE AND REVENUE CAPS

With the exception of construction, repair, and maintenance of the state highway system, infrastructure in Texas is primarily the responsibility of local governments. Streets, bridges, drinking water systems, and wastewater facilities are funded by local entities. Although some loans and very limited grant funds are available for some water projects, the fact remains that city streets, water systems, and wastewater utilities are built and maintained with city-generated revenue.

Texas cities are on their own when it comes to paying for these infrastructure projects. The paucity of state aid to Texas cities is well-documented. While most states (including virtually all of the most populous states) provide substantial financial assistance to cities to help pay for infrastructure, such grant programs generally do not exist in Texas.

In fact, it can be argued that funds flow the other way—from local entities to the state. In recent years, the Texas Department of Transportation received almost \$100 million annually in revenue called "Local Participation" from cities alone. (Other entities provide local participation funds as well.) This is city money that helps pay for improvements to the state highway system.

Chart 1  
Cost-Saving Measures  
Percent of All Cities

	2007	2009	2011	2012	2013	2014	2015	2016
Hiring freeze during past two years	4.9%	8.7%	17.9%	15.8%	7.6%	4.4%	3.8%	2.9%
Wage freeze during past two years	2.9%	5.1%	23.8%	16.2%	5.9%	4.2%	3.4%	3.5%
Reduced services	2.5%	4.0%	6.7%	7.6%	3.2%	2.6%	1.3%	2.5%
Eliminated services	1.4%	2.2%	2.9%	3.4%	1.7%	1.5%	1.3%	0.6%
Reduced salaries	0.8%	1.0%	1.7%	1.7%	1.3%	0.9%	0.4%	0.4%
Laid off employees	5.9%	6.6%	10.7%	10.2%	4.5%	3.8%	3.0%	1.4%
Postponed capital spending	49.4%	50.0%	52.4%	43.1%	36.9%	29.7%	36.0%	28.7%



Much of the local revenue that is used to fund infrastructure projects comes from the property tax. That fact raises an interesting question: if the Texas Legislature passes legislation that limits or caps municipal property tax revenue, will municipal investment in infrastructure decrease?

**The answer is yes.**

The evidence is in the Texas Municipal League's biennial fiscal conditions survey. When asked which cost-cutting measures were employed to balance the current-year budgets, cities consistently identify "postponed capital spending" as the most commonly used tactic. (Please see Chart 1 on page 30.)

Chart 2

**If Revenues Remain Constant or Diminish, What Will Cities Do?**

Percent of All Cities

First Response	2007	2009	2011	2012	2013	2014	2015	2016
Postpone capital spending	39.5%	45.0%	22.6%	24.6%	24.1%	27.6%	28.5%	29.4%
Impose hiring freeze	19.1%	18.1%	42.3%	32.7%	32.1%	26.6%	22.0%	16.4%
Increase user fees	21.1%	17.7%	12.4%	10.6%	10.9%	10.2%	14.5%	10.5%
Raise property tax	10.0%	10.6%	6.2%	4.2%	8.2%	7.6%	8.0%	6.6%
Impose wage freeze	3.4%	2.4%	10.6%	9.3%	7.3%	6.7%	6.5%	5.1%

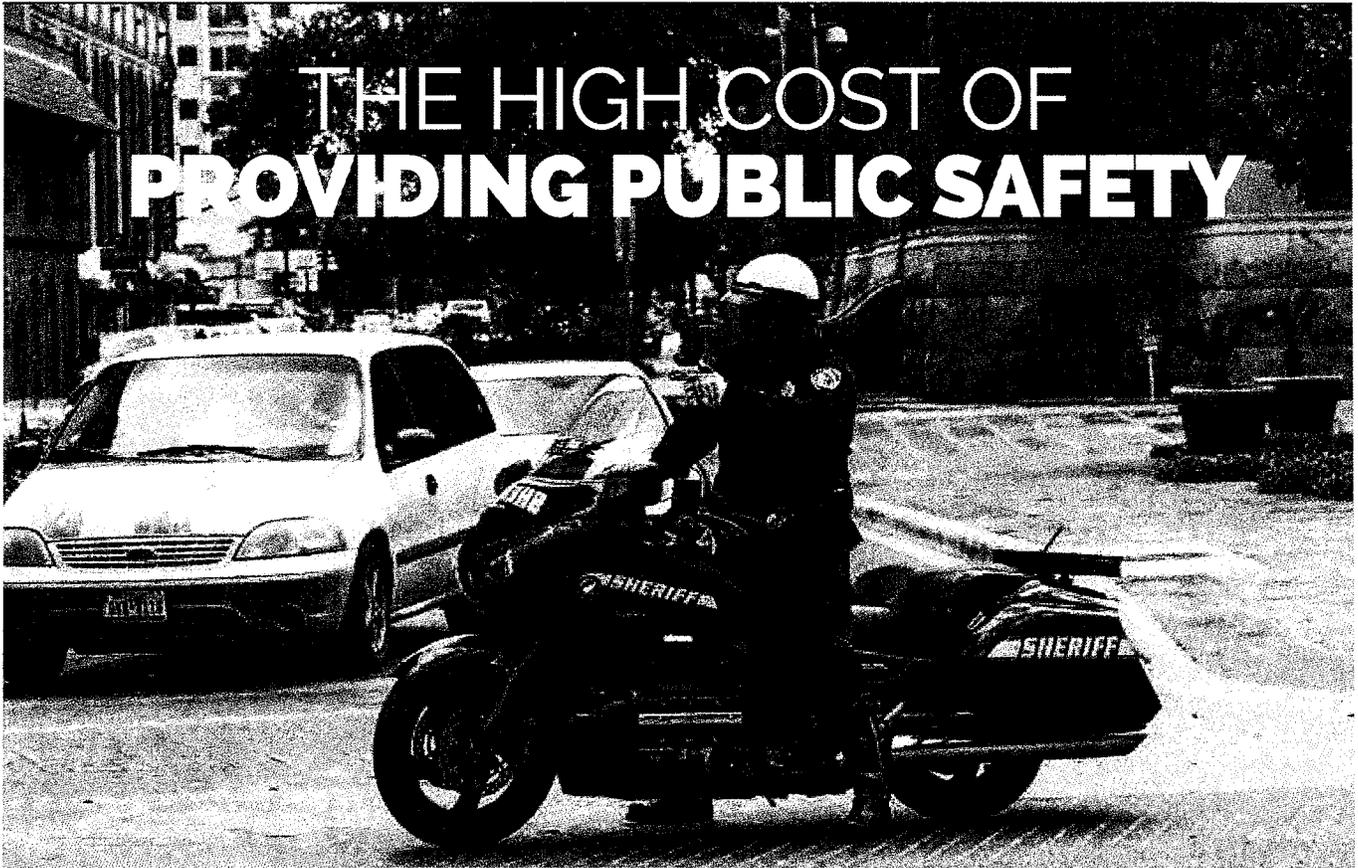
Similarly, when asked to identify how they would respond to diminishing revenue in future years, city officials almost always select "postpone capital spending" as the top choice. (Please see Chart 2.)

Here's the bottom line: Any legislation that would place new restrictions on the ability of cities to generate property tax revenue will result in reduced spending on infrastructure, particularly

city streets and bridges. Those spending cuts will harm regional economies and the state's economy.

Without municipal investment in the infrastructure needed for industrial and commercial activity, the state's job creation and economic growth will be severely damaged. And the most certain way to limit the construction and maintenance of infrastructure is to restrict the growth of tax revenue. ★

# THE HIGH COST OF PROVIDING PUBLIC SAFETY



Ensuring that citizens have a safe city in which to live and work is of the utmost importance to the state. Cities strive to promote the health, safety, and welfare of all of their citizens. Unfortunately, providing a high level of public safety does not come cheap.

For most citizens, it is almost an automatic response to turn to government in times of need. In cities, that translates to spending tax dollars on public safety services. Cities expend considerable resources anticipating what the public at large generally doesn't want to think about—emergencies.

Public safety includes traditional fire protection, such as fighting house fires; traditional police protection, such as officers patrolling streets for traffic violations and criminal activity; and responding to numerous 911 calls.

However, in today's world, the task of providing public safety has expanded as threats have increased and citizen expectations have grown. Public safety now encompasses:

- hurricanes and other natural disasters;
- preventing and responding to terrorist threats and attacks;
- federal homeland security mandates;
- emergency medical services (EMS) and ambulance

services;

- border security;
- hazardous materials response;
- response to pandemic disease and other public health disasters;
- drug task forces; and search and rescue, along with a host of other activities.

As the list illustrates, police, fire, and EMS are now expected to protect our homeland and be ready to respond to terrorist attacks with chemical, biological, and weapons of mass destruction. That's a tall order, considering the cost of standard public safety training and equipment.

For example, it costs approximately \$2,000 to provide basic protective equipment for a single structural firefighter. Of course, the equipment needed to enter a burning building is specialized and much more costly than the standard issue equipment. (See firefighter diagram.) In addition to the expensive equipment necessary for firefighters to safely carry out their jobs, they must also receive continuous training. This training often comes with a high price tag and must be supplemented on an ongoing basis. ★

**Median Salary for Police Officer and Firefighter**

Police Patrol Officer:  
\$60,270.00 plus  
benefits annually

Firefighter:  
\$46,870.00 plus  
benefits annually

Source: US Bureau of Labor

Helmet  
and hood  
\$381

"PASS" alarm to  
monitor firefighter  
while deployed  
\$495

Firefighter pager  
\$459

Self-contained  
breathing apparatus  
\$4,268

Heat-reflective,  
fire-resistant coat  
\$1,200

Gloves  
\$87

Heat-reflective,  
fire-resistant pants  
\$600

Puncture-proof,  
heat-resistant boots  
\$358

**Total cost of Firefighter Equipment \$7,848**

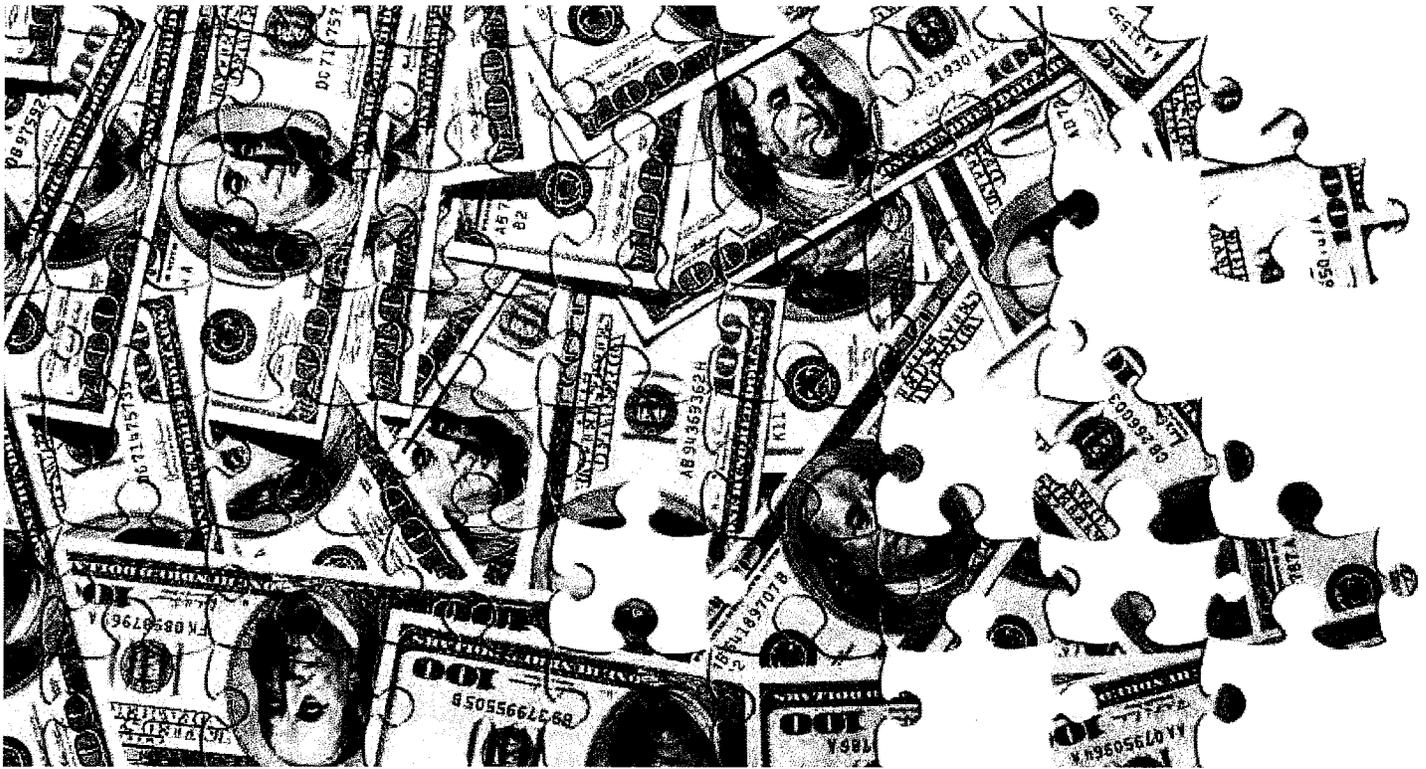


**Texas Cities Assist with  
Disaster Response and  
Relief**

Over the past several years, cities have played a major role in disaster response, relief, and rebuilding efforts as hurricanes, wildfires, and tornadoes hammered Texas. According to *Texas Rebounds*, a publication of the governor's office, Hurricanes Ike and Dolly caused the City of Houston to sustain local government infrastructure damages of more than \$100 million. The City rushed to repair vital infrastructure in the days following the storm, dedicating countless resources to restoring necessary services to citizens. The City of Galveston, also hard-hit by Hurricane Ike, expended \$500 million to repair and replace housing, city buildings, and utility infrastructure, not to mention millions more to repair roads, revitalize the business community, and much more. Some of these expenditures were ultimately reimbursed by the federal government, but the ability of cities to react quickly and decisively during and after a natural disaster is an invaluable service. In 2013, the City of West responded to a fertilizer plant explosion that devastated its city. The City not only paid the price of emergency response in dollars, but also lost many of its volunteer firefighters, one being the city secretary. Disasters like the West explosion can lead to legislation that seeks to impose additional mandates on cities, but without commensurate funding. In 2014, cities like Dallas have already been asked to assist with the costs of Ebola response. The costs for these types of emergencies will continue to fall on cities because urban populations are often the hardest hit by public health emergencies

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# ANNEXATION: IT ISN'T A FOUR-LETTER WORD



Texas cities, unlike the cities of other states, don't receive general state financial assistance or state revenue-sharing. They don't ask the state to help fund the facilities and services on which regions and the entire state rely. But cities do ask that their authority to take care of themselves not be eroded. The power to annex is one of those key authorities, and to lose it would not only be very detrimental to cities, it would also be detrimental to the economy of the entire state.

Nonetheless, annexation powers have routinely come under attack in the legislature. The residents of unincorporated areas rarely favor being brought into a city involuntarily, and any city that has gone through a major annexation is well aware of how controversial the process can become. Rural landowners and others have regularly turned to their legislators for relief from city expansions, with the result that bills to curb unilateral annexations have surfaced in every session for the past 40 years.

Texas cities are the fastest-growing in the United States. Evidence of the importance of unilateral annexation exists in other states where cities do not have that power. The broad power of Texas cities to annex has permitted cities in Texas to share in the benefits of growth in the surrounding areas. According to many national authorities, this annexation power is the primary difference between the flourishing cities of Texas and the declining urban areas in other parts of the nation. If San Antonio, for example, had the same boundaries it had in 1945, it would contain more poverty and unemployment than Newark, New Jersey. Without annexation, Texas cities would languish economically, as do northern cities with limited or no annexation power.

A 2003 report issued by The Perryman Group, a well-respected economic and financial analysis firm, showed that overly restrictive annexation policies would harm the Texas economy by reducing gross state product, personal income, sales, employment, and population. The

study concluded that voter approval of annexations would essentially eliminate annexations and thus severely damage the state's economy.

The Perryman Group report concludes that restrictions on annexation would mean that "the entire character of the Texas economy will be changed in a way which notably limits its capacity to support future growth and prosperity." If you think those numbers are exaggerated, just look at what happened to four once-great American cities that were prevented from growing. In 1950, Detroit, Baltimore, Cleveland, and St. Louis were the fifth, sixth, seventh, and eighth largest cities in the nation in population. All four of them were prevented from expanding their city limits. Sixty years later, in 2010, all four cities had about the same number of square miles they had in 1950.

Over the six decades from 1950 to 2010, Detroit suffered a population loss of 61 percent. Baltimore's population declined 35 percent. Cleveland lost 57 percent of its population and St. Louis lost 63 percent of its population. Without the ability to take in areas of growth, those cities died.

### Did You Know?

San Antonio's annexation of land on the south side of the city set the stage for Toyota's decision to build a new manufacturing plant in the city.

	Land Area Sq. Mi.		Population Rank		City Population		Population Change	Median household Income in 2013
	1950	2010	1950	2010	1950	2010		
Detroit	140	140	5	20	1,849,568	713,777	-61%	\$26,325
Baltimore	79	81	6	24	949,708	620,961	-35%	\$41,385
Cleveland	75	78	7	48	914,808	396,815	-57%	\$26,217
St. Louis	61	62	8	61	856,796	319,294	-63%	\$34,582

In contrast to the four cities that experienced a death spiral due to annexation limitations, look at what happened in four Texas cities between 1950 and 2010 without similar restrictions on their ability to grow.

	Land Area Sq. Mi.		Population Rank		City Population		Population Change	Median household Income in 2013
	1950	2010	1950	2010	1950	2010		
Houston	160	600	14	4	596,163	2,009,453	252%	\$45,010
San Antonio	70	451	25	7	408,442	1,327,407	225%	\$45,722
Dallas	112	341	22	9	434,452	1,197,816	176%	\$42,846
Austin	32	297	73	14	132,459	709,390	497%	\$53,946

Certainly other factors were at play, but it seems clear that annexation authority plays a big role in the success of a city (and therefore the state). More recently, the League commissioned a study of only southern states with similar demographics to Texas. That study found that, among a comparison set of 13 states, three key findings emerge:

1. States in which city councils decide whether to annex have seen their cities grow faster over the past 25 years, both economically and demographically, than other states that limit annexation.
2. In terms of annexation activity (as measured by change in city size) states in which city councils decide whether to annex have actually seen their cities physically grow more slowly from 1990 to 2010 than other states that limit annexation.
3. When measured by bond ratings tied to the issuance of general obligation bonds, states in which city councils decide whether to annex have better ratings than other states that limit annexation.

In short, municipal annexation is an engine that drives the Texas economy, and turning off that engine would be devastating to the state's financial future. ★

## Did You Know?

Current law provides numerous protections for rural landowners on the outskirts of cities. For example, a city is prohibited from annexing property that is appraised as agriculture or wildlife management unless a city first offers a "non-annexation agreement" to the landowner. Many landowners have accepted the agreements, which provide that the land won't be annexed unless development of the property commences. If a landowner declines an agreement and is annexed, both the Agriculture Code and the Local Government Code prohibit a city from enforcing most regulations that would interfere with farming, ranching, and certain other operations.

## Why Is Annexation Authority So Critical to the Texas Economy?

To understand the answer to this question, one must look to the most basic elements of municipal finance and intergovernmental relations.

**1. Cities (city taxpayers) pay for a wide array of services and facilities that benefit entire regions and the entire state.** For example, basic activities such as mail delivery couldn't take place if cities didn't construct and maintain streets. The economy of Texas would crumble without city investments in the basic infrastructure upon which business and industry rely. Cities are centers of employment, health care, entertainment, transportation, and merchandising used by non-city-residents throughout the region. This means that cities must support public safety services and a physical infrastructure sufficient to serve a daily influx of visitors from throughout the metropolitan region.

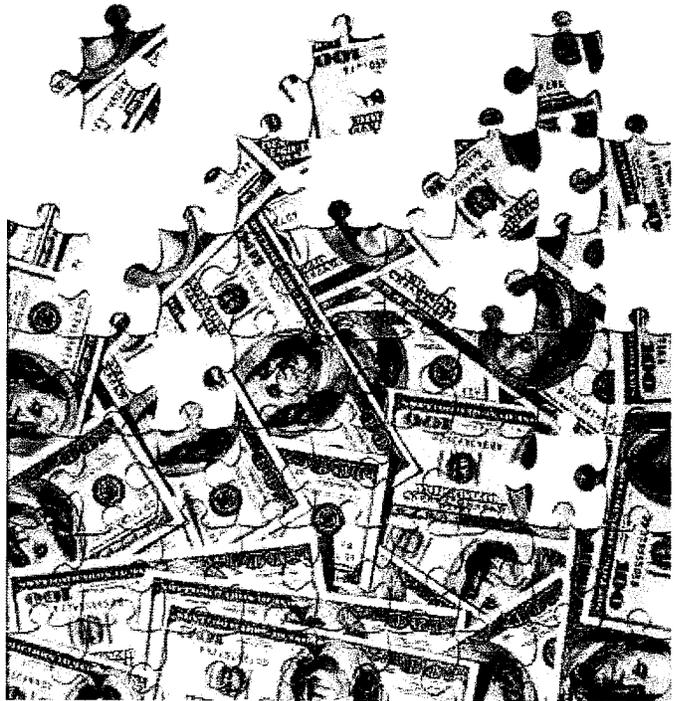
**2. Most states recognize that cities should be assisted in making these expenditures that benefit entire regions and the whole state.** Virtually every state transfers state-generated revenue to cities to assist in the provision of services and facilities. They recognize that cities (city taxpayers) are making expenditures that benefit all residents of the state. For example, most populous states give a portion of state gasoline tax revenue to cities to assist in street construction and repair. Many states share vehicle registration revenue or

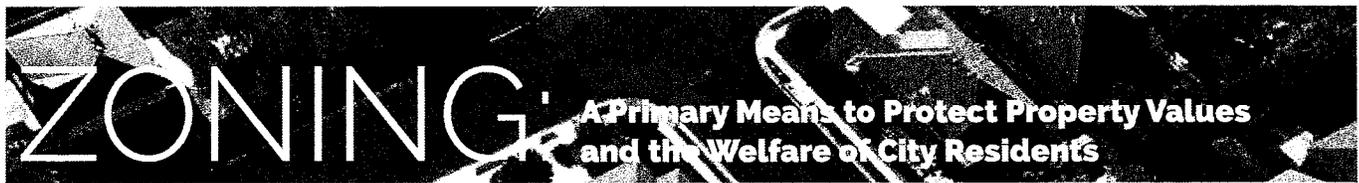
motor vehicle sales tax revenue with cities. A survey conducted by the National League of Cities found that cities across the nation receive 13 percent of their revenue from state aid.

**3. In Texas, there is virtually no state aid to cities.** Take a look at a municipal budget and try to find a revenue line item called "Transfer from State" or "State Financial Assistance." While such line items are common in other states, you won't find them in Texas.

**4. But Texas has allowed cities to annex.** Cities have used that authority to bring adjacent areas into the city and into the system through which cities finance the services and facilities that benefit the region and state.

**5. To erode or eliminate municipal annexation authority without considering the issues of municipal revenue and intergovernmental relations would cripple cities and city taxpayers.** If annexation authority were eliminated, Texas would become the only state in the nation that denies both state financial assistance and annexation authority to its cities. Opponents of annexation cannot point to a single state that has restricted annexation authority without implementing fiscal assistance programs under which the state helps cities pay for the infrastructure on which the entire state depends.





Zoning is the division of a city into districts that permit specific land uses, such as residential, commercial, industrial, or agricultural. Zoning authority empowers a city to protect residential neighborhoods, promote economic development, and restrict hazardous land uses to appropriate areas of the city. It is designed to reduce street congestion; promote safety from fires and other dangers; promote health; provide adequate light and air; prevent overcrowding of land; and facilitate the provision of adequate transportation, utilities, schools, parks, and other public services and facilities.

As with all issues that affect a city's residents, the power to zone is best exercised by the level of government closest to the people. For example, a person from a small town in the Panhandle cannot possibly know what type of zoning is best for a large coastal city.

Chapter 211 of the Texas Local Government Code contains many procedural requirements that must be followed when zoning property, including strict notice and hearing provisions. The requirements ensure that residents of the city and affected neighborhoods have a strong voice any time a zoning change is considered. In addition, Chapter 211 provides for the creation of a planning and zoning commission to make recommendations on the adoption of initial regulations and to consider proposed amendments. Also, a board of adjustment may be appointed to hear requests for variances from the regulations.

Zoning authority is generally demanded by the residents of cities, and citizens, through neighborhood and preservation groups, who support it wholeheartedly.

In essence, zoning grants a city the authority to prohibit detrimental uses and to promote beneficial uses. For example, zoning authority allows a city to prohibit lead-smelting plants or junkyards from being located in or near residential areas, thereby protecting the quality of life and property values for residents. Without zoning authority, the property values in a city would certainly drop.

#### **Appropriate Use of Manufactured and Modular Housing**

The Texas Manufactured Housing Standards Act allows cities to regulate the location of "manufactured homes," which must meet federal construction regulations. The Texas Industrialized Housing Act allows cities to require that "modular homes," which meet the more stringent

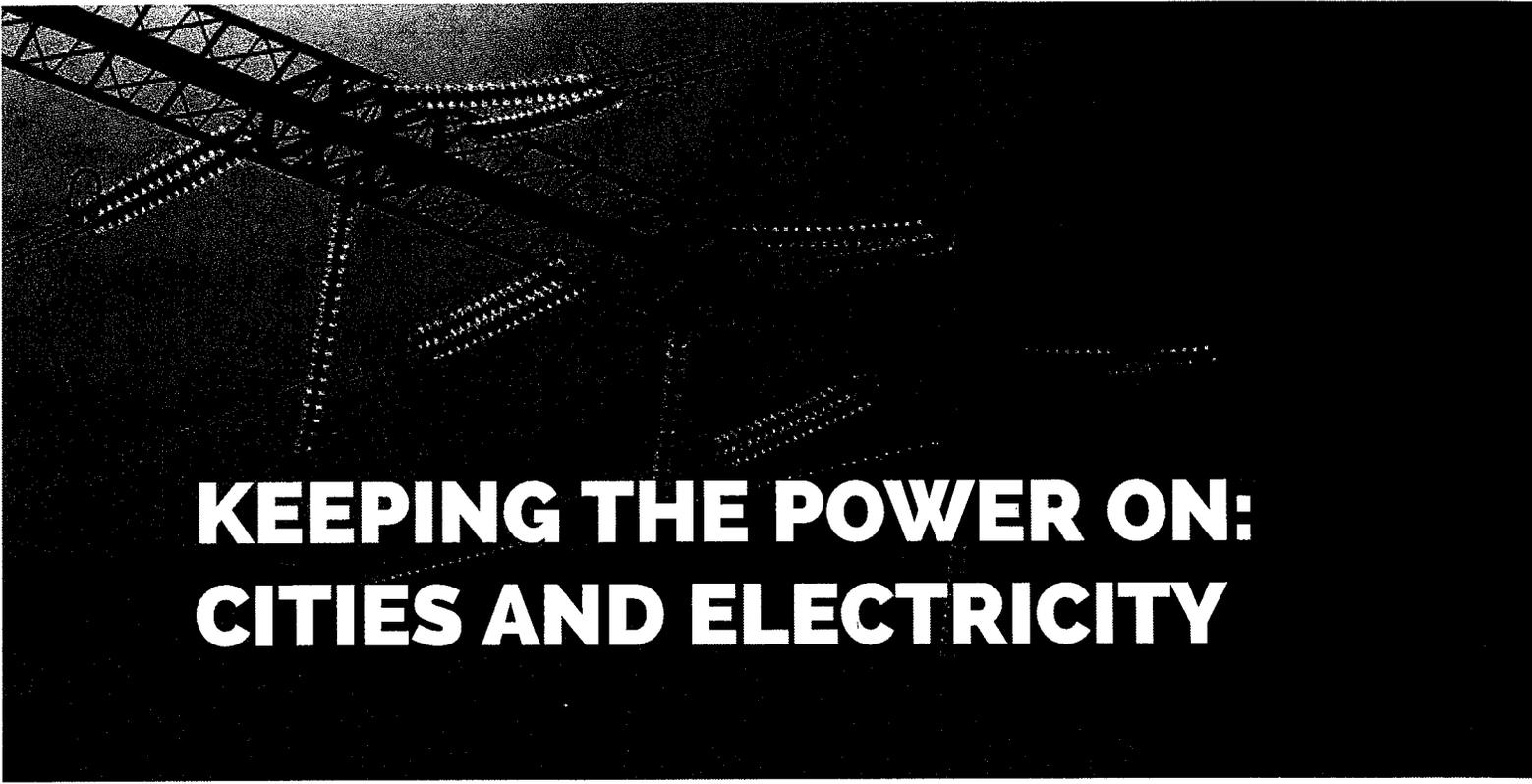
requirements of the International Residential Code, have an appearance and value similar to nearby homes. Many cities take advantage of these provisions to protect property values and the safety of residents, while at the same time offering viable housing alternatives for lower income families. "Manufactured and modular housing provides a solution to affordable housing in appropriate areas under consciously adopted, well-thought-out regulations," says David Gattis, former deputy city manager in the City of Benbrook. The Texas Municipal League is not opposed to this type of housing, but strongly advocates the authority of cities to retain local control over when, where, and how this type of dwelling is installed. ★

#### **Zoning Changes and Property Values**

Because zoning is an essential power, statutes that require compensation when a property's value is affected by a zoning change are extremely rare in the United States. Rather, the United States Supreme Court and various state courts have set forth tests that are used to determine whether a government regulation requires compensation to a property owner.

In fact, the Supreme Court of Texas upheld a city's authority to make reasonable zoning changes. In that case, a city rezoned a residential area to provide for larger lot sizes. The rezoning was designed to create more open space, less traffic, greater setbacks, less noise, and similar results. The Court concluded that a city has a legitimate governmental interest in such results and in preserving the rate and character of community growth. The Court also found that no "taking" of the owner's property occurred, because the regulation did not impose a great economic impact on him.

Any legislative requirement that compensation should be paid when a zoning change (or any other municipal regulation for that matter) reduces property value would create an untenable situation under which cities would either: (1) go bankrupt; or (2) be forced to give up the local power to zone property in the best interests of the community as a whole. And the reality is that most zoning changes are initiated by a property owner and *increase* the value of land.



# KEEPING THE POWER ON: CITIES AND ELECTRICITY

Cities have various interests relating to how they and their citizens get electric service, how cities with municipally owned electric utilities provide service, and the prices that everyone pays for electricity. Cities also receive franchise fees from utilities that use their rights-of-way, and they have original jurisdiction over the rates of investor owned utilities in their cities.

How electricity is provided in Texas is complex and based on many moving parts in an always changing puzzle. The following questions and answers provide a "primer" on the issues facing cities in this area.

*Note: See the article in this publication titled "Cities Refuse to Accept Utility Rate Hikes Without a Fight" to learn more about how cities without their own electric utility keep rates reasonable for their citizens.*

## **What are the different ways cities and their citizens get their electricity?**

Cities and their citizens generally get their electricity in one of three ways: (1) from a municipally owned utility (MOU); (2) from an investor owned utility (IOU); or (3) from a rural electric cooperative (Coop). Each of those providers usually has a monopoly in the areas they serve, based on a certificate from the Texas Public Utility Commission (PUC). (Note: a few areas of the state are served by river authorities and municipal power agencies. Also, with regard to an IOU, only the transmission and distribution component discussed below has a geographical monopoly in the deregulated market.)

After deregulation, MOUs and Coops retain that monopoly status, unless they choose—by a vote of their governing body—to adopt customer choice. The reasons for allowing MOUs and Coops discretion to retain their monopoly status are many, but one of the most important is that MOU and Coop rates are governed by a city council or board of directors—the members of which are elected by the customers. The city council or board of directors is therefore accountable directly to the customers they serve.

IOUs are also governed by a board of directors, but they are accountable to their shareholders, rather than their customers. The rates of investor-owned transmission and distribution utility (discussed below) are regulated by the PUC in a way that should—in theory—cover costs of operation and allow for a reasonable profit.

## **What is electric deregulation, and why should city officials care?**

In 1999, legislation was enacted to deregulate the portion of the state that is served by IOUs. MOUs and Coops are given the option to participate in the deregulated market by "opting in" to competition. However, to date no MOU has opted in.

Prior to deregulation being fully implemented in 2002, a single IOU performed all the things necessary to provide service to customers within its designated service area. In simple terms, the legislation "broke up" or "unbundled" investor owned utility monopolies. Those utilities were

divided up into different components: generation, transmission and distribution, and retail service. Some utilities sold one or two of those parts of their business, while others created subsidiary companies to run them.

Generation companies make the power with power plants, wind farms, and other means. Transmission and distribution companies move the power from the generators to other parts of the state with huge transmission lines, and ultimately distribute it to the customers through smaller distribution lines.

While the generation and retail portions of the market are now deregulated, the rates of transmission and distribution utilities are still regulated by cities and the PUC. That is necessary because the companies that generate power must have a reliable way to get that power to the retail companies which actually sell the power to customers.

The retail companies are numerous and essentially speculate as to how much generation will cost them. They then offer price plans to consumers accordingly. They are the ones with which customers in a deregulated area interact. Customers can switch retail companies to try to get the best possible rate.

Certain areas of the state—including the Panhandle, El Paso, and certain areas in the northeast and southeast portions of the state—are served by IOUs, but have not been deregulated. Those areas are not a part of the main transmission grid in Texas, so deregulation is impractical.

Whether deregulation has been beneficial to cities and their citizens remains the subject of heated debate. One thing is certain: deregulation has changed the way cities in the deregulated market purchase power for city facilities; one of the ways cities and other political subdivisions do that is by a process called aggregation. Aggregation means just what it says: cities join together or “aggregate” to purchase energy at a better price than they could obtain themselves. (Note: state law also authorizes citizens to aggregate, but the logistics of that process have made it all but useless. Previous legislative efforts to allow cities to automatically bundle-up their citizens and negotiate on the citizens’ behalf have failed.) The most well-known aggregation group is called the Texas Coalition for Affordable Power, which represents more than 100 cities.

### **Why aren't MOUs opting into the deregulated market?**

Even though they are not required to do so, MOUs have the discretion to opt in to the deregulated market. Many state leaders continue to applaud the Texas deregulated

market as one that has created lower prices. For a number of reasons, that is questionable. It would also appear that MOUs aren't convinced, and that their citizens prefer the consistently lower prices and better service that they provide. It's a case of “if it ain't broke, don't fix it.” MOUs can wait and see if opting in to deregulation would really benefit their customers. Also, an MOU that opts in is essentially stuck with that decision. Further, opting into competition would require an MOU to undertake the complex and expensive process of breaking up its service into the three components of the deregulated market (generation, transmission and distribution, and retail).

### **What are recent criticisms levied against MOUs?**

Some MOUs have been criticized recently for transferring some of their profits to the city's general fund. Interestingly, even larger cities that transfer large amounts of revenue have electric rates that are comparable to, or lower than, IOUs serving the deregulated market.

In addition, cities may or may not charge their MOUs franchise fees for the use of the city's rights-of-way. Thus, the transfer is often analogous to a franchise payment that the city would receive from an IOU that uses the city's rights-of-way. In any case, it is currently up to each city's council to decide how to handle transfers. Another way to look at transfers is that they are very similar to the return on investment that IOUs give back to their shareholders. But in the case of an MOU, the “shareholders” are the taxpayers of the city. Transferred revenue is used to pay for services (police, fire, EMS, streets, and so on) that are used by the customers of the MOU. The transferred revenue is used to keep property tax rates low, which benefits the taxpayers served by the MOU.

### **What are electric franchise fees?**

Electric franchise fees are fees paid by IOUs or Coops (and in some cases, MOUs that provide service in other cities) that use a city's rights-of-way to provide service. Both state law and the Texas Constitution provide that a city may not allow a private entity to use city property for free.

Some argue that franchise fees of any type are a “hidden tax” on utility service. Of course, the municipal position is that the fees are authorized by state law. In fact, the Texas Constitution prohibits a city from giving away anything of value (for example, the use of city property) to a private entity. Thus, the city position is that the fees are nothing more than “rental” payments for the use of city property. ★



# CITIES REFUSE TO ACCEPT UTILITY RATE HIKES WITHOUT A FIGHT

Texas cities have a long history of participation in the ratemaking process for both gas and electric utilities in the State of Texas. Prior to the enactment of the Public Utility Regulatory Act (PURA) in 1975 and the Gas Utility Regulatory Act (GURA) in 1983, utility rates were set exclusively at the city level, with any appeals of municipal rate ordinances decided in the courts.

Currently, under PURA and GURA, cities have original jurisdiction over the utility rates within their city limits. This means that the Railroad Commission (RRC) and the Public Utility Commission (PUC) have original jurisdiction over gas and electric rates in service areas outside city limits and also within the city limits of those cities that have ceded their original jurisdiction to the agency. In addition, the PUC and RRC have appellate jurisdiction over rate ordinances and orders of cities concerning electric and gas utility service within a city's limits.

Recognizing the important role cities play in the regulation of utilities, hundreds of cities across the state participate in ratemaking proceedings at both the PUC and the RRC in order to ensure fair, just, and reasonable rates, as well as adequate and efficient services for the city and its residents.

Historically, cities have formed coalitions to represent the collective interests of cities and their citizens before the regulatory agencies and courts. By forming coalitions, cities have been able to present a strong voice for consumers for more than 30 years. This has served to reduce the costs that cities and their residents pay for electric and gas service. Cities' active participation in rate cases demonstrates their concern for reliability, quality of service, and the prices their citizens pay for gas and electricity. In numerous instances, without city participation, rate increases would have gone into effect without any party scrutinizing the utility's application.

Both PURA and GURA allow for cities to be reimbursed by the utility company for their reasonable rate case expenses associated with participation in ratemaking proceedings. In providing for the reimbursement of rate case expenses in the statutes, the Texas Legislature has acknowledged the important role that cities play in protecting citizens from unreasonable utility costs. Because these expenses are ultimately passed on to consumers by the utility, cities are always cost-conscious. Cities must balance the cost of participation in a ratemaking proceeding against the need to protect the interests of their residents. In prior cases, however, municipal participation has resulted in a net savings for ratepayers because the utility's rate increase was reduced by an amount far in excess of the expenses incurred by the cities. Cities' participation in utility ratemaking proceedings has proven time and again to be a good value for consumers. ★

City coalitions have found expenses like these which utilities tried to pass on to customers:

- Hotel expenses of nearly \$1,000 per night for executives to stay at a New York City hotel.
- Tens of thousands of dollars worth of art for the utility's office.
- Dinners in New York City, Dallas, and Philadelphia restaurants costing more than \$200 per person.
- More than \$1.5 million in employee "financial incentives."

A private, investor-owned utility is allowed to incur expenses like those listed above, but the company itself (i.e., its shareholders), not the utility customers it serves, should pay for those costs. It's unreasonable to ask to raise customer rates to cover these kinds of expenses, and cities are the first line of defense against such requests.



Many states around the country are faced with huge deficits in public worker pension plans. That has prompted lawmakers in those states to seek large-scale reforms in their retirement systems. Over the last few years, many states have undertaken major efforts to address those deficits by converting public pensions from defined benefit to defined contribution plans, which are similar to a 401(k). As those funding crises across the country continue, the drumbeat for "reform" in Texas pensions will continue to grow louder.

In Texas, the Texas Municipal Retirement System (TMRS) is responsible for the administration of a majority of city retirement plans covering both public safety and civilian city employees. The system is made up of 850 member cities, 102,000 contributing members, and 43,000 annuitants.

TMRS has taken great strides in recent sessions to make improvements in the system that provide retirement benefits

to a majority of city employees in Texas. The reforms have stabilized benefits and lowered city contribution rates, while ultimately using fewer tax dollars to fund pensions. They will also require training by pension system employees.

There are numerous reasons why TMRS has been so successful. TMRS relies on an advisory board of 19 members, including TMRS retirees, elected officials, pension experts, as well as representatives from both labor and employer groups. This advisory group thoroughly vets all legislative proposals while moving forward only with those that have consensus. The unified front during session provides for easy passage of the needed reforms.

Although the drumbeat for reform may persist throughout the next legislative session, TMRS has proved to be a well-funded model for pensions around the country. It should not be included in discussion about other pension reforms. ★



# THRIVING LIBRARIES REFLECT THRIVING CITIES

*"Libraries allow children to ask questions about the world and find the answers. And the wonderful thing is that once a child learns to use a library, the doors to learning are always open." —*

Laura Bush

The Texas Library Association (TLA) reports that there are 561 public libraries in Texas, with an additional 314 public branches and bookmobiles. Public libraries—both city and county—consistently rank high among taxpayers in terms of community services.

**Libraries impact the local economy and workforce development.**

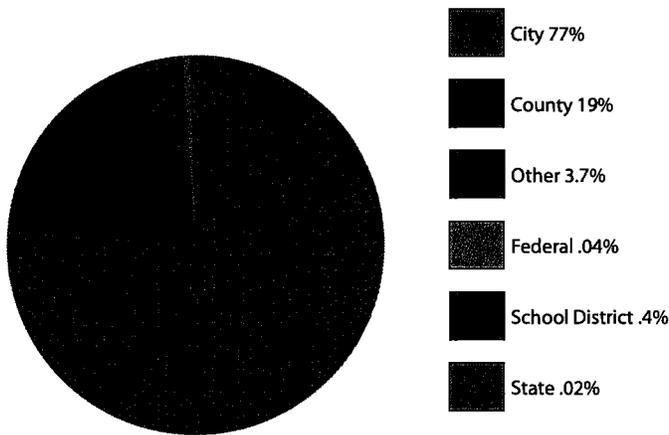
In a 2008 public opinion survey, conducted on behalf of the TLA, 83 percent of Texas voters believed that public libraries support the economy through job skills training, career and job information, and resources for local businesses. A recent study conducted for the Texas State Library and Archives Commission (TSLAC) documented various, specific examples of libraries (1) enabling businesses and self-employed individuals to improve their economic activities; (2) assisting individuals to obtain employment; and (3) providing educational and occupational programs that meet the needs of Texas communities and regions. Some businesses—particularly those requiring a highly skilled workforce—look to the city's library as a barometer of local commitment to workforce readiness.

**Libraries impact literacy and education.** Public library patrons include preschoolers, afterschoolers, homeschoolers, distance learners, and researchers. Through story time hours, reading programs, English second language classes, and other local services, they represent the public's bridge to structured educational campuses. The 2008 TLA public opinion poll found that Texas voters were nearly unanimous in their belief that public libraries create educational opportunities for all citizens (97 percent agreed).

**Libraries impact community.** Communities value their city libraries not only as centers of information and learning, but also as a gathering point for ideas and discussion. The 2008 TLA public opinion survey found that 95 percent of Texas voters believed that public libraries improve the quality of life in their community. Approximately 75 percent of public libraries serve communities smaller than 25,000 in population. In small Texas cities, the library may be the only community gathering place.

As shown in the accompanying chart, cities are the largest source of income for public libraries in Texas. ★

**Texas Public Libraries: 2015 Income by Source**



Source: Texas State Library and Archives Commission, Texas Public Library Statistics, Statewide Comparison Statistics: 1997 to 2015

*"Whatever the cost of our libraries, the price is cheap compared to that of an ignorant nation." —*

Walter Cronkite

**Texas Public Libraries: A Great Investment**

A study found that, in 2011, Texas public libraries collectively provided \$2.407 billion in economic benefits while costing less than \$0.545 billion. That is a return on investment of \$4.42 for each dollar invested. This chart from the study shows how Texas compares to some other states and cities:

JURISDICTION	RETURN ON THE DOLLAR
<b>STATES</b>	
Colorado	\$4.99
Florida	\$8.32
Indiana	\$4.76
South Carolina	\$4.48
<b>Texas – Statewide</b>	<b>\$4.42</b>
Wisconsin	\$4.06
<b>CITIES</b>	
Charlotte	\$4.61
Southwestern Ohio	\$3.81
<b>Texas – 14 cases</b>	<b>\$4.19</b>

Table 7.1. Return on Investment in Selected Reports  
Note: Summary statistics were unavailable for Philadelphia and Seattle.

Texas voters get it! In a 2008 public opinion survey, 94 percent of Texas voters agreed that public libraries are a good value for the tax dollar.

Sources:  
Dec. 2012, Texas Public Libraries: Economic Benefits and Return on Investment, Prepared for TSLAC by Bureau of Business Research, IC2 Institute, Univ. of Tex. at Austin. Fall 2008, KRC Public Opinion Survey conducted on behalf of the Texas Library Association



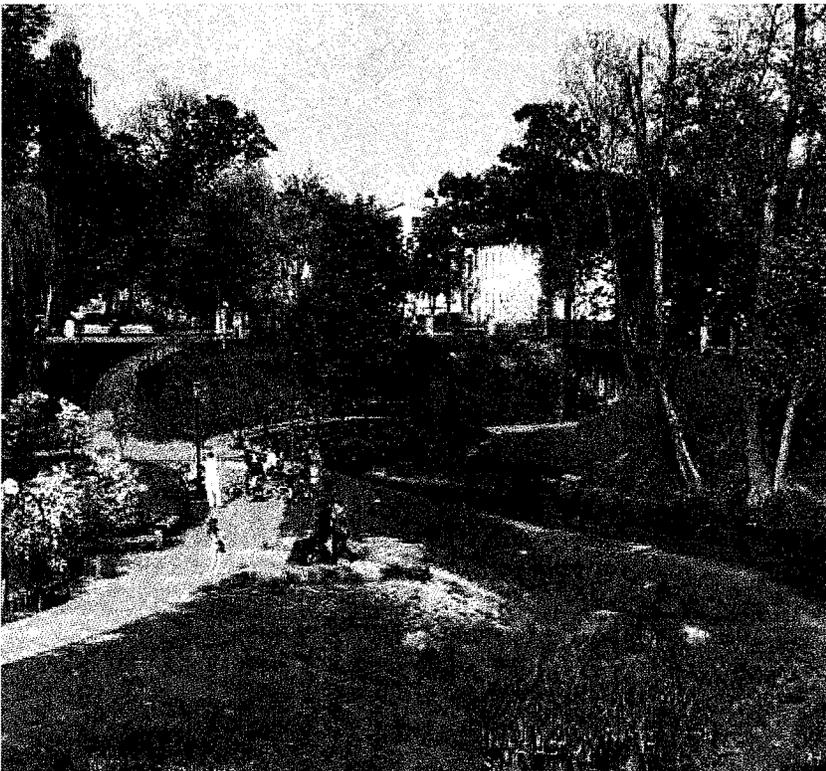
# EXANS KEEP HEALTHY CITY PARKS

City parks are the front line in the battle of the bulge, and they help keep Texans feeling their best at home and while away. Texas cities face extreme weather, modern lifestyles, and funding challenges in maintaining fitness.

Texas cities provide programs that improve the quality of life for individual participants and the overall community. All Texans, including youth and seniors, benefit from the opportunity to increase their health and reduce stress. Communities are strengthened by opportunities to build partnerships, enhance diversity, and learn tolerance through teamwork. A 2006 study by The Perryman Group found that the physical health of individuals and environmental contributions are often the first benefits people associate with local parks. People with the best access to both built and natural facilities are 43 percent more likely to exercise 30 minutes most days of the week, clearly illustrating the importance of local parks in the fitness movement.

According to the American Planning Association, there is evidence that when cities provide parks, it can make communities safer. City parks also encourage youth to step away from their televisions and computer games for real social interaction while playing basketball, softball, soccer, gymnastics, or simply enjoying sunshine and wildflowers.

City parks provide outdoor recreation resources such as pools, softball fields, and Frisbee golf courses. Cities also provide indoor recreation activities for sports, arts, and nature programs. While most cities have hiking trails, some cities are investing in new interests such as dog parks and skate parks. Many cities even provide classes to encourage hobbies and various self-help classes such as income tax and language skills. ★



## The Texas Economy Keeps Healthy in Local Parks

- Parks contribute to residential and commercial real estate values. An analysis of approximately 30 studies found a positive impact of 20 percent on property values abutting or fronting a passive park area.
- Local parks across the state lead to the creation of 45,623 jobs through their maintenance and operations activity, capital investment, and direct tourism.
- By adding the effects of operations and maintenance, capital spending, and tourism, a total gross impact can be derived. Across the state, the total impact of local parks leads to an addition to business activity including \$6.439 billion in spending.
- The incremental net fiscal revenue to the state government from local parks activity is approximately \$171.6 million per year.

Information from *Sunshine, Soccer, and Success: An Assessment of the Impact of Municipal Parks and Recreation Facilities and Programs on Business Activity in Texas* by The Perryman Group for the Texas Parks and Recreation Foundation in December 2006.

# INVESTING IN TOMORROW'S LEADERS: CITY GOVERNMENTS INVOLVE YOUTH



Many Texas cities have created special programs to engage and involve youth. These programs can take many different forms—from presentations at local schools, to special recognition programs; mentoring or internship programs, to formal youth advisory commissions. At the heart of these programs is a desire to educate youth on the mechanics of city government, provide an outlet for youth to voice their ideas and concerns, and make sure that the city is nurturing their future leaders.

Some of the most comprehensive youth programs are formal youth advisory commissions (YACs). YACs are often authorized by city ordinance; have a well-defined mission statement, bylaws, and application process; and meet regularly. YAC commissioners

participate in community service projects, provide input to city staff and elected officials on city policy matters, develop and organize youth activities, and serve as role models to their peers.

City officials know that, whatever the format, developing relationships with the city's youth is an investment in tomorrow's leaders and in the city's future. ★

# YAC

### **The League Leads Advocacy Efforts.**

One of the primary functions of the League is to speak as the voice for city government in Texas. Each legislative session, the League staff works with city officials to educate state legislators about the needs of Texas cities.

## **ADVOCACY IS VITAL**

The Texas 85<sup>th</sup> Legislative Session began on January 10, 2017. Before, during, and after the session, League staff works directly with legislators on items of municipal interest. However, our influence is directly affected by your city's efforts to be heard. Help your city plan an active and consistent role in the League's legislative effort.

### **Stay Well Informed**

The League provides several ways for members to stay informed about legislative issues. The *Legislative Update* is the primary legislative communication between the League and its members. It is sent electronically as part of the TML Exchange email to member city officials on Fridays.

The legislative portion of the League website ([www.tml.org](http://www.tml.org); click on "Legislative Information") is another important information source. There you will find a link to the current issue of the *Legislative Update* newsletter, as well as an index to past issues of the newsletter, summaries of legislative hot topics, and the League's legislative program.

The 2017 legislative session will address many issues that will involve Texas cities and their ability to meet citizen demands for services. The League's best advocates for protection of municipal authority are its members—elected and appointed officials from cities of all sizes and geographic areas. TML needs your participation.

### **Contact Legislators Early and Often**

Your legislators need to hear from you, or they're forced to make decisions on local government issues without fully appreciating the impact they will have on cities in their district. Meet formally at least once a year prior to the session to review key issues. Ask if phone calls, emails, letters, or personal contact works best for them during the session. Encourage your legislators to work with League staff, as well.

### **Keep the League Informed**

The League lobbying team includes Director of Legislative Services Shanna Igo, Assistant Director of Legislative Services Monty Wynn, Legislative Liaison JJ Rocha, and you. Always send copies of your correspondence to and from legislators to the League. League staff can work more effectively with your legislators when we know what you've said and what you received in return. It also allows us to incorporate your local circumstances into our commentary. Emails can be forwarded to [legislative@tml.org](mailto:legislative@tml.org), and copies can be faxed to 512-231-7490 or mailed to the League office.

### **Stick to It**

It's a fact of life in public policy that things take time. Your consistent participation in the legislative process is essential to long-term success. ★

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## ABOUT



Whether you are a new or a seasoned elected official, TML has the resources, tools, and training to help you succeed in your leadership role.

Since its formation in 1913, the Texas Municipal League's mission has been to serve the needs of member cities and advocate for members' interests.

Membership in the League is voluntary, and is open to any city in Texas. From the original 14 members, TML now has more than 1,150 member cities. More than 16,000 mayors, councilmembers, city managers, city attorneys, and city department heads are member officials through their cities' participation.

### How is TML Organized?

TML has 15 sub-state regions that were formed in 1958 and are the League's grassroots. Regions exist to promote interests in city government on a regional level, foster the exchange of information among cities in the region, and help the TML Board of Directors develop policy that represents the state's diverse interests.

Every TML region elects officers, including a representative who serves on the TML Board of Directors, and conducts regional meetings at least twice each year. The TML Board representative must be an elected official from a city within the region, and serves a two-year term of office with a maximum of two full terms.

To help address the functional professional development needs of member officials, TML has 21 affiliate organizations. Affiliate organizations represent city officials engaged in specific professional disciplines. For example, the Texas City Management Association (TCMA) is the professional association for city managers in Texas. TCMA is its own association, as well as a TML affiliate with a representative on the TML Board. Each affiliate group has its own membership criteria and dues structure that is separate from the League's.

TML is governed by a board of directors composed of a representative from each of the 15 regions, a representative from each of the 21 affiliate organizations, eight at-large

directors (one from each of the state's largest cities), past TML presidents still in municipal office, a president and a president-elect, and two ex officio directors from the TML risk pools.

The Board appoints an executive director to manage the affairs of the League under the Board's general direction. Bennett Sandlin is the current executive director, and has been serving in this role since October 2010.

Today, TML employs a staff of 32 full-time employees and has six departments: Administrative Services, Affiliate Services, Communications and Programs, Legal Services, Legislative Services, and Member Services.

### What Does TML Do?

One of the principle purposes of the League is to advance and represent the interests of Texas cities at the state and federal levels.

The Texas Legislature meets for 140 days each odd-numbered year and meets frequently in special "called" sessions. There are hundreds of bills that adversely impact cities among the thousands of bills introduced each legislative session. Most would erode the authority of Texas cities to govern their own affairs or impose mandates that do not provide a commensurate level of compensation.

The League, working through its Legislative Services Department, makes every effort to assure that bad-for-city bills are defeated and bills that help cities operate more effectively are passed.

Through the years, thousands of proposals that would have undermined city government have been defeated. The League's legislative track record is one of unparalleled success.

### How Does TML Develop Policy?

Protecting the interest of Texas cities during each legislative session requires considerable planning to

## **TML AFFILIATES**

Association of Hispanic Municipal Officials (AHMO)

Building Officials Association of Texas (BOAT)

Government Finance Officers Association of Texas (GFOAT)

Texas Association of Black City Council Members (TABCCM)

Texas Association of Governmental Information Technology Managers (TAGITM)

Texas Association of Mayors, Councilmembers and Commissioners (TAMCC)

Texas Association of Municipal Health Officials (TAMHO)

Texas Association of Municipal Information Officers (TAMIO)

Texas Chapter of the American Planning Association (TXAPA)

Texas City Attorneys Association (TCAA)

Texas City Management Association (TCMA)

Texas Court Clerks Association (TCCA)

Texas Fire Chiefs Association (TFCA)

Texas Municipal Clerks Association, Inc. (TMCA)

Texas Municipal Human Resources Association (TMHRA)

Texas Municipal Library Directors Association (TMLDA)

Texas Municipal Utilities Association (TMUA)

Texas Police Chiefs Association (TPCA)

Texas Public Purchasing Association (TxPPA)

Texas Public Works Association (TPWA)

Texas Recreation and Park Society (TRAPS)

establish legislative priorities. While the TML legislative philosophy is based on protecting the ability of cities to govern their own local affairs, positions must be taken on hundreds of issues that affect cities.

The process of adopting positions on legislation begins a full year before the regular legislative session convenes. In January of a non-legislative year, the TML president appoints members to legislative policy committees to address specific issues. Each "specific issue" committee is made up of approximately 20-25 members. These committees meet to review issues summarized in policy briefing books, as well as other issues brought up by committee members. Subcommittees may be appointed to tackle some of the more complex issues.

Those "specific issue" committees combine to make up the General Government Committee, which meets once to cover any issues not addressed by those committees.

The final reports of these committees are forwarded to the Resolutions Committee, which meets during the TML Annual Conference. The Resolutions Committee is comprised of members from cities across the state. The committee reviews these reports, as well as any resolutions submitted by the general membership. After a decision is reached by the Resolutions Committee, the resolutions are then considered by the TML general membership at the annual business meeting held the last day of the annual conference. The TML Board adopts a legislative program based on these resolutions.

The League uses this process to determine which issues are most important to Texas cities and how to best allocate its legislative resources.

## **Legal Services**

The League employs full-time attorneys who are available to provide legal information on municipal issues to member cities, as well as example documents to assist cities in drafting ordinances and other required legal notices. The legal staff provides cities with information on changes in federal and state laws and regulations, as well as city-related developments in the courts. During legislative sessions, the legal staff is frequently called on to provide testimony to legislative committees on a variety of city issues.

In addition, the legal staff is available to deliver workshops on a variety of legal subjects to small cities problem solving clinics, affiliate organizations, and regional groups.

## **Information and Research**

The League was formed in 1913 to provide information to member cities. Today, this is still an important service. TML staff has information on virtually every topic affecting Texas cities and can be reached by telephone, snail mail, or email.

The League library and files contain thousands of books, magazines, and periodicals that are available for use by member officials. League publications are another important member service. In addition to *Texas Town & City*, the League publishes a number of books and pamphlets to keep its membership informed on emerging municipal issues.

TML also conducts several annual surveys that collect information on water and wastewater rates, taxation and debt levels, and general fiscal conditions.

## **Conferences and Training**

TML conducts a variety of conferences, workshops, and webinars to enhance the knowledge and skills of municipal officials.

The TML Annual Conference and Exhibition is one of the nation's largest gatherings of municipal officials. The 2017 Annual Conference will be held October 3-6 at the George R. Brown Convention Center in Houston. In addition to keynote sessions, workshops, and the annual business meeting, the conference features an impressive exhibit hall with more than 350 companies presenting products and services that benefit Texas cities.

The League also offers training opportunities that are designed specifically for elected officials. The Elected Officials' Conference, co-hosted by TML and the Texas Association of Mayors, Councilmembers and Commissioners, will be held in Allen, February 16-18, 2017. This event focuses on key issues for newly elected and veteran city officials on topics like economic development, media relations, infrastructure, citizen engagement, revenue sources, government trends, and leadership.

In addition, TML holds several Newly Elected City Officials' Orientations and Workshops each year. The 2017 summer orientations will be held July 13-14 in Round Rock, and August 3-4 in San Antonio. The winter workshop will take place in December via a series of four webinars. These sessions offer training on the basics of serving on the governing body, and provide an overview on the fundamentals of city regulation, financial oversight responsibilities, ethical governance, council-staff relations, economic development, Texas Open Meetings Act, and more.

TML conducts other timely workshops and webinars for both elected and appointed officials throughout the year, including the Economic Development Conference; Public Funds Investment Act Training; Budget, Tax Rate, and Audit Workshops; Leadership Academy; Small Cities' Problem-Solving Clinics; Grant Writing Workshop; and more.

## Federal Representation

Through its membership in the National League of Cities, the Southern Municipal Conference, and other similar organizations, TML has a voice in Washington, D.C. Working with these groups, TML ensures that the voice of Texas cities is heard not only in congressional offices, but also in the headquarters of various federal agencies.

## Risk Pools

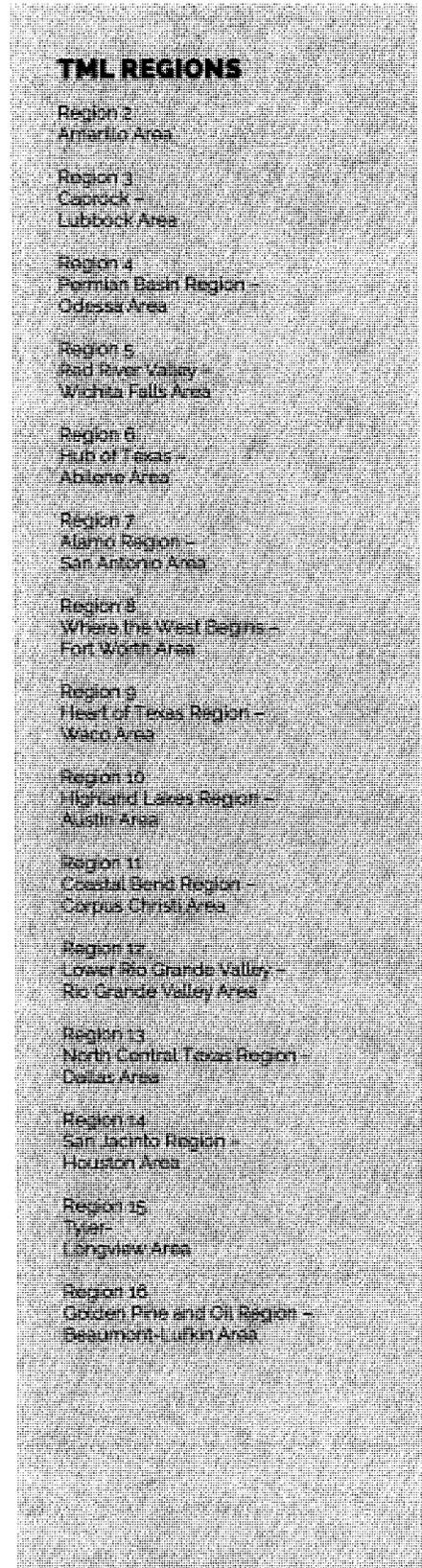
For more than 40 years, the TML risk pools have provided Texas cities with quality risk coverage specifically designed to meet municipal needs. These pools are separate entities, but maintain a close administrative relationship with TML.

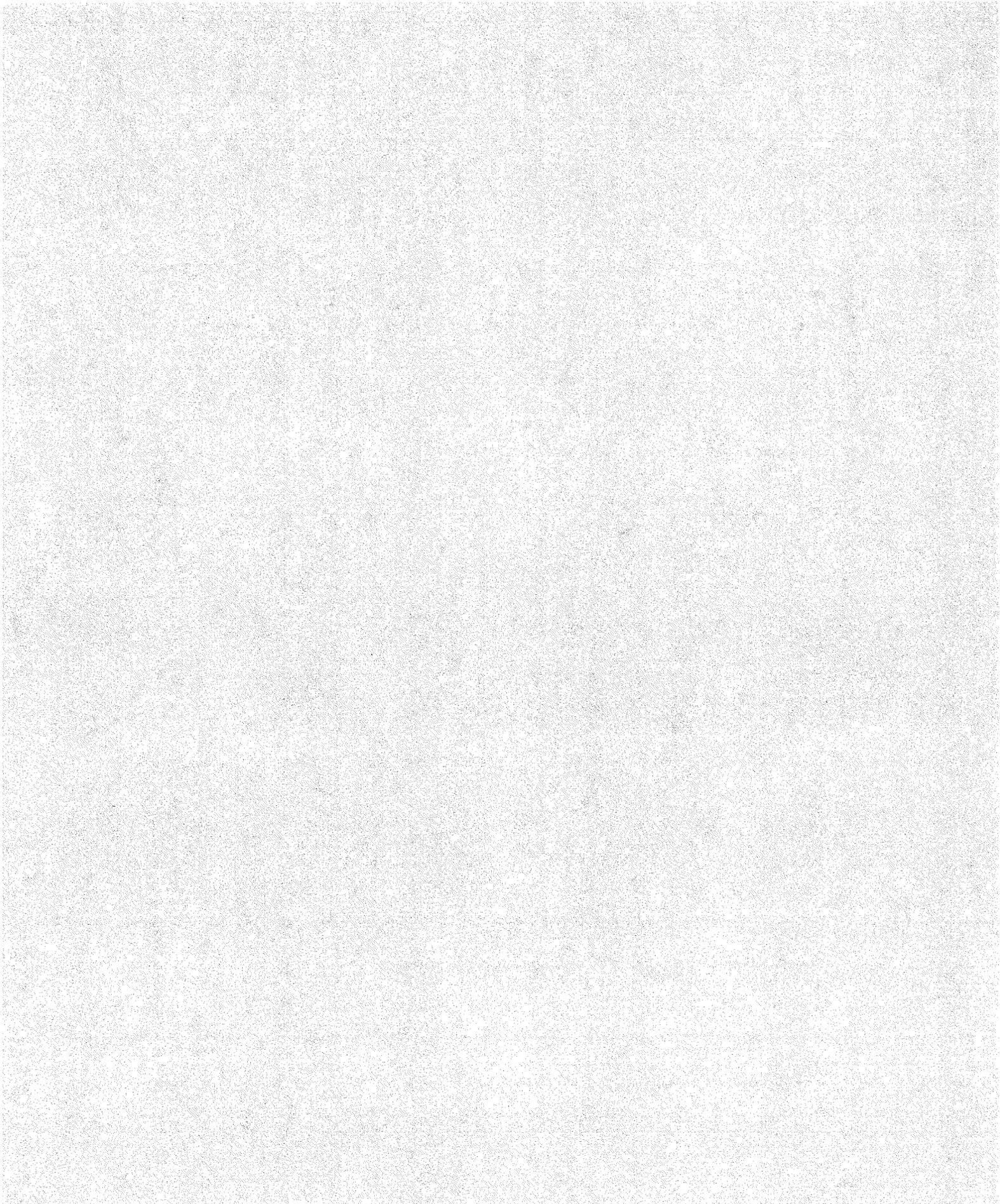
The TML Intergovernmental Risk Pool (TMLIRP) works to reduce the cost of property and casualty risks in Texas cities. In addition to providing a stable risk financing system, the TMLIRP offers education to its members to avoid and reduce risks, control losses, and stay informed on other aspects of risk management.

Benefit coverage for municipal employees and their families has become a major expense item in virtually every city budget. Cities throughout the state are holding the line on these costs by participating in the TML MultiState Intergovernmental Employee Benefits Risk Pool (TML MultiState IEBP).

## The League Today

TML is committed to helping city leaders in Texas meet today's governing challenges. The League prides itself on 104 years of service to Texas cities, and looks forward to providing the resources, knowledge, and advocacy to support city officials into the future. ★

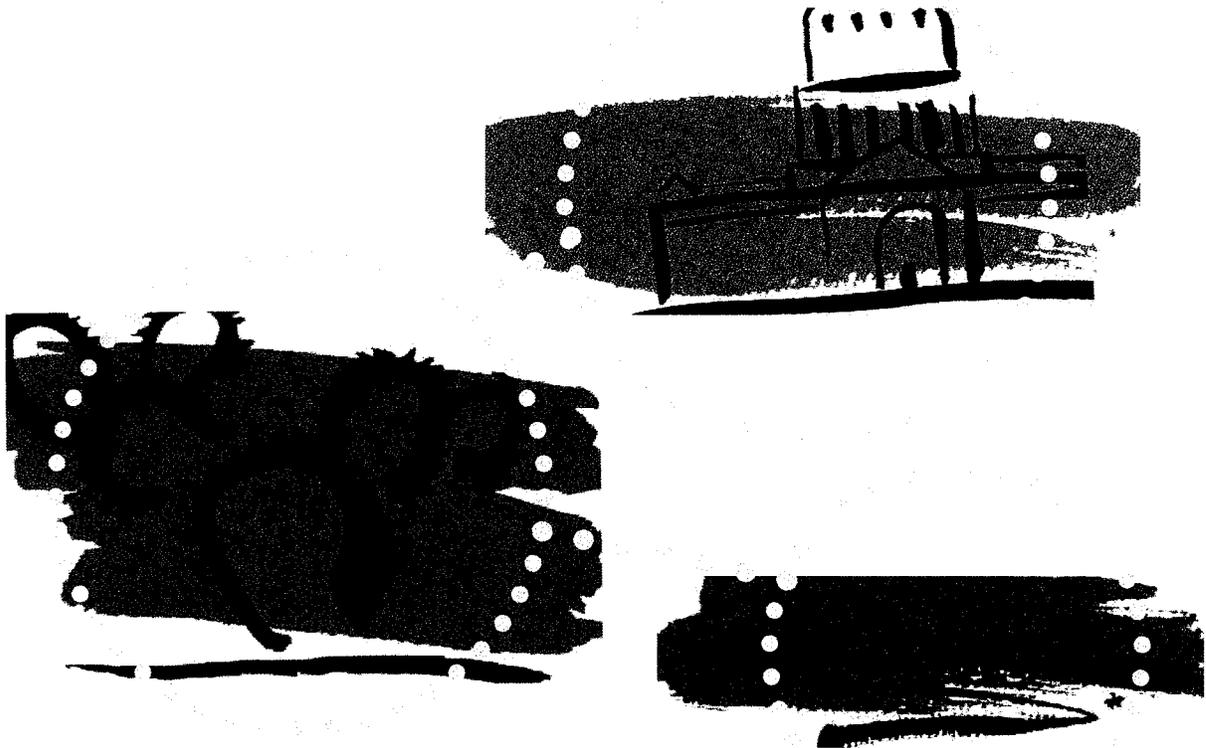






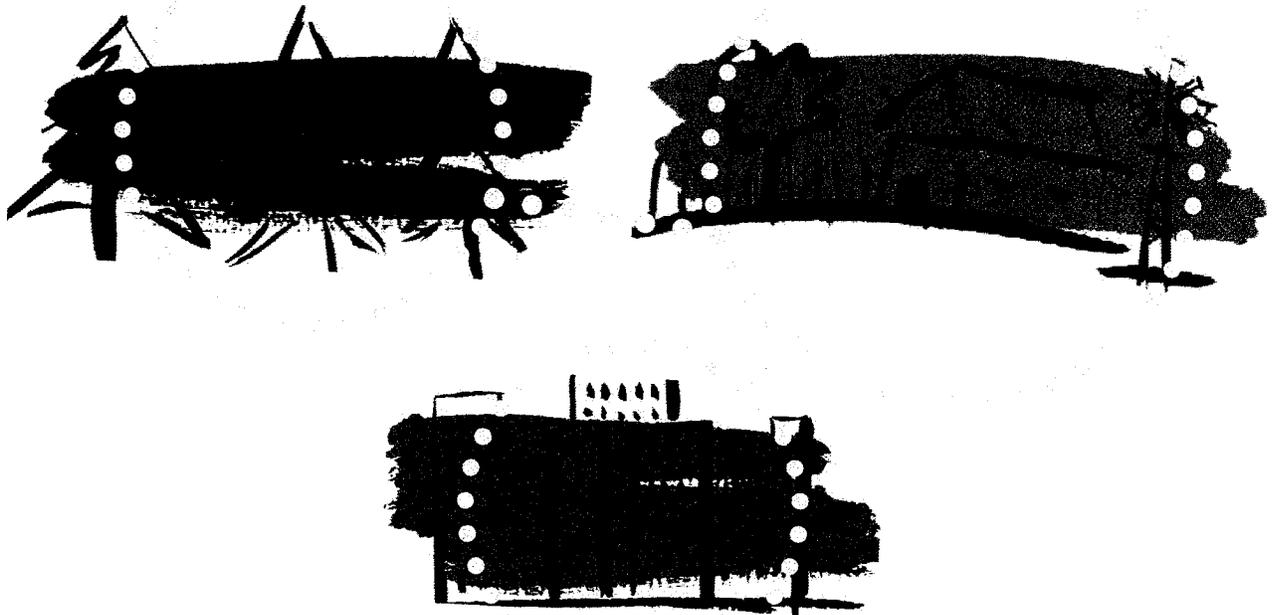
**EMPOWERING TEXAS CITIES TO SERVE THEIR CITIZENS.**

Texas Municipal League  
1821 Rutherford Lane, Suite 400, Austin, Texas 78754-5101  
Phone 512-231-7400 • Fax 512-231-7490 • [www.tml.org](http://www.tml.org)



# A Guide to Becoming a City Official

Updated June 2015





The Texas Municipal League exists solely to provide services to Texas cities. Since its formation in 1913, the League's mission has remained the same: to serve the needs and advocate the interests of its members.

The TML Constitution states that the purpose of the League is to "render services which individual cities have neither the time, money nor strength to do alone."

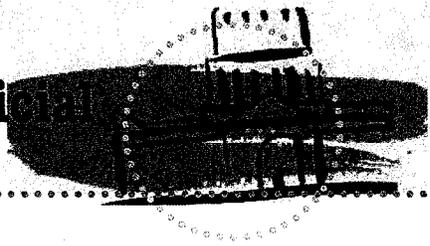
# **A Guide to Becoming a City Official**

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# A Guide to Becoming a City Official



## CONGRATULATIONS ON YOUR DECISION TO FILE FOR CITY OFFICE!

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

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

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

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

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

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## **LEADERSHIP ATTRIBUTES FOR COUNCILMEMBERS**

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

- a general understanding of city government
- willingness to learn about a wide range of topics
- integrity
- consistency
- confidence
- dedication to the interests of citizens and the community as a whole
- strong communication and team-building skills, including being a good listener
- openness to the thoughts and ideas of others
- being approachable and accessible
- willingness to work cooperatively with others

## **AN ELECTED OFFICIAL WEARS MANY HATS**

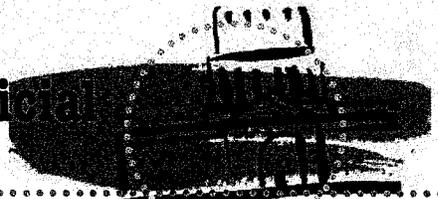
Local elected officials have many responsibilities—policymaker, legislator, ambassador, and employer.

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

### ***Policymaker***

As policymakers, it is the council's responsibility to identify the needs of the citizens and to formulate a plan to meet those needs. Policymaking is a complicated process but can be simplified if the city council works together as a team and sets goals for the city. It is from the city council's vision that the administrative staff of the city takes direction and goes about its daily work. The goals of the city should

# A Guide to Becoming a City Official



be clear. There are many legal, financial, and administrative considerations to implementing the goals of the city, and without clear direction the effectiveness of the city council can be diminished.

## ***Legislator***

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

## ***Ambassador***

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

## ***Employer***

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

# **MAYORS, COUNCILS, AND BOARDS OF ALDERMEN**

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

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## **ARE YOU ELIGIBLE?**

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

- be a citizen of the United States;
- be at least 18 years old on the date of the election; and
- be a registered voter and have lived in the State of Texas for at least 12 consecutive months prior to the filing date for the election, and in your city or ward for at least 6 months prior to the filing date for the election.

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

## **FILING FOR A PLACE ON THE BALLOT**

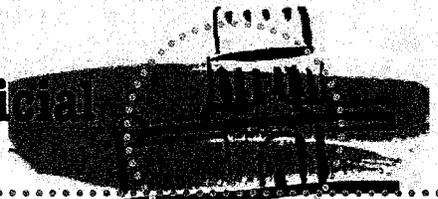
To run for city office, you must file an application with the city clerk or secretary. The application includes information required by the Texas Election Code and must be filed according to deadlines set by that code. A candidate may either file for a place on the ballot or as a write-in candidate,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

## **TEXAS ETHICS COMMISSION CAMPAIGN FINANCE FILINGS**

State law requires the filing of various forms by a candidate for city office.

All candidates for city offices must file an "Appointment of a Campaign Treasurer by a Candidate" form with the city secretary before beginning their campaigns. Candidates who do not intend to accept more than \$500 in political contributions or make more than \$500 in political expenditures may file a modified reporting declaration and operate under modified reporting. Under modified reporting, the candidate is not required to file any further forms beyond the final report, which is filed at the end of the campaign. Semiannual reports may still be required in some cases.

# **A Guide to Becoming a City Official**



Candidates who intend to accept more than \$500 in political contributions or make more than \$500 in political expenditures, or who exceed that amount even after filing for modified reporting, must file under regular reporting requirements. Reports due under these requirements must be submitted by January 15 and July 15 of each year. The reports filed on these dates are known as semiannual reports. An opposed candidate in an upcoming city election who is using regular reporting must file reports of contributions and expenditures 30 days and 8 days before the election. A candidate in a runoff must file a report 8 days before the runoff election. Candidates filing under regular reporting are also required to file a final report at the end of the campaign.

Detailed information on filing is available on the Texas Ethics Commission's Web site at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

## **AN INTRODUCTION TO CITY GOVERNMENT**

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

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

## **TYPES OF CITY GOVERNMENT**

Texas has more than 1,200 incorporated cities; each of them is either a home rule city or a general law city.

Home rule cities are larger cities. A city with a population of more than 5,000 in which the citizens have adopted a home rule charter through an election is a home rule city. A home rule charter is the document that establishes the city's governmental structure and provides for the distribution of powers and duties.

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General law cities are usually smaller cities. General law cities don't have charters. Rather, they operate according to specific state statutes. A general law city looks to the state constitution and state statutes to determine what it **may do**. If state law doesn't grant a general law city the express or implied power to initiate a particular action, none may be taken. There are three categories of general law cities: type A, B, or C. If you are seeking office in a general law city, you should ask your city manager or city secretary to clarify the type in order to understand which state laws apply.

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

## FORMS OF GOVERNMENT

There are two prevalent forms of city government in Texas:

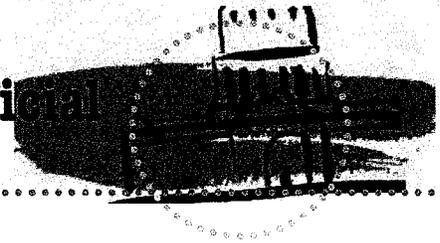
### **MAYOR-COUNCIL STRUCTURE**

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

### **COUNCIL-MANAGER STRUCTURE**

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

# A Guide to Becoming a City Official



## BASIC CITY SERVICES

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

**PUBLIC SAFETY**—police, fire, and sometimes ambulance service

**UTILITIES**—water and sewer, trash collection, electric power, and natural gas

**LAND USE**—planning, zoning, code enforcement, and other regulatory activities

**TRANSPORTATION**—street construction and maintenance, traffic safety, and sometimes public transit

**RECREATION/CULTURE**—parks, recreation, libraries, and sometimes cultural facilities

**LEGAL**—ordinances protecting the public health, safety, and welfare of the community

## CITY FINANCE

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

Cities levy specific taxes to finance city services. The following are the most common taxes levied by Texas cities:

**PROPERTY TAX**—levied on the valuation of taxable property located within the city

**SALES TAX**—levied on retail sales of tangible personal property and some specific services

**FRANCHISE FEES**—levied on non-municipally owned utilities (telecommunications, electric, gas, water, cable television)

In addition, many city services are financed in whole or in part by user fees and charges. Finally, cities receive some revenues from various federal and state grant and allocation programs. TML provides a comprehensive guide to all revenue sources available to cities. The guide is called the *TML Revenue Manual for Texas Cities* and is available at [www.tml.org](http://www.tml.org).

## ETHICS AND CONFLICTS OF INTEREST

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

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## LOCAL GOVERNMENT CODE CHAPTER 171 – CONFLICTS OF INTEREST

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

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

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

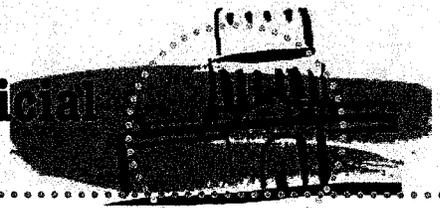
**Penalties:** Penalties for violating the conflict of interest provisions range from having the action voided to the imposition of fines and incarceration.

## LOCAL GOVERNMENT CODE CHAPTER 176 – CONFLICTS DISCLOSURE

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

- A city officer or the officer’s family member has an employment or business relationship that results in taxable income of more than \$2,500 in the preceding 12 months with a person who has contracted with or is considering contracting with the city (“vendor”).

# A Guide to Becoming a City Officer



- A city officer or the officer's family member receives and accepts one or more gifts with an aggregate value of \$100 in the preceding 12 months from a vendor.
- A city officer has a family relationship with a vendor.
- The law also requires a vendor to file a "conflict of interest questionnaire" if the vendor has a business relationship with the city and has an employment or other relationship with an officer or officer's family members, has given a gift to either, or has a family relationship with a city officer. The conflicts disclosure statement and the conflict of interest questionnaire are created by the Texas Ethics Commission and are available online at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). An officer who knowingly fails to file the statement commits either a class A, B, or C misdemeanor, depending on the amount of the contract.

## **GOVERNMENT CODE CHAPTER 553 – CONFLICTS DISCLOSURE**

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

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

## **FINANCIAL DISCLOSURE FOR CITIES OVER 100,000 POPULATION**

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

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## NEPOTISM

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

**General rule:** A public official, acting alone or as a member of a governing body, generally may not appoint a close relative to a paid position, regardless of the relative’s merit. In addition, the reverse applies. In other words, a person may not be elected to the city council if a close relative is employed by the city, unless the relative first resigns.

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

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

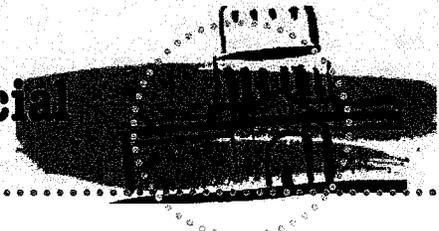
## DUAL OFFICE-HOLDING/INCOMPATIBILITY

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

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

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

# A Guide to Becoming a City Official



## OPEN GOVERNMENT

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

## TEXAS OPEN MEETINGS ACT (TOMA)

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

**Definition of "meeting":** A meeting occurs any time a quorum of the city council is present and public business is discussed, and either: (1) a member of the governmental body speaks or the governmental body votes; or (2) the governmental body calls and is responsible for the gathering. Please note that a meeting may occur even when a quorum is not physically present at the same location and/or discussion does not take place at the same moment in time.

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

**Exception:** The TOMA does not apply to purely social gatherings, conventions and workshops, ceremonial events, or press conferences, so long as any discussion of city business is incidental to the purpose of the gathering and no formal action is taken. Similarly, the Act does not apply to a quorum attending a legislative committee or legislative agency meeting so long as public business is discussed in a public forum.

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

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

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**Notice:** A governmental body must post a notice that includes the date, hour, place, and subject of each meeting. The notice must be posted on a bulletin board at city hall in a place readily accessible to the public at all times for at least 72 hours before the meeting. In addition, for cities that have an Internet Web site: (1) a city under 48,000 population must post meeting notices on its Web site; and (2) a city over 48,000 population must post the entire agenda on its Web site.

**Records of meetings:** Cities must keep written minutes or recordings of all meetings, except for closed consultations with an attorney. The minutes must state the subject, indicate further action taken on the matter (for example, a vote, or decision, or other action taken on the matter), and include an announcement by the presiding officer at the beginning and end of the closed meeting indicating the date and time.

**Penalties:** Penalties for violating the TOMA range from having the action voided to the imposition of fines and incarceration. Any action taken in violation is voidable and may be reversed in a civil lawsuit. There are four criminal provisions under the TOMA, including: (1) knowingly conspiring to circumvent the TOMA by meeting in numbers less than a quorum for the purpose of secret deliberations; (2) knowingly calling or participating in an unauthorized closed session; (3) participating in an executive session knowing a certified agenda or a tape recording is not being made; and (4) disclosure of a certified agenda or tape recording to a member of the public.

## TEXAS PUBLIC INFORMATION ACT (PIA)

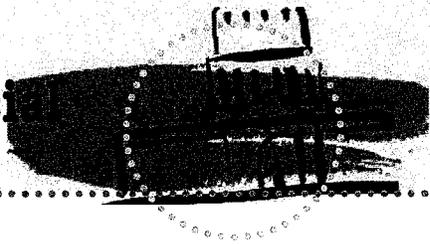
The Texas Public Information Act governs the availability of city records to the public. Some general provisions follow.

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

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

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

# A Guide to Becoming a City Official



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

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

## OPEN GOVERNMENT TRAINING

Each elected or appointed member of a governmental body must take at least one hour of training in both the Open Meetings Act and the Public Information Act. For more information, please visit the attorney general's Web site at [www.oag.state.tx.us](http://www.oag.state.tx.us).

## A BASIC GLOSSARY OF CITY GOVERNMENT

**BUDGETING:** Crafting, passing, and following a city budget are among the most important tasks you will perform as a councilmember. Cities cannot make expenditures except in strict accordance with a budget, and they can levy taxes only in accordance with the budget. The state comptroller's office publishes the *Budget Manual for Texas Cities*, which is an excellent resource.

**CONFLICTS OF INTEREST:** As a councilmember, you are prohibited from voting or deliberating on agenda items that affect your own business or financial interests. You'll be required to file an affidavit with the city secretary disclosing the details of your financial interests, and that affidavit becomes a public record. Further, a law passed in 2005 may require you to disclose in writing the receipt of any gifts or income from any vendor that does business with the city.

# We've Got You Covered!

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**DUAL OFFICE-HOLDING:** Councilmembers cannot hold other paid public offices; in many cases, they cannot hold other unpaid public offices, either. Further, councilmembers can't take paid jobs with their own city, nor can they appoint themselves to other posts or positions. Finally, think twice about announcing to run for another public office while you're still a councilmember—you may automatically resign your council seat when you do. Check with your city attorney, the Texas Municipal League, or the attorney general before considering any other position or job that might be a problem.

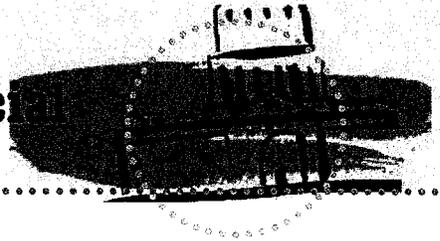
**EMPLOYMENT POLICIES:** In general law cities, the final authority on employment decisions typically rests with the council as a whole. In home rule cities, the charter usually determines who makes employment decisions. As a member of the council, you should familiarize yourself with the city's employment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

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

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

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

# A Guide to Becoming a City Officer



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

**MEETING:** Almost everyone intuitively knows what a meeting is. For example, a regular meeting of a city council, where agenda items are discussed and formal action is taken, is clearly a meeting. However, according to the Texas Open Meetings Act, other gatherings of the members of a governmental body may constitute a meeting. Generally, any time a quorum is present and city business is discussed, all of the Open Meetings Act requirements, including posting of a notice and preparation of minutes, must be followed.

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

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

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

## GOOD LUCK!

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

# **We've Got You Covered!**

## **Who Belongs to TML?**

Membership in the League is voluntary and is open to any city in Texas. From the original 14 members, TML's membership has grown to more than 1,145 cities. Over 16,000 mayors, councilmembers, city managers, city attorneys, and department heads are member officials of the League by virtue of their cities' participation.

Associate memberships are available to private sector organizations and companies that strive to provide quality services to municipal government.

## **TML Service Statement**

In serving its member cities, the League strives to:

- Represent the interests of member cities before legislative, administrative, and judicial bodies at the state and federal levels.
- Sponsor and conduct an annual conference and other conferences, seminars, meetings, and workshops for the purpose of studying municipal issues and exchanging information regarding municipal government.
- Publish and circulate an official magazine and other publications, reports, and newsletters of interest to member cities.
- Provide for and conduct training on relevant and timely topics related to municipal government.
- Alert member cities of important governmental or private sector actions or proposed actions that may affect municipal operations.
- Promote the interests of League affiliates (which represent specific professional disciplines in municipal governments) and TML regions by providing organizational and technical assistance as directed by the Board and consistent with financial resources.
- Promote constructive and cooperative relationships among cities and between the League and other levels of governments, councils of governments, the National League of Cities, educational institutions, and the private sector.
- Provide in a timely manner any additional services or information that individual members may request, consistent with the member cities' common interests and the League's resources.
- Provide administrative services to the Texas Municipal League risk pools so that quality coverages at reasonable and competitive prices can be made available to member cities and their employees.

**Texas Municipal League**

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