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Legal Q&A

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Can a mayor cancel a city council meeting?

No state law provides a procedure to cancel a city council meeting. Home rule cities should consult their charter for any relevant provisions. Assuming that a city is general law, or is home rule with no charter provision controls, the common practice is for the mayor to cancel a meeting when it becomes necessary to do so. However, a city council could theoretically still have the meeting without the mayor, as long as all of the posting requirements of the Open Meetings Act have been met. If a mayor chooses to cancel a meeting, he should contact all councilmembers and inform them of the decision. If the councilmembers meet without the mayor and their numbers comprise a forum, they may still take action on the posted agenda. Of course, as with other areas that are not governed by state law, it makes sense for a city council to adopt written procedures to clarify the “who, when, and how” by which meetings are cancelled.

Does a mayor have veto power over actions taken by the city council?

In a home rule city, the ability of a mayor to veto actions taken by the city council is determined by the city’s charter. Only a small percentage of Texas home rule charters contain veto language.

Chapter 52 of the Texas Local Government Code requires the mayor of a type A general law city to sign ordinances and resolutions before they become effective. However, four days after the ordinance or resolution has been placed in the secretary’s office (that is, voted-on), if the mayor has not signed it or returned objections to it, the ordinance or resolution will take effect without the mayor’s signature. The mayor may make a written statement of objections before the fourth day after the date that the ordinance or resolution is placed in the secretary’s office. If he does so, the ordinance or resolution must be returned to the city council for reconsideration. If the ordinance or resolution passes by a majority vote of the entire membership of the city council, excluding the mayor, the ordinance or resolution takes effect. The process described above is not technically a “veto.” Rather, it is known as the mayor’s “right of reconsideration.”

In a type B general law city, the mayor does not have either a veto or a right of reconsideration. *See* Tex. Atty. Gen. Op. No. JM-527 (1986).

Can a mayor file a lawsuit on behalf of the city without the approval of the city council?

A city may act only by and through its governing body. *Alamo Carriage v. City of San Antonio*, 768 S.W.2d 937, 941 (Tex. App. – San Antonio 1989, no writ); *City of Coppell v. General Homes Corp.*, 763 S.W.2d 448, 456 (Tex. App. – Dallas 1988, write denied); *Cook v. City of Addison*, 656 S.W.2d 650, 657 (Tex. App. – Dallas 1983, writ ref’d n.r.e.); *Stirman v. City of Tyler*, 443 S.W.2d 354, 358 (Tex.Civ.App. – Tyler 1969, writ ref’d n.r.e.). The governing body may act officially only through resolution or ordinance. The statements of individual members of the governing body, including the mayor, do not bind the city. *Alamo Carriage*, 768 S.W.2d at 941-942; *City of Coppell*, 763 S.W.2d at 457; *Stirman*, 443 S.W.2d at 358.

The governing body of a city is authorized to delegate by resolution or ordinance the right to perform acts and duties necessary for the day-to-day operation of the city. *Stirman*, 443 S.W.2d at 354. Therefore, the governing body could delegate the right to file a lawsuit on behalf of the city to the mayor, a city councilmember, or a city staff member. In the case of delegation of authority, any action taken beyond what has been authorized by the city council is void. *Foster v. City of Waco*, 255 S.W.2d 1104, 1106 (Tex. 1923).

Can a mayor act as the city administrator?

A city council may delegate the duties of most city offices, such as administrator or treasurer, to the mayor. See *Stirman v. City of Tyler*, 443 S.W.2d 354 (Tex.Civ.App. – Tyler 1969, writ ref'd n.r.e.). However, the mayor may not be officially appointed to another city office or position of employment, or compensated for any duties delegated to him by the city council. To do so would violate the common law doctrine of incompatibility.

Can a mayor administer an oath of office?

Under Texas Local Government Code Section 22.042(d), the mayor of a type A city may administer oaths to officers of the city. Otherwise, the office of mayor is not part of the enumerated list of public officials authorized to administer an oath of office under Texas Government Code Section 602.002.

If a mayor is absent or incapacitated in a general law city, does the mayor pro tem automatically become mayor?

In the event the mayor of a general law city is absent or incapacitated, the mayor pro tem does not actually become mayor, but rather assumes the duties of the mayor, including presiding at meetings of the governing body. TEX. LOC. GOV'T CODE § 22.037(b). When assuming the duties of mayor, the mayor pro tem does not lose the power to vote, even when presiding at the meetings. However, in some cities the presiding officer does not vote as a matter of custom.