

Legal Q&A

By **Laura Mueller**, TML Assistant General Counsel

What are a mayor's duties in a general law city?

In a general law city, a mayor's duties and authority come first from the Local Government Code and other state law and then may be expanded by the city council. *See* TEX. LOC. GOV'T CODE §§ 22.037; 22.042; and 23.027. A mayor in a Type A city presides over the meetings of the governing body, but may not vote unless there is a tie. *Id.* § 22.037. A Type A mayor is also authorized to call special meetings on her "own motion or on the application of three aldermen." *Id.* § 22.038.

The majority of the mayor's duties are listed in Section 22.042 of the Local Government Code. The mayor: (1) is the "chief executive officer" of the city; (2) must "actively ensure that the laws and ordinances of the municipality are properly carried out"; (3) must "inspect the conduct of each subordinate municipal officer and shall cause any negligence, carelessness, or other violation of duty to be prosecuted and punished"; and (4) must give to the city council "any information, and shall recommend to the governing body any measure, that relates to improving the finances, police, health, security, cleanliness, comfort, ornament, or good government of the municipality."

The mayor also has emergency management authority including: (1) the authority to close public facilities in order to ensure the peace and good order of the city during a riot or unlawful assembly; and (2) the authority to summon a special police force when necessary for the enforcement of city laws, because of riot or outbreak, or because of the threat of serious danger. *Id.* §§ 22.042; 341.011. A Type A mayor also has the authority to appoint an individual to a vacancy in a municipal office, subject to confirmation by the city council. *Id.* § 22.010. However, the mayor's duties are not only determined by state law. The city council can also prescribe the duties and authority of the mayor, and the mayor must perform these duties as directed by the city council. *Id.* § 22.042. Additional emergency management powers of a mayor are discussed further below.

In a Type B city, the mayor is the president of the governing body of the city, but is not given more specific duties by statute. *Id.* § 23.027. A Type C mayor is given no guidance in Chapter 24 of the Local Government Code, which covers Type C cities. However, the Local Government Code provides what are commonly referred to as the "borrowing provisions." These provisions state that Type B and Type C cities have the same authority as a Type A city. TEX. LOC. GOV'T CODE §§ 51.035; 51.051. Section 51.035 states:

A Type B general-law municipality has the same authority, duties, and privileges as a Type A general-law municipality, unless the Type B general-law municipality in exercising the authority or privilege or performing the duty would be in conflict with another provision of this code or other state law that relates specifically to Type B general-law municipalities.

Section 51.051 states:

(a) The governing body of a Type C general-law municipality with 501 to 4,999 inhabitants has the same authority and is subject to the same duties as a Type A general-law municipality unless the authority or duties conflict with a provision of this code relating specifically to a Type C general-law municipality.

(b) The governing body of a Type C general-law municipality with 201 to 500 inhabitants has the same authority as a Type B general-law municipality unless the authority conflicts with a provision of this code relating specifically to a Type C general-law municipality.

Thus, a Type C city may have the same authority as a Type B or a Type A city, but because Type B cities have the same authority as a type A city, pursuant to Section 51.035, a type C city has the same authority as a type A city in cases where there is not a conflict. These “borrowing provisions” have been used to give mayors in Type B and Type C cities some of the same duties and authority as that held by a mayor in a Type A city. The mayor of any city also serves as the budget officer for the governing body, unless the city has the city manager form of government, which designates the city manager as the budget officer. *Id.* § 102.001.

Questions often arise as to the specific duties and authority of a mayor, and the city should consult with its city attorney on this issue.

(Note: In a home rule city, the mayor’s duties are determined by the charter.)

Does a mayor have the authority to cancel a city council meeting?

State law provides no procedure to cancel a city council meeting. In a general law city, the common practice is for the mayor to cancel a meeting when it becomes necessary to do so. If a mayor chooses to cancel a meeting, he should contact all councilmembers and inform them of the decision. Of course, as with other areas that are not governed by state law, a city council may wish to adopt written procedures to clarify the “who, when, and how” by which meetings are canceled.

(Note: A home rule city should consult its charter for any relevant provisions.)

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

No. However, the Local Government Code provides that the mayor in a *Type A general law city* has the authority to require “reconsideration” of an ordinance or resolution passed by the city council. *Id.* § 52.003. After an ordinance or resolution is passed by the city council, it must be placed in the secretary’s office for the mayor’s signature. The mayor may sign the ordinance or resolution, in which case it takes effect, or the mayor may return the ordinance or resolution to the council with objections. In the case of a “return” to the city council, the council must reconsider the vote by which the ordinance or resolution was adopted. *Id.* § 52.003. If the council passes the ordinance or resolution by a majority vote of the total number of members of the governing body, excluding the mayor, the ordinance takes effect. *Id.* § 52.003. If the mayor

neither signs the ordinance nor sends it back to the council, it automatically takes effect after the fourth day.

It is unclear whether a mayor in a Type B or Type C city has the right of reconsideration. Many Type A provisions apply to Type B and C cities through the “borrowing provisions” of the Local Government Code. *See* TEX. LOC. GOV’T CODE §§ 41.035; 51.051. However, attorney general opinion JM-527 (1987) suggests that a general law city that is not given reconsideration authority by statute may not have the right of reconsideration. *See* Tex. Atty. Gen. Op. No. JM-527 (1986). Each city should discuss this issue with its city attorney to determine whether the mayor has a right of reconsideration.

(Note: 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.)

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

No. A city may act only by and through its governing body, and acts of the mayor or individual councilmembers are ineffectual without express authorization from the governing body. *City of Bonham v. S.W. Sanitation, Inc.*, 871 S.W.2d 765, 765 (Tex. App.—Texarkana 1994, writ denied); *Alamo Carriage v. City of San Antonio*, 768 S.W.2d 937, 941 (Tex. App. – San Antonio 1989, no writ). 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. *City of Bonham*, 871 S.W.2d at 765; *Alamo Carriage*, 768 S.W.2d at 941-42.

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 v. City of Tyler*, 443 S.W.2d 354, 354 (Tex. Civ. App.—Tyler 1969, writ ref’d n.r.e.); *Central Power & Light Co. v. City of San Juan*, 962 S.W.2d 602 (Tex. App.—Corpus Christi 1998, rev. disp’d w.o.j.). 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. 1104, 1106 (Tex. 1923).

Do mayors have emergency management powers and responsibilities?

Yes. State law provides that the mayor (or the mayor’s designee) is the emergency management director for a city. TEX. GOV’T CODE § 418.1015. In that role, the mayor has certain emergency management powers and duties. Generally, the mayor has the same powers, on a local level, as the governor under Chapter 418 of the Government Code (The Texas Disaster Act). *Id.* For example, the mayor has the authority to order evacuation and other restrictions on movement during an emergency. TEX. GOV’T CODE §§ 418.108(f); 418.1015(b); 418.018. The mayor is also the official responsible for declaring a local state of disaster or requesting that the governor declare a state of emergency. *See id.* §§ 418.108; 433.001.

If local disaster resources are exhausted, and assistance is needed outside a mutual aid agreement, the mayor is the official who must request that assistance from other political subdivisions or the state. 37 TEX. ADMIN. CODE §§ 7.23; 7.25. To request assistance from the state, the mayor must contact the local disaster district committee chairperson (the local Texas Highway Patrol commander). *Id.* § 7.24. For disaster district contact information, please see <http://www.puc.state.tx.us/emr/districtcontact.cfm>.

To assist her with her emergency management duties, the mayor may designate an emergency management coordinator to be her assistant for emergency management purposes. *Id.* § 418.1015. In many cities, the emergency management coordinator has responsibility for developing the emergency management plan and coordinating emergency management training. The mayor must notify the Texas Division of Emergency Management of her designee as emergency management coordinator (if any) and the city's plan for emergency management using a form provided by the division. 37 TEX. ADMIN. CODE § 7.3.

(Note: Sample documents for a disaster declaration, a request to the governor for declaration of an emergency, and an emergency powers ordinance are included at the end of the "Annex U - Legal" document of the model local emergency management plan, located at ftp://ftp.txdps.state.tx.us/dem/plans/uanx_21_1007.rtf.)

May 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?

No. In the event that the mayor of a general law city is absent or incapacitated, the mayor pro tem does not actually become mayor. Rather, the mayor pro tem 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. (In some cities, the presiding officer does not vote as a matter of custom.)