

Newly Elected Officials Workshop 2012

AGENDAS, LEGISLATIVE FINDINGS, ORDINANCES AND RESOLUTIONS

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THE AGENDA

- Purpose of the Agenda
 - Compliance with the Texas Open Meetings Act
 - Provide for a roadmap for the orderly conduct of the meeting
- Agenda must be posted at least 72 hours prior to any meeting

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THE AGENDA

- WHO PREPARES THE AGENDA?
 - IT DEPENDS!!!!!!!
 - On Local Rule
 - Custom and Practice
 - Municipal Clerk/City Secretary
 - City Manager/Administrator
 - Council Input into Agenda Formulation?

THE AGENDA

CONTENTS OF THE AGENDA

- a. Call to order.
- b. Invocation and pledge of allegiance.
- c. Roll call.
- d. Announcements.
- e. Public recognition.
- f. Citizen's forum.
- g. Consent agenda.

THE AGENDA

CONTENTS OF THE AGENDA

- h. Public hearings/action.
- i. Action items.
- j. Staff reports.
- k. Report of advisory committees and boards.
- l. Items for future agendas.
- m. Executive session.
- n. Reconvene into open session for possible action resulting from any items posted and legally discussed in executive session.
- o. Adjourn.

FORM OF ACTION

Form of Action

Simple Motion and Vote

Resolution

Ordinance

Differences

- An ordinance is an act of legislation, while a resolution is a mere expression of the sense or will of the legislative body
- An ordinance usually prescribes a continuing rule or restriction, while a resolution deals with temporary issues
- Legislative vs. Administrative

LGC Chapter 51

- A municipality may adopt, publish, amend or repeal an ordinance that:
 - is for the good government, peace, or order of a municipality or for trade and commerce; and
 - is necessary and proper for carrying out a power granted by law to a municipality or office/department.

Ordinances and Types of Municipalities

- Type A General Law - LGC 51.012
 - May adopt an ordinance, act, law or regulation, not inconsistent with state law that is necessary for the government, interest, welfare or good order of the municipality.
 - General law cities must follow Texas statutory guidelines in enacting ordinances. They don't have flexibility to make their "own" laws.

Ordinances and Types of Municipalities

- Type B General Law – LGC 51.032
 - May adopt ordinance not inconsistent with state law that the governing body considers proper for the government of the municipality and any other action to carry out a provision of the Texas Local Government Code.

Ordinances and Types of Municipalities

- Home Rule – LGC 51.072
 - Has the full power of local self-government
 - Granting of powers to a home rule municipality does not prevent it from exercising authority of local self government.

Ordinance Adoption Procedures in General

- Adoption procedures in the city charter or Local Government Code must be followed when drafting and adopting ordinances.

Ordinance Adoption Procedures in General

- Formal adoption procedures should be provided, if not by a charter then by ordinance, and distributed to members of the governing body, the city attorney, and the city secretary.
- Ordinance adoption procedures provide a necessary consistency in legislative enactments.

Ordinance/ Resolution Elements

A. Numbering

- All ordinances/resolutions should be numbered.
- A number facilitates record keeping and may provide at a quick glance the relationship in time
- This is particularly important when the city does not have codified ordinances.

Ordinance/ Resolution Elements

B. Caption, or “title”

- The purpose of the caption: to identify the subject matter of without going into detail.
- The title discloses the intent and the scope of the policy; the method for implementation is left for the body.
- Leaves the details for the body.

Ordinance/ Resolution Elements

C. Preamble, or “Whereas” clauses

- Legislative Findings
- Prefatory statement or explanation including finding of facts and findings of law by the legislative body enacting it.
- When the intent is at issue in a court of law, the court may look to the preamble to determine the intent of the local governing body and as an aid in interpreting its provisions.

Ordinance/ Resolution Elements

D. Enacting Clause

- Ordinances
 - Type A General Law- Tex. Loc. Gov't Code Sec. 52.002
 - Home Rule- Charters or code of ordinances usually provide enacting clauses
 - “NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PUNK CITY, TEXAS”

Ordinance/ Resolution Elements

D. Enacting Clause (cont.)

- Resolutions

- “NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROCKTOWN, TEXAS:”

Ordinance/ Resolution Elements

E. Controlling provisions

- The guiding principle in drafting the controlling provisions is to draft them in plain and simple language so as to make clear the intent.
- They also assert or establish a policy that the City must follow, allow permission to enter into a contract, pass a budget or expend City funds, etc.

Ordinance Elements

F. Other Clauses

- Severability clause
- Cumulative/Conflict Clause
- Savings Clause
- Repealer Clause
- Open Meeting Clause

Sample Ordinance – Cont'd

Severability clause

“Should any part, sentence or phrase of this Ordinance be determined to be unlawful, void or unenforceable, the validity of the remaining portions of this Ordinance shall not be adversely affected. No portion of this Ordinance shall fail or become inoperative by reason of the invalidity of any other part. All provisions of this Ordinance are declared to be severable.”

Sample Ordinance – Cont'd

Cumulative/Conflict Clause

“This Ordinance shall be cumulative of all provisions of ordinances of the City except where provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.”

Sample Ordinance – Cont'd

Savings Clause

“The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any right of the City of ____ under any section or provisions of any ordinances in effect at the time of passage of this Ordinance.”

Sample Ordinance- Cont'd

Repealer

“All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.”

Sample Ordinance- Cont'd

Open Meeting

“That the City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time preceding this meeting and that this meeting has been open to the public as required by law under the Open Meetings Law, Chapter 551, Texas Government Code.”

Ordinance Elements

G. Date of Effect

- Most Home Rule charters provide an effective date for ordinances.
- Type A General Law-
 - Placement in the city secretary's office after adoption
 - Mayor may object within 4 days it is placed in office; procedures to follow on reconsideration. See Tex. Loc. Gov't Code Sec. 52.003(c)
- Upon an ordinance's final passage:

“This ordinance shall be and become effective immediately upon its passage and publication as required by law.”
- At a specified time after final passage- Example:

“No ordinance shall take effect until fifteen (15) days after its final passage”

Ordinance Elements

H. Date of Effect

- Upon an ordinance's final passage:

“This ordinance shall be and become effective immediately upon its passage and publication as required by law.”

- At a specified time after final passage-

Example:

“No ordinance shall take effect until _____days after its final passage”

Ordinance Elements

I. Signatures

- The mayor's signature and a line for the city secretary's signature.

Notice, Publication and Public Hearing

- Notice Provisions
 - Type A General Law
 - Tex. Loc. Gov't Code Sec. 52.011
 - Type B General Law
 - Tex. Loc. Gov't Code Sec. 52.012
 - Home Rule
 - Tex. Loc. Gov't Code Sec. 52.013
- Penal ordinances require publication; check the Tex. Loc. Gov't Code depending on type of city.

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