

The Florida Municipal Officials' Manual



the John Scott Dailey

FLORIDA
INSTITUTE OF
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Chapter 2

Primary Elements of Municipal Government

Section 2-1

Basic Forms of Municipal Government

Borrowing from the English municipal model, America's cities, towns and villages are governed by a legislative body known as a city council (or city commission). This elected body has several responsibilities, which are specified in the charter or incorporating documents. In Florida, each municipality has a charter (see Section 2-2); this document specifies the composition of the elected body and duties of appointed officials.

The council is responsible for creating and enforcing the laws, called ordinances, of the city. The council also has an oversight role that varies in its responsibilities based upon the form of government specified in the charter. The council also adopts and appropriates the city's funds through its budgetary responsibilities, and has fiduciary responsibilities as trustees of public funds. In addition, the council is expected to have a vision for the city's future, which may or may not be detailed in a strategic plan. In Florida, each municipality is also required by state law to have a comprehensive plan, known as the "comp plan" for land-related decisions within its boundaries. Lastly, the city may choose to be a service provider for a utility, utilities or other services, as guided by the citizens and the council.

Throughout the U.S., cities adopt a form of government that sets their structures. The most common of these forms as found in Florida are specified below:

A. COUNCIL-WEAK MAYOR FORM

The original form of municipal government in America was the council-weak mayor form, which was near-universal in the nineteenth century. It is still widely used, particularly in small towns. In most weak-mayor systems, the office of mayor is simply rotated among the elected council members on an annual basis. The council retains collective control over administration, including appointment and dismissal of municipal employees and appointments to boards and commissions. Control of some functional areas (e.g., parks, library) may be delegated by charter or ordinance to semi-independent boards and commissions. In general, the mayor's authority is little, if any, greater than that of the other council members. Department heads – e.g., the clerk, police chief, public works director – report to the council as a whole or to the mayor in his or her capacity as spokesman for the council. Sometimes the municipal clerk functions as a de facto chief administrator.

B. COUNCIL-STRONG MAYOR FORM

The council-strong mayor form gradually evolved from the council-weak mayor form. It provides for a distinct division of powers between the council and the mayor. The mayor actually is the chief executive, that is, the office of mayor has substantial influence in the policy-making process and substantial control over administration. The mayor holds important budgetary and appointing powers, along with the power to veto legislative actions of the council. Administrative authority is not shared with a number of independent boards and commissions. The mayor enjoys general power to appoint people to boards and commissions. Depending upon the city charter, the mayor may (or may not) vote with the legislative body.

Some large cities with a strong mayor have established the position of chief administrative officer under the mayor to handle the day-to-day operations of the government, thus leaving the mayor free to concentrate on policy formulation and ceremonial tasks. In this way, administrative management by a hired assistant to the mayor may be combined with strong political and policy leadership by the mayor.

C. COMMISSION FORM

The commission form combines both executive and legislative powers in a governing board, the commission. There is no single chief executive; rather, the commissioners, who serve collectively as the policy-making body, also serve individually as heads of the principal departments. In the basic commission form, there is neither a mayor nor a city manager. Today, most commission-form cities do select or elect a mayor.

Early advocates of the commission form hoped that the concentration of power in the hands of a few elected council members would make administration more effective and would enhance accountability to the public.

The commission plan was first employed in Galveston, Texas, after a disastrous hurricane almost destroyed the city in 1900. It enjoyed widespread popularity for about two decades. Since 1920, however, its use has declined greatly. Although offering more integration of policy and administration than the council-weak mayor form, the commission form tends to provide inadequate coordination, insufficient internal control, and non-professional direction of administration.

It should be noted that, in Florida, municipalities use the terms "council" and "commission" without reference to the distinction between the commission form and other forms of municipal government. Many Florida municipalities designate their legislative bodies as the "commission" but do not employ the commission form of government. One should not presume that a Florida municipality employs the commission form merely because its policy-making body is labeled "commission."

D. COUNCIL-MANAGER FORM

One of the key elements in 20th-century municipal reform has been the proposition that a strong and non-political executive office should be the administrative centerpiece of municipal government. This concept has been implemented in thousands of American cities in the 20th century by the adoption of the council-manager form of government. This form parallels the organization of the business corporation: voters (stockholders) elect the council (board of directors), including the mayor (chairman of the board), which, in turn, appoints the manager (chief administrative officer). Unlike the two council-mayor forms, where the emphasis is on political leadership, the prevailing norms in the council-manager form are administrative competence and efficiency.

Under the council-manager form, the manager is the chief administrative officer of the city. The manager supervises and coordinates the departments, appoints and removes their directors, prepares the budget for the council's consideration, and makes reports and recommendations to the council. All department heads report to the manager. The manager is fully responsible for municipal administration.

The mayor in a council-manager form is the ceremonial head of the municipality, presides over council meetings, and makes appointments to boards. The mayor may be an important political figure, but has little, if any, role in day-to-day municipal administration. In some council-manager cities, the office of mayor is filled by popular election; in others, by council appointment of a council member.

The council-manager plan, first used in 1908 in Staunton, Va., received nationwide attention six years later when Dayton, Ohio, became the first sizable city to adopt it. Thereafter, the plan's popularity enjoyed steady but not spectacular growth until after World War II. At that time, many municipalities were confronted with long lists of needed services and improvements that had backlogged since the Depression years of the 1930s. Faced with such challenges, many municipalities adopted the council-manager form. The plan has been especially attractive to small- and medium-sized localities. It is used in a majority of American municipalities with populations of 25,000 to 250,000. It has been strongly promoted since the 1920s by the National Civic League.

The council-manager form is widely viewed as a way to take politics out of municipal administration. The manager himself is expected to abstain from any and all political involvement. At the same time, the council members and other "political" leaders are expected to refrain from intruding on the manager's role as chief executive. Of course, the manager, who is hired and fired by the council, is subject to the authority of the council, but council members are expected to abstain from seeking to individually interfere in administrative matters, including actions in personnel matters. Some city charters provide that interference in administrative matters by an elected city official is grounds for removal of the elected official from office.

E. MUNICIPAL-GOVERNMENT FORMS IN FLORIDA

In Florida, a municipality is free to adopt any of the basic municipal-government forms identified above or any variation thereof. State law does not prescribe one or more permissible forms, nor does it prohibit any. The Florida Constitution requires only that "each municipal legislative body shall be elective" (Art. 8, Sec. 2 (b), Const.); state statutes require only that an acceptable proposed municipal charter is one which "prescribes the form of government and clearly defines the responsibility for legislative and executive functions."

Many Florida cities have forms of government that combine elements of the four basic structures. These cities, having "hybrid" forms outlined in their charters, are difficult to categorize. More elements of the council-weak mayor form are identified in these hybrids, and carry-over elements of the commission form have also been found.

The most common form of city government in Florida today is the council-manager form. A second common form, found in many smaller municipalities, is the council-weak mayor form. In Florida, in recent years, most changes of municipal-government form have been from some other form to the council-manager form. Approximately 270 Florida cities (out of more than 400) have a position of manager or a similar position, such as "administrator."

In all Florida cities, members of the council or commission are elected by the voters of the city. The mayor may be simply a member of the council, elected by the council to serve as mayor; may be a separate office (that is, not a member of the council) or elected by the people. Certain administrative positions are filled by elections in a few cities. These include the offices of clerk, police chief and fire chief.

REFERENCES

Florida Constitution: Article 8, Section 2(b). Florida Statutes: Section 165.061. *Membership Directory*, Florida League of Cities. *Model City Charter*, 8th Edition, National Civic League, www.ncl.org.

Table 2-1

Comparison of Municipal Executive Types

SOURCE: International City/County Management Association, Directory of Local Governments, Washington, D.C.: ICMA, 1978, p. 5

DUTIES	TYPES OF EXECUTIVE	
	Municipal Manager (council-manager position)	Municipal Administrator (general management position)
Appointment	The manager should be appointed by a majority of the council for an indefinite term and removable only by a majority of the council.	The administrator should be appointed by the council or the mayor.
Policy Formulation	The manager should have direct responsibility for policy formulation on overall problems.	(same as municipal manager)
Budget	The manager should have responsibility for preparation of the budget presentation to the council, and direct responsibility for the administration of the council-approved budget.	The administrator should have major responsibilities for preparation and administration of the budget.
Appointing Authority	The manager should have full authority for the appointment and removal of at least most of the heads of the principal departments and functions of the municipal government.	The administrator should exercise significant influence in the appointment of key administrative personnel.
Organizational Relationships	Those department heads whom the manager appoints should be designated by legislation as administratively responsible to the manager.	The administrator should have continuing direct relationships with operating department heads on the implementation and administration of programs.
External Relationships	Responsibilities of manager should include extensive external relationships involving the overall problems of city operations.	(same as municipal manager)
Qualifications	The qualifications for the position should be based on the educational and administrative background of candidates.	(same as municipal manager)

Section 2-2

The Municipal Charter

A. SIGNIFICANCE OF THE CHARTER

The municipal charter is an essential and fundamental element of every Florida municipality. No municipal government may be created without a proposed charter, and no municipal government may exist without a charter.

In addition, the municipal charter is vital to the democratic and effective functioning of a municipal government. It must contain basic provisions for the organization of municipal government. A good charter is one which presents a concise and workable legal framework for the government of the municipality. In addition, says the National Civic League, a good charter is one which "sets before the citizens a clear picture of their own powers and responsibilities and before the officials and employees a statement of their duties and mutual interrelations." The adoption of a good charter, says the League, "is an affirmation by the citizens that they mean to have good government and is the legal framework within which such government can be won and the more easily maintained."

A municipal charter must originate within the community and must be formally approved by a majority of the registered voters of the community. The charter is, in a sense, a compact among the residents of the community regarding the extent and form of government which they desire.

B. CONTENTS OF A CHARTER

A charter should contain details which are of such importance that they should not be subject to change simply by ordinance, without a public referendum. By including certain provisions in the city charter, the citizens ensure that their provisions cannot be changed hastily and without popular consent. On the other hand, subjects of less importance should not be in the charter because it should be easier to make necessary changes affecting them. In short, a happy medium should be found between including "enough" and including "too much" in the charter.

1. Recommended Subjects

What subjects should be included in a charter? The National Civic League has recommended a charter article for each of the following subjects:

1. Powers of the City
2. City Council
3. City Manager (or other chief administrator)
4. Administrative Departments
5. Financial Procedures
6. Planning
7. Nominations and Elections
8. Initiative and Referendum
9. General Provisions
10. Transitional Provisions

2. Models and Samples

The National Civic League has prepared a model charter, which may serve as a guide in the preparation or revision of a charter. See the following:

- *Model City Charter*, National Civic League, 1445 Market Street, #300, Denver, CO, 80202-1728, (303) 571-4343, www.ncl.org. Revised each decade: 8th edition in 2003.

Copies of current Florida city charters may be obtained from the cities themselves and are often posted on-line at city websites. Consult the FLC Municipal Directory for email addresses, and if inquiring for a copy, ask the city clerk's office for assistance. The Florida League of Cities can lend copies of the charters of several Florida cities.

3. The Charter and Home Rule

With the advent of municipal Home Rule in 1969, a municipal government is not restricted to those powers which are listed in its charter. A city may exercise any power for municipal purposes which is not explicitly prohibited by law. That being the case, the charter need not contain an exhaustive list of municipal powers.

Despite the general grant of home-rule authority, a city may not exercise powers which are prohibited to municipalities by the constitution or general law; consequently, it is useless to put such provisions into a charter, as any such provisions found in a charter are null and void.

With certain exceptions, limitations of power contained in a municipal charter prior to July 1, 1973, were nullified in 1973 by legislative enactment of Chapter 73-129, Laws.

4. Statutory Requirements

To be accepted by the Legislature, a proposed charter must meet these conditions regarding its content:

1. It must prescribe the form of government and clearly define the responsibility for legislative and executive functions.
2. It must not prohibit the city council from levying any tax authorized by the Constitution or general law.

C. PREPARATION OF A CHARTER

Preparation of a municipal charter must occur as part of the incorporation process. See the next chapter for details.

D. AMENDING A CHARTER

Amendments to a municipal charter may be proposed either by the council (by ordinance) or by registered voters (by means of a petition). Charter amendments must be approved by the city's electors in a referendum.

All parts of a charter may be amended except that part defining the boundaries of the city. Boundary changes may be made only by following the statutory procedures for annexation and contraction, found in Chapter 171, F.S. Once these procedures are followed, boundary changes may be reflected in the language of the charter by action of the council, by ordinance and without referendum.

Two other types of charter provisions may be changed without referendum. First, a municipal department which is provided for in the charter may be abolished by unanimous vote of the council. Second, charter language which has been judicially construed to be contrary to the federal or state constitution may be removed, again by unanimous vote only. In addition, in charter counties the provisions of the county charter supersede the provisions of the city ordinances. For more information

regarding charter adoption and dissolution, see the section on "Incorporation, Merger and Dissolution" in this manual.

REFERENCES

Florida Statutes: Chapters 165, 166 and 171.

Section 2-6

Key Officials and Their Roles

Key city offices include those of mayor, council member, manager/administrator, clerk and attorney. Commissions, boards and advisory committees also often play key roles.

A. MAYOR

The roles of mayor and council member vary widely in scope and power throughout the United States. This variety is linked primarily to the specific form of government which a city has adopted, although additional legal restrictions in some states, as well as individual personality, may also be significant factors.

1. Qualifications

Formal qualifications for the office of mayor may be specified in the city charter. Typically, the sole stated qualification is that one be a qualified elector of the city. In some cities, a higher minimum age is required (e.g., 21 or 25); otherwise, the only age requirement is that which is implicit in the qualified-electror requirement. Other qualifications required by some cities include a requirement that one have been a resident of the municipality for some minimum period (e.g., one year, three years) and a property-ownership requirement (i.e., that one be a "freeholder").

2. Selection Method

The method of selection of the mayor is specified in the city charter. It is either by popular election or by appointment by the council. In some cities, the mayor is elected by popular vote for a two-year or four-year term; in others, the council elects one of its members as mayor, usually on an annual, rotating basis.

3. Powers

The office of mayor has all the powers designated to it by the city charter, or delegated to it by the council, provided that these designated or delegated powers are not inconsistent with the charter or state and federal constitutions and laws. The mayor must look to the charter and to specific delegations of authority by the council for most of his formal powers; in addition, some powers and duties are assigned to mayors by state and federal law. In general, the mayor should claim and should attempt to exercise only those powers for which explicit authorization is found in one or another of these sources. The role of the mayor varies widely from one community to another. At one extreme, the mayor may be solely a ceremonial figure, there to play certain ceremonial roles but playing no part at all in policy-making and administration. At the other extreme, the office of mayor may be designed (by charter provisions) as the chief-executive position of the municipality, analogous to the president's role in the national government; in this event, the mayor enjoys significant powers in both the legislative process and the administrative functions of the municipal government.

In general, the role of the mayor is determined by the basic form of municipal government which is utilized by the community. These basic forms are discussed elsewhere in this manual, in "Basic Forms of Municipal Government," where additional information concerning mayoral powers and duties is discussed.

At the same time, it should be emphasized that the formal role of the mayor in a given city is primarily determined by charter provisions and ordinances of that particular city, not by any common pattern or "model" arrangement. All existing charter provisions and ordinances should be adhered to; if change is needed in the role of the mayor, the relevant charter provisions or ordinances should be changed. All Florida cities do not have a "mayor," some have chosen to use "council chairperson" as the title for the municipality's ceremonial leader.

B. COUNCIL MEMBERS

The elected municipal governing body is responsible for the policy-making function of city government. Municipal governing bodies in Florida are titled council, commission, board of aldermen, or councilor. The choice of title for the legislative body has no legal significance; whether "council," "commission," "aldermen," or "councilor," the body's functions and powers are the same. (Throughout this manual, "municipal governing body" and "city council" are used interchangeably.)

Members may be elected at-large or from districts. The number of council members varies from three to 19, with five being the most common number. In many Florida communities, the mayor is recognized as the presiding officer of the council, whether as a voting or a non-voting member; in others, a council member is elected by the council as its "president" and presiding officer. In most cities, the council sets the qualifications for its members; they are quite similar to those for mayor. Terms of office for council members are either two or four years. In some cities, all council seats are elected simultaneously; in others, council elections occur on a "staggered" basis. The staggered-term system serves to eliminate the possibility of an entirely new and inexperienced council being elected at one time.

The mayor and each council member may receive salary and/or reimbursement of expenses, as provided by charter or ordinance.

A vacant council position may be filled either by appointment or by special election. Rules concerning the filling of vacancies are usually contained in the city charter.

C. MANAGER/ADMINISTRATOR

The council-manager form of municipal government provides for a separation of legislative and executive powers. Legislative authority is vested in the council, while a manager, appointed by the council, serves as chief administrator. Depending on local preference, the administrator position may be titled "manager" or "administrator." If the position is not provided in the charter, it has been found in a few cities as an ordinance. For questions on these distinctions and job descriptions, please contact the Florida City and County Management Association (see reference page).

D. CLERK (AND TREASURER)

The city charter should delineate the central duties and responsibilities of the municipal clerk, which generally include mandatory attendance at council meetings, taking and transcribing the minutes of the council meetings, and being responsible for all or most official records. Additional duties may be assigned by ordinance or by the clerk's supervisor (mayor or manager). These additional duties could include those of treasurer, purchasing officer, clerk to the city board of elections and the issuance of licenses and permits, as well as other administrative functions.

In a handful of Florida communities, the office of clerk is an elective office; in most, the clerk is appointed by the council or by the manager/administrator. In some communities, one person is designated as both city manager and city clerk.

As with the city clerk, the position of treasurer is generally established by charter. The treasurer serves as chief fiscal officer of the municipality. Specific duties of the treasurer include the collection, receipt, and custody of payment of both municipal employees and all vendors providing goods and services. In addition, the treasurer could be responsible for all municipal monies; the keeping and monitoring of all financial records; the investment of idle funds; and the assigned specific duties in the preparation of the annual budget. The treasurer also reports periodically (monthly, quarterly and/or annually) to the council on the financial condition of the municipality.

Municipal finance officers have a statewide association; see reference page for details.

In many small Florida communities, the city (or town) clerk functions as a general municipal administrator. In such a municipality, with a part-time mayor and no manager, the clerk is the chief administrative officer. In addition to the previously mentioned duties, therefore, the clerk will administer the personnel ordinance, prepare the municipal budget, interview and recommend candidates for employment, process citizens' complaints, and make recommendations to the council on various matters affecting the municipality. For this reason, the position of city clerk is of great importance in those Florida cities which have neither a strong mayor nor a city manager. City clerks have a statewide association; see the reference page for information.

E. ATTORNEY

In most cities in Florida, the council appoints a city attorney for legal counsel. A city attorney may be a full-time employee, a part-time employee, or may be hired on a case-by-case basis. One attorney may represent more than one municipality. A city attorney should be a member of the state and national bar. The council will determine the city attorney's compensation. The city attorney is a legal advisor, primarily. At the request of the governing body or designated staff members, the attorney renders opinions on legal issues affecting the city. The attorney gives legal counsel on the drafting and implementation of ordinances and should keep the council and staff informed of new laws and judicial opinions that could affect the city. The attorney may also represent the city in court, although cities often employ other (additional) counsel to handle court cases.

The city attorney serves at the pleasure of the council and handles whatever responsibilities are designated to his office. In some cities, the council is quick to involve the attorney in varied aspects of city policy-making and administration; in other cities, the attorney's services are resorted to only when a legal issue absolutely requires it.

City attorneys have a statewide association; see reference page for details.

F. COMMISSIONS, BOARDS AND ADVISORY COMMITTEES

In Florida, a municipality's authority to establish commissions, boards and advisory committees to carry out particular municipal functions may be inferred from Section 166.021, F.S., which describes the general and express powers of a municipal corporation. The general power of a municipality to create commissions, boards, and advisory committees should be stated in the municipal charter. The powers, duties, and composition of permanent bodies should also be included in the municipal charter.

Temporary bodies may be created and abolished by resolution or administrative order. Their duties and powers, composition, and any compensation should be determined by the council, if not specified by charter or state law. Commissions and boards sometimes are assigned significant powers of policy-making or administration.

Advisory committees serve an important function in providing expertise in certain areas of municipal concern. Usually established at the request of the council, they may be made up of both citizens and council members and may deal with issues and problems which the council deems worthy of special consideration and advisement. The advisory committee adds another degree of municipal responsiveness to the public interest. It provides an excellent opportunity for citizens to actively participate in their local government. The advisory committee is not of the same significance as a commission or board, lacking the power to make or administer policy on its own. Nevertheless, the advisory committee may play an important role by taking up matters that deserve extra attention and consideration that a group of interested, concerned citizens can provide.

It should be noted that commissions, boards and advisory committees and the individual members thereof are subject to open-meetings ("Sunshine Law") and public-record laws; individual members may be required to comply with financial-disclosure laws, also. For more information on these laws, see Chapter 3, "Standards of Conduct," in this manual. Advisory board training is encouraged for all citizens who serve on them.

REFERENCES

Elected Officials Handbooks, International City/County Management Association,
1120 G Street N.W., Washington, DC 20005.