

Forms of Government and The Lawrason Act

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Three Forms of Government:



Legislative Charter



Home Rule Charter



Lawrason Act

Legislative Charters

Pockets in time when legislative charters could be created:

- Prior to 1879, all municipalities were incorporated by legislative Act
- Between 1898 (only if they had a population of at least 2,500) and 1952

So, NO new legislative charter municipalities

For these municipalities, the Act that created them serves as the municipality's charter and it sets forth the form of government as well as the municipality's powers and duties.

The only way to change the charter is set forth in *La. R.S. 33:1181* (must have gubernatorial and Attorney General approval with the blessing of voters).



Legislative Charter Municipalities (24)



Abbeville

Bastrop

Clinton

Coushatta

Evergreen

Farmerville

Franklinton

Greensburg

Homer

Jackson

Jeanerette

Keachi

Madisonville

Mansfield

Marksville

Minden

Mount Lebanon

New Roads

Plain Dealing

Plaquemine

Springfield

St. Martinville

Vienna

Zwolle

Legislative Charter → Lawrason Act

(La. R.S. 33:481)

If a conflict exists between the legislative charter and the Lawrason Act, the charter prevails.

If the legislative charter is silent on a matter, the Lawrason Act governs.

Home Rule Charters

(La. Const. Art. VI, Sec. 5)

Any local governmental subdivision may draft, adopt, or amend a home rule charter, which adoption, amendment, or repealing is accomplished by approval by a majority of the electors voting thereon at an election held for that purpose.

The municipality has broad authority to set its own operational rules:

- Citizens select their own form of government via a charter commission process
- Municipality has authority to perform any function except those denied by general law or the constitution

The legislature shall not enact a law that changes or affects the structure and organization or the particular distribution and redistribution of the powers and functions of any local governmental subdivision that operates under a home rule charter (La. Const. Art. VI, Sec. 6)

Home Rule Charter Municipalities

(30)



Alexandria

Baker

Berwick

Bogalusa

Bossier City

Covington

Dequincy

DeRidder

Donaldsonville

Franklin

Hammond

Jennings

Kenner

Lake Charles

Leesville

Mandeville

Monroe

Montgomery

Morgan City

Natchitoches

New Iberia

Oak Grove

Patterson

Shreveport

Slidell

Sulphur

Thibodaux

Washington

West Monroe

Zachary

Home Rule Charter Consolidated Governments (4)

- La. Const. Art. VI, Sec. 5(D) allows for local governments to charter under one home rule charter if properly approved by effected voters.

Baton Rouge - East Baton Rouge Parish

Houma - Terrebonne Parish

Lafayette - Lafayette Parish*

New Orleans - Orleans Parish

- * *In 2019, voters approved an amendment to the charter to provide separate governing councils for the city and parish*

Home Rule Charter → Lawrason Act

If the home rule charter is silent on a matter, the Lawrason Act is persuasive, but not binding.

Many home rule charters have a catch-all provision that adopts the Lawrason Act by reference in any matter on which the charter is silent.

Lawrason Act Municipalities (245)

- In 1898, the legislature passed a set of statutes to provide a general charter for municipalities who do not wish to adopt a home rule charter – *La. R.S. 33:321-463*.
- It provides the **mayor-board of alderman form of government** and sets forth the powers and duties of new municipalities. It is the default charter option.
- Municipalities may exercise any power and perform any function necessary, requisite, or proper for the management of affairs not denied by law, including the power to levy and collect taxes, incur debt, and issue bonds and other evidences of indebtedness.
- Legislative charter municipalities may opt into this form of government through an election.

What's Off Limits?

- X** May not define or provide for punishment of a felony
- X** Except as authorized by law, may not enact an ordinance governing private or civil relationships
- X** May not abridge the police power of the state

Other Applicable Laws

- Open Meetings Law
- Public Records Law
- Local Government Budget Act
- Auditing Laws and AUPs
- Official Journal and Publications
- Public Bid Law
- Civil Service Law (by population)
- Annual Mandatory Training in Code of Governmental Ethics
- Annual Mandatory Training in Sexual Harassment Prevention and Cybersecurity

Special Rules

- ❖ Over 1/3 of Louisiana's municipalities (102 of them) have *some kind* of state statute that alters one or more of the general rules of the Lawrason Act OR creates special rules for their mayor's court
- ❖ When you encounter a question about official authority, always look for the statutory local rules FIRST. Then, go to your charter (for legislative or home rule charter municipalities), then go to the Lawrason Act provisions
- ❖ LMA's Municipal Handbook – Chapter 1 – The Governing Body – includes many of the rules regarding specific Lawrason Act municipalities.

Lawrason Act Lanes of Authority

Mandatory Municipal Officers

Mayor

Alderman

Chief of Police

Tax Collector

Clerk

Optional Municipal Officers

Street Superintendent

Municipal Attorney

Department Heads

Mayor

CEO of the municipality – head of Executive Branch

- Supervises and directs administration and operation of municipal departments, other than a police department with an elected chief. See the Mayor – Police Chief Relations Handbook under the publications tab at www.lma.org.
- Mayor controls preparation of the agenda and items contained therein subject to ordinances detailing how matters are added by alderman request.
- Subject to law, civil service, and ordinance, Mayor appoints and removes employees, **except**;
 - police personnel in a department with an elected chief
 - department heads, appointed police chiefs, clerks, attorneys, or auditor/tax collector

Mayor's Specific Duties

- Signs **ALL** municipal contracts
- Prepares and submits annual operations and capital improvement budget
- Represents municipality (including litigation matters and contract negotiations)
- Keeper of municipal seal
- Signs warrants drawn on municipal treasury (**the mayor MUST sign the checks**)
- Has any other power or duty necessary or proper for administration of municipality not denied by law

Board of Aldermen

Vested with legislative authority – the Legislative Branch

- Number varies based on population/designation
 - Villages = < 1,000 population = 3 aldermen
 - Towns = >1,000 but <5,000 = 5 aldermen
 - Cities = > 5,000 = 5 to 9 aldermen
- If a city has > 8 aldermen, 2 shall be elected from each district in the city and the remainder shall be elected at large
- If a city has 5 – 7 aldermen, an equal number of aldermen shall be elected from each district of the city and the remainder shall be elected at large
- If a town is divided into districts, one alderman shall be elected from each district, and one shall be elected at large
- Aldermen in villages shall be elected at large

Board of Aldermen Duties

- May enact ordinances with penalties of fine not more than \$500, not more than 60 days in jail, or both; zoning ordinances; nuisance ordinances
- Subject to law (including federal labor laws) and civil service rule, may provide personnel policies by ordinances, including payroll protocols/software
- They generally control the public fisc, and must approve the proposed budget
- They must approve hiring and firing of appointed chief, department heads, clerk, attorney, auditor, tax collector, and recommendations from elected chief re: personnel

Mayor Pro Tempore

- Board selects one of its members as mayor pro tempore – mayor has no vote
- Presides over board meeting in absence of mayor with same rights as mayor in presiding (but cannot vote twice)
- **No additional authority** as mayor unless provided by law or upon written consent of mayor (IF it is a duty the mayor may assign)
- Performs duties of mayor when mayor is unable to carry out duties by reason of physical or mental disability, as determined by a physician

Chief of Police

Also known as the “Marshal” under the Lawrason Act



- Lawrason Act presumes chiefs are elected, but appointed chiefs exist in municipalities where they existed as of August 1970, AND in towns where the people have voted to authorize the mayor to appoint the chief subject to board approval
- To switch from elected to appointed, the people present a petition signed by at least 25% of the qualified voters, and if the people vote no, you can't hold another one for at least 4 years
- In municipalities of 5,000 people or less, the board must call the election by 2/3 vote, and the result of the election bars another for at least 4 years
- After at least 4 years, the people can switch back either way using the same mechanism
- Generally, both appointed and elected have responsibility for enforcement of law and ordinances within the municipality, which authority runs concurrent with the sheriff

Elected Chief of Police

- The chief controls all administrative matters within the department, and must get board approval only for appointment, promotion, discipline, or dismissal of police personnel
- Exceptions: found in 33:423.1 – 423.29: Mandeville, Harahan, Gretna, Ville Platte, Scott, Westwego, Patterson, Gonzales, Crowley, Tickfaw, Winnfield, Iowa, Grand Isle, Broussard, Carencro, Amite City, Livingston, Ponchatoula, White Castle, Independence, Pearl River, Youngsville, Kaplan, Welsh, Rayne, Eunice, Homer, and Opelousas

Elected Chief of Police

- Chief can immediately suspend or dismiss personnel pending board approval at next special or regular meeting
- Chief may provisionally fill a vacancy with the mayor's approval pending board approval – if the board never votes to reject, the appointment stands

Elected Chief of Police

- Regarding budgets – if the elected chief sees that he is going to exceed the budget allocated to the PD by the board by 5% or more, it is the Chief's fiduciary obligation to inform the board of the overage and to present a plan to bring his budget back into line with what the board has provided – cutbacks, etc.

Appointed Chief of Police

- The law requires that the municipality articulate the exact duties and authority of an appointed chief by ordinance
- Since the mayor is otherwise responsible for administrative decisions within the department, it is essential that the mayor and appointed chief have a good working relationship
- Voters choose this route to avoid the politics of law enforcement, to allow the chief to focus on public safety and not the compulsion to perpetually campaign for office

Municipal Clerk

- Appointed by recommendation of the mayor and approval by a majority of the board; one cannot do it without the other, and it's the same process for termination/subsequent appointments
- Shall be the auditor, assessor, and keeper of all tax records
- May be the tax collector and/or Treasurer
- Keeps minute book, seal, and docket book
- Custodian of municipal records – responds to public records requests



Tax Collector



Mandatory except for Denham Springs, Richwood, and Sterlington (La. R.S. 33:381(D) and 461(C))



Mayor recommends and board affirms; it may be the clerk, but if not, they must give preference to municipal residents if all other considerations are equal



Must collect, account for, and pay over all taxes levied by the municipality



The tax collector, and the sureties on his official bond, are liable to the municipality for any misappropriation, shortage or embezzlement of, or failure to account for, funds of the municipality

Treasurer



- Appointed by recommendation of the mayor and approval by a majority of the board; may be the clerk
- Receive, safely keep, and pay out according to law, all monies belonging to the municipality
- Keep accurate accounts of all receipts and disbursements, and make written report of municipal finances to the mayor and board, at each regular meeting
- Pay out money only on the warrant issued by the order of the mayor and board

Municipal Attorney



- Though it's an optional officer, practicality demands legal counsel; done by recommendation of mayor, affirmation by board
- Duty is to represent all municipal officers in actions against them in connection with and arising out of their functions as such officers, and any other duties as prescribed by the mayor
- Difficult to represent all when they are fighting, and the attorney should mediate these disputes considering legal framework
- The municipality may also employ counsel to represent its interests for specialized matters (expropriation, annexation, litigation, etc.)

Matters Affecting All Officers

Appointment - At the first regular meeting of the board following election, the mayor, subject to board confirmation, must appoint a clerk, tax collector and all other necessary officers, with preference given to residents.

Bond - The clerk and tax collector must execute bonds in such amounts and with such surety and conditions as may be prescribed by ordinance and hold their offices until their successors are appointed and qualified.

Matters Affecting All Officers

Compensation - The board must fix by ordinance the compensation of mayor, aldermen, clerk, chief of police, and all other municipal officers; board may increase or decrease their own compensation and that of nonelected municipal officers and increase the compensation of other elected officials, but they cannot reduce compensation of any elected official during the term for which he is elected.

Matters Affecting All Officers

Term - The term of the clerk, tax collector, nonelected chief of police, street commissioner, attorney, and court magistrate ends at the time of the first regular meeting of the next elected board, however, see La. R.S. 42:2

Vacancy – Vacancies in appointed offices are filled by same process; for elected officers, see La. R.S. 18:602

Conflict of interest - no board member or any other officer, shall be directly or indirectly interested in any work, business, or contract involving public funds

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VACANCIES

Before a vacancy...

- Municipal elections shall be held every four years on the date for municipal and ward elections in accordance with R.S. 18:402(C).

C. Municipal and ward elections. In all municipalities with a population of less than three hundred thousand, elections for municipal and ward officers who are not elected at the same time as the governor or members of congress shall be held every four years.

(1) Primary elections for municipal and ward officers who are not elected at the same time as the governor or members of congress shall be held on the last Saturday in March of an election year.

(2) General elections for municipal and ward officers who are not elected at the same time as the governor or members of congress shall be held on the fifth Saturday after the last Saturday in March of an election year.

- The officers elected shall take office on the first day of July following their election and shall hold their office for four years.

Before a vacancy...

- If NO election is held on the day herein prescribed or if a VACANCY in any municipal office elective by the people occurs, such vacancy shall be filled in accordance with the provisions of Article VI, Section 13 of the Constitution of Louisiana, or otherwise provided by law.
- Any vacancy in a municipal office to which the officer is elected or appointed by the mayor and board of aldermen may be filled for the term by the mayor and board of aldermen at any regular or special meeting.

Vacancies

- Article VI, Section 13 of the Constitution of Louisiana
- Article VI. Local Government
- Section 13. Vacancies
 - Section 13 states:
 - Except as otherwise provided by this constitution, a vacancy in any local office filled by election wholly within the boundaries of a local governmental subdivision shall be filled by appointment by the particular governing authority of the local governmental subdivision in which the vacancy occurs, until it is filled by election as provided by law.
 - Exception. This Section shall apply to each local governmental subdivision unless otherwise provided by its home rule charter or plan of government.

Vacancies

- A vacancy in the office of **aldermen** shall be filled pursuant to R.S. 18:602.
 - R.S. 18:602, Vacancies in certain local and municipal offices, states:
 - When a vacancy occurs in the office of a member of a municipal governing authority, a mayor, or any other local or municipal office, and the office is filled by election wholly within the boundaries of a local governmental subdivision, the governing authority of the local governmental subdivision where the vacancy occurs shall within **twenty days** appoint a person to fill the vacancy who meets the qualifications of the office.
 - However, if the deadline for making the appointment falls on a Saturday, Sunday, or other legal holiday, then the next day which is not a Saturday, Sunday, or legal holiday shall be deemed to be the final day for making such appointment.
 - The presiding officer of the governing authority shall not be required to vote on such an appointment to be made by the governing authority of a local governmental subdivision **unless a tie vote occurs** thereon, in which case he shall vote to break the tie; however, in no case shall the presiding officer vote more than once on the appointment.
- If a vacancy is not filled within the time specified, the governor shall fill the vacancy.
 - That means the members of the board of aldermen shall notify the governor of the existence of the vacancy**

Vacancies

- R.S. 18:602:
 - G. The provisions of this Section shall apply to all local governmental subdivisions, including those operating under the provisions of a legislative charter, but shall not apply where the filling of a vacancy otherwise is provided for by the constitution or by the home rule charter or home rule plan of government of the affected local governmental subdivision. Such constitutional home rule plan provisions shall govern the filling of the vacancies, except that the provisions of R.S. 18:402 shall apply to the time and manner of calling the special elections to fill the vacancies.
- §402. Dates of primary and general elections

Mayors Courts

Each Lawrason Act municipality (and 24 non-Lawrason Act municipalities) shall have a mayor's court (except if prior to 1974 a city court was enacted)

It is critical that these courts be run in full compliance with due process demands, that there be accurate records, and protocols to avoid the appearance of self-serving litigation.

Though not required, it is strongly suggested that the municipality have a separate prosecutor and an appointed magistrate, if fiscally possible.

Louisiana Judicial College

All mayors and magistrates who preside over Mayor's courts are required to take an initial training upon being elected or appointed. Mandatory continuing education annually is now required. R.S. 44:441(D)

Visit the Louisiana Judicial College / Louisiana Supreme Court website at www.lasc.org for online training materials.

Comprehensive Guide to Mayor's Courts and Mayor's Court Guide to Court Cost Submission may be found at www.lma.org

Municipal Buildings and Phones

- Call your main phone line.
 - What message do you get?
 - Are messages checked?
 - If you press number for options, are those current?
 - Is phone information correct on your website?
- Look at your municipal buildings
 - Is the sign current?
 - Are officials and information current on the signs?
 - Are office hours posted?
 - It is clear where to enter, pay utility bills, etc?
 - Are your municipal buildings handicap accessible (Americans with Disabilities Act)

What's Available at www.ima.org

Resource Guides

QUESTIONS?

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