

# Chapter 13

## ENACTING ORDINANCES AND RESOLUTIONS

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### Municipal Legislative Powers

Municipalities cannot legislate beyond the bounds fixed by the *Louisiana Constitution* and state law [*Louisiana Constitution*, Article VI, Section 2; *Lentini v. City of Kenner*, 211 So.2d 311 (La. 1968), and *Theriot v. Terrebonne Parish Police Jury*, 436 So.2d 515 (La. 1983)].

Each *Lawrason Act municipality* may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs not denied by law [R.S. 33:361(A)]. The legislative power is vested in and exercised by the board of aldermen [R.S. 33:362(A)]. The mayor is the chief executive officer [R.S. 33:362(B)].

Municipal ordinances are presumed to be valid and are interpreted to sustain its validity if susceptible to reasonable interpretation [*Schmitt v. City of New Orleans*, 461 So.2d 574 (4<sup>th</sup> Cir. 1985)]. However, when First Amendment rights are involved, the ordinance's proponent bears the burden of proving its constitutionality [*Acorn v. City of New Orleans*, 606 F. Supp 16 (1984)].

Municipalities cannot by ordinance:

- Define and provide for the punishment of a felony [*Louisiana Constitution*, Article VI, Section 9(A) and R.S. 14:143]. This precludes any ordinance which defines as an offense any action defined as a relative felony under state law, that is "conduct that may be considered a misdemeanor or a felony offense, depending upon the number of prior convictions of the same offense." Specific exceptions have been enacted for ordinances which prohibit conduct defined as a misdemeanor in the relative felony crimes of battery of a police officer, theft, theft of goods, illegal possession of stolen things, issuing worthless checks, prostitution, and telephone communications involving improper language or harassment.
- Govern private or civil relationships [*Louisiana Constitution*, Article VI, Section 9(A)].
- Reduce the compensation of a municipal elected official during the term for which he is elected [*Louisiana Constitution*, Article VI, Section 12].
- Levy a severance tax, income tax, inheritance tax, or tax on motor fuel

[*Louisiana Constitution*, Article VII, Section 4 (C)].

- Impose a license fee on motor vehicles [*Louisiana Constitution*, Article VII, Section 5].

Municipalities can not, except as otherwise authorized by the Constitution, loan, pledge, or donate funds, credit, property, or things of value of the municipality to or for any person, association, or corporation, public or private [*Louisiana Constitution*, Article VII, Section (A)].

However, a municipality may (1) use public funds for programs of social welfare for the aid and support of the needy; (2) contribute public funds to pension and insurance programs for the benefit of its employees; (3) pledge municipal funds, credit, property, or things of value for public purposes with respect to the issuance of bonds or other evidences of indebtedness to meet public obligations as provided by law [*Louisiana Constitution*, Article VII, Section 14 (B)].

For a public purpose, a municipality may engage in a cooperative endeavor with another municipality, the federal government, the state and other state agencies or political subdivisions or with a public or private association, corporation, or individual [*Louisiana Constitution*, Article VII, Section 14 (C)].

## **Nature of Ordinances and Resolutions**

Generally, **ordinances** are acts of legislation which are permanent in nature and which are concerned with matters that are legislative in nature [*James v. Rapides Parish Police Jury*, 108 So.2d 100 (La. 1959)].

An ordinance is required to codify existing ordinances [R.S. 33:1361]. The Constitution requires each municipality to have prepared a code of all of its general ordinances. When prepared, the code is to be available for public distribution [*Louisiana Constitution*, Article VI, Section 10].

*Under the Lawrason Act*, any law enacted by a board of aldermen must be made by ordinance [R.S. 33:406(A)(1)].

An ordinance is required to:

- Provide for the appropriation of funds, incurrence of debt, or issuance of bonds or other evidences of indebtedness [R.S. 33:406(A)(3)].
- Change the name of the municipality to reflect the classification change when the governor issues a proclamation changing the classification of a municipality [R.S. 33: 342(C)].
- Divide the board of aldermen into election divisions or in any manner

different than provided by law and revise election boundaries based on the census [R.S. 33:382(C)(2), (D) and (F); R.S. 33:1371]. Note that federal pre-clearance is also required.

- Establish municipal election on day of congressional elections [R.S. 33:385].
- Fix the compensation of the mayor, aldermen, clerk, chief of police, and all other municipal officers [R.S. 33:404.1].
- Increase or decrease the compensation of the board of aldermen and any nonelected municipal officer and increase the compensation of other elected officials [R.S. 33:404.1].
- Fix the date of the monthly meeting and the place and hour of the regular meeting [R.S. 33:405(A)(2)].
- Provide for additional duties of marshal [R.S. 33:423] and treasurer [R.S. 33:425].

Generally, **resolutions** are merely expressions of opinion that are temporary in nature and which are concerned with matters that are administrative or ministerial in nature [*James v. Rapides Parish Police Jury*, 108 So.2d 100 (La. 1959)].

Under the Lawrason Act, any act of the board of aldermen which is not law is a resolution [R.S. 33:406(A)(2)]. The board may by resolution:

- Require the expenditure of funds previously appropriated. Adoption requires the affirmative vote of a majority of the members of the board. Such resolution must be presented to the mayor within three days after its adoption for his approval or disapproval. In this instance, a resolution serves as a directive to the mayor, rather than a mere expression of legislative will and the mayor may veto the resolution. Upon such a veto, the process for override becomes applicable [R.S. 33:406(A)(3)].
- Suspend an ordinance but the resolution must be subject to the same vote and formalities that were required to enact the ordinance, except for the mayoral veto. Such a resolution must fix the period of suspension which can not exceed beyond one year and 30 days after its adoption [R.S. 33:406(F)].
- Request the governor to change the classification of a municipality whenever a census taken by resolution of the board or a certified report from the federal Census Bureau shows a population that takes the municipality out of its current class [R.S. 33:342 (A)].
- Elect to be known as the council rather than the board of aldermen [R.S. 33:343(A)].

- Request or direct administrative action, express views, provide internal policies or rules, and express condolences and commendations.

## Form of an Ordinance

Absent constitutional or statutory requirements, considerable informality is permitted in the form of an ordinance. Requirements are often labeled as directory rather than mandatory.

Generally, ordinances adopted after the approval of a code of ordinances shall be amendments or additions to the code of ordinances [*Louisiana Constitution*, Article VI, Section 10].

With regard to the "one-object rule," the constitutional provisions that a law embrace only one object does not apply to ordinances [*State v. Monsour*, 17 So.2d 307 (La. 1943)].

With regard to the "one-subject rule," the following must be remembered:

- The subject is defined as the subject matter of the action or that with which the action deals [*Town of Ruston v. Dewey*, 76 So.719 (La. 1917)].
- *Under the Lawrason Act*, an ordinance can contain only one subject which is to be indicated in the title, except for ordinances involving the annual operating budget, a capital improvements budget, or a codification of ordinances [R.S. 33:406(B)(1)].
- "Subject" is given a broad construction to allow the inclusion in one ordinance of all matters having a logical or natural connection [*Town of Ruston v. Dewey*, 76 So. 719 (La. 1917)].

With regard to the title of an ordinance, the constitutional provision that a law has a title indicative of its subject is not applicable to ordinances [*City of New Orleans v. Pergament*, 5 So.2d 129 (La. 1941)].

*Under the Lawrason Act*, an ordinance must contain a title indicating its subject, except for ordinances involving the annual operating budget, a capital improvements budget, or a codification of municipal ordinances [R.S. 33:406(B)(1)].

Finally, the title need not be an index or synopsis.

With regard to the enacting clause, an ordinance considered for adoption by a Lawrason Act municipal governing authority must be styled – "Be it ordained by the Board of Aldermen of the City (*or Town or Village*) of ..." [R.S. 33:406(A)(2)].

The repeal of an ordinance is accomplished in two ways. First, an ordinance may

be repealed by another ordinance [*Sylvestre v. St. Landry Parish School Board*, 113 So. 818 (La. 1927)]. And second, an ordinance may be invalidated by subsequently adopted federal or state constitutional amendments or laws.

State law also governs the adoption of an emergency ordinance. Under the Lawrason Act, an ordinance sought to be adopted at an emergency meeting of the board without previous consideration must specify the nature of the emergency [R.S. 33:405(D)(2)].

The effective date of an ordinance also is prescribed by the state law. Under the Lawrason Act, unless an ordinance specifies an earlier or later effective date, the ordinance becomes effective on the 30<sup>th</sup> day after the meeting at which the ordinance was adopted [R.S. 33:406(E)].

### **Form of a Resolution**

Absent constitutional or statutory requirements, the forms of resolutions are very informal.

### **Enacting the Ordinance and Resolution (Lawrason Act municipality)**

No ordinance shall be adopted except by the affirmative vote of a majority of the members of the board [R.S. 33:406(A)(1)].

A proposed ordinance may be introduced by any alderman at any meeting of the board [R.S. 33:406(B)(1)].

All ordinances must be in writing [R.S. 406(B)(1)].

Copies are to be provided to board members and the mayor [R.S. 33:406(B)(2)].

No ordinance can be adopted at the meeting at which it is introduced, except an emergency ordinance [R.S. 406(B)(2)]. An emergency ordinance requires a two-thirds vote and is only valid for no more than 60 days [R.S. 33:405 (D)(2)].

The title of the proposed ordinance is to be published once in the municipality's official journal [R.S. 33:406 (B)(2)].

The public notice shall indicate the time and place where the board will consider adoption of the proposed ordinance. No ordinance shall be adopted until a public hearing on it has been held [R.S. 33:406(B)(2)].

The ordinance must be read by title when called for final passage [R.S. 33:406(B)(4)].

Proposed amendments must be reduced to writing before its final consideration

[R.S. 33:406(B)(3)]. An amendment can not nullify the purpose of the proposed ordinance nor, except for ordinances involving the annual operating budget, a capital improvements budget, or a codification of municipal ordinances, add a new subject matter to it [R.S. 33:406(B)(3)].

The vote is to be taken by "Yeas" and "Nays." The clerk is to enter the names of the board members voting for or against each ordinance or amendment in the minutes [R.S. 33:406(B)(4)].

As opposed to the enactment of an ordinance, there are no formalities as to the introduction and adoption of a resolution which generally is approved by affirmative vote of majority of board present at the meeting [R.S. 33:406(A)(2)]. However,

- A resolution that requires the expenditure of funds previously appropriated requires the affirmative vote of a majority of the members of the board [R.S. 33:406(A)(3)].
- A resolution to suspend an ordinance is subject to the same vote and, except for mayoral veto, the same procedures and formalities required for the enactment of the ordinance [R.S. 33:406(F)].

A resolution generally does not require the signature or other action of the mayor to become effective [R.S. 33:406(A)(2)]. However, a resolution that requires the expenditure of funds previously appropriated must be presented to the mayor within three days after its adoption for his approval or disapproval. In this instance, a resolution serves as a directive to the mayor, rather than a mere expression of legislative will [R.S. 33:406(A)(3)].

### **Veto of an Ordinance and Resolution and Vote to Override (Lawrason Act municipality)**

The mayor has the authority to veto an ordinance [R.S. 33:406(C)(2)]. However, the veto power of the mayor is not applicable to simple motions.

An adopted ordinance is to be presented to the mayor by the clerk within three days after its adoption [R.S. 33:406(C)(1)]. The mayor is to return the ordinance by the end of 10 days with or without his approval or with his disapproval. Unless the mayor vetoes an ordinance, it becomes law upon return to the clerk or the expiration of 10 days if not returned to the clerk. If the mayor disapproves, he is to return the ordinance along with a written statement of the reasons for his veto. In that event, the clerk transmits the statement to board members. The clerk is to record the date of delivery to the mayor and the date of receipt from the mayor, if any [R.S. 33:406(C)(2)].

An ordinance that has been vetoed by the mayor must be considered again by the board at its next regular meeting after the veto. The board may vote on the ordinance at that meeting or at a continuance of that meeting. If the board consists of three members, an affirmative vote by all board members is required to override the mayor's veto. If the

board consists of more than three members, an affirmative vote of two-thirds of the board's members is required to override the mayor's veto. If the board overrides an ordinance vetoed by a mayor, the ordinance becomes law upon its enactment by the board [R.S. 33:406(C)(3)].

Resolutions do not require the signature of the mayor and are not subject to mayoral veto, except for a resolution requiring the expenditure of appropriated funds. The mayor may veto the resolution. Upon such a veto, the process for override becomes applicable [R.S. 33:406(A)(3)].

### **Recording and Publication of the Ordinance and Resolution**

The municipal clerk is to furnish the official journal, within 10 days after the date of any meeting, a copy of the minutes, ordinances, resolutions, budgets, and proceedings for publication [R.S. 43:144]. In addition, every ordinance authorizing the issuance of bonds or other debt obligation must be published at least once in the official journal [*Louisiana Constitution*, Article VI, Section 35 (B)].

Under the Lawrason Act, the clerk is to publish each ordinance adopted by the board, in full, once in the official journal of the municipality, designated pursuant to R.S. 43:141-149, within 20 days of its adoption and prior to its effective date [(R.S. 33:406(D)(2)].

The clerk of a Lawrason Act municipality is to keep a book entitled "Ordinances, City (Town or Village) of \_\_\_\_\_," in which the original of every adopted ordinance is to be filed immediately after its adoption and with a note attached stating the date of its enactment and reference to the book and page of the board's minutes containing the record of its adoption [R. S. 33:406(D)(1)].