

Chapter 17

THE MUNICIPAL CLERK'S OFFICE AND RESPONSIBILITIES

Reviewed January 2, 2009

Note: The Louisiana Municipal Association is indebted to the Louisiana Municipal Clerks Association for its compilation and review of this chapter.

State law that has attempted to define the powers and duties of the municipal clerk is Act 136 of 1898, commonly known as the Lawrason Act [R.S. 33:321-481]. Since the vast majority of municipalities are governed by the Lawrason Act, most of the information and examples in this chapter are aimed at those requirements. Municipal clerks who operate under special legislative charters or home rule charters must refer to their respective charters for guidance and requirements, since each municipality is unique under those forms of government.

Furthermore, this chapter outlines at a minimum the duties and responsibilities of the municipal clerk's office.

THE OFFICE OF THE MUNICIPAL CLERK

The Municipal Clerk's Role in the Community. In most Louisiana municipalities, the municipal clerk is elected by the mayor and council at their first regular meeting following each regular municipal election. He must execute a bond to the municipality "in such penalty, with such surety and conditions" as may be prescribed by local ordinance [R.S. 33:386]. Within limits set by the council, he is instrumental in the distribution and control of available public resources and responsible to the council for all municipal activities under his direction. Being at the center of communications for the city hall staff, the municipal clerk serves as a "gatekeeper" of information, advice, and consultation on municipal affairs.

Any action taken by the municipal clerk's office must be in the public interest. The municipal clerk must consider each decision and its short- and long-term effects. The municipal clerk should be aware that positions that he may take on public issues as a private citizen may often be assumed to be those of the current municipal administration. He may be, in many cases, the only point of contact a citizen may have with the municipal governing body.

The municipal clerk's actions on a daily basis also contribute significantly to the municipality's public relations efforts. If the municipal clerk handles a problem or question properly and gives a good impression of himself as an individual, the caller will receive an equally good impression of the municipal government.

The municipal clerk's office staff should realize that they act as representatives of the municipality. For this reason, it is essential that they be well-trained to handle matters efficiently. The actions of all municipal employees -- how they act, their work habits, and their general appearance -- affect the public image of the municipality. Good contacts with the public is the single most important tool leading to good municipal public relations.

Qualifications. While the municipal clerk in Louisiana occupies one of the most important and exacting positions in local government, it is difficult to outline specific qualifications for that office. The Lawrason Act [R.S. 33:336-421] is silent on this matter, and the governing body of the municipality may provide by ordinance or resolution the minimum levels of formal education, relevant professional experience, personal integrity, and residency of prospective candidates prior to their nomination to this office.

Statutory duties. The following are statutory references to the duties of the municipal clerk:

- Maintains minutes of the governing authority [R.S. 33:421].
 - a. Records the proceedings of the mayor and board of aldermen (hereinafter referred to as the "council").
 - b. Indexes the proceedings alphabetically.
- Keeps the municipal seal [R.S. 33:421].
- Maintains the municipal docket [R.S. 33:421].
 - a. Enters each claim against the municipality.
 - b. Enters subject matter to be acted upon by the mayor and the council.
- Examines state statutes and municipal ordinances to determine subject matter requiring action at the next council meeting [R.S. 33:421].
- Keeps other books and records as provided by municipal ordinance [R.S. 33:421].
- Files and preserves all municipal records and papers [R.S. 33:421].
- Maintains municipal tax records [R.S. 33:421].
 - a. Enters all deeds to individuals.
 - b. Lists all lands sold to the municipality by the tax collector.
- Serves as municipal auditor [R.S. 33:422].
- Files public audits and certifications with the State Treasurer [R.S. 33:3033].

- Attests warrants drawn on the treasury for money, affixes the seal on such warrants, and maintains an accurate record of warrants [R.S. 33:404].
- Receives requests to testify before the governing authority enlarging the boundaries of the municipality [R.S. 33:404].
- Advertises for bids on street or sewerage improvements as authorized by the council [R.S. 33:3386, 3952 et al.].
- Maintains records of installment payments for property assessments [R.S. 33:398, 3426 et al.].
- Attests to bonds and affixes municipal seal [R.S. 33:2717.4, 33:4252, 39:564, and 39:825].
- Administers the oath of office [R.S. 42:162].
- Serves, at council's discretion, as tax collector or assessor for the municipality [R.S. 33:381].

These diverse duties may be codified into a single legislative mandate by the local governing body. *For example:* The board shall appoint and fix the compensation of a clerk who shall act as the clerk of the board. It shall be his duty to keep separate journals of the proceedings of the board during regular business hours. He shall perform such other duties as may be prescribed by resolution of the board. The cost of this office shall be included in the municipal budget.

Customary duties. In addition to the powers and duties designated under the Lawrason Act, the municipal clerk also must carry out customary duties and responsibilities as needed to fulfill his obligations to the council. Chief among these obligations is providing the governing body with sufficient information to enable the council to formulate public policy for the municipality.

The municipal clerk may serve on a full-time basis, although the Louisiana statutes are silent on this point. This is a matter for local determination by the council and depends largely upon the amount of municipal business, local custom, and salary provided. "Full-time" service may mean personal services during normal business hours during the work week. It does not necessarily prohibit the municipal clerk from engaging in other enterprises outside of normal work hours. The clerk, as an officer of the municipal corporation, shall not "be directly or indirectly interested in any work, business, or contract, the consideration of which is paid from the treasury of the municipality, nor be a surety for any person having a contract, work, or business with the municipality, for the performance of which the security may be required nor be a surety for any officer or employee" [R.S. 33:385]. The council should provide by ordinance or resolution whether the municipal clerk is to serve full-time or part-time as necessary to fulfill the duties of the office.

The duties of the municipal clerk vary greatly from one town to another. Such duties range from serving primarily as secretary to the board to serving as city manager with responsibility for budgeting, accounting, purchasing, and supervision of most or all city departments. Although not by any means a complete list, the following constitutes examples of customary duties that are performed by Louisiana municipal clerks:

- Receives documents addressed to the municipality or council.
- Responds to citizen inquiries made in person, by telephone, or by letter.
- Administers the municipal clerk's office.
- Maintains the municipality's Code of Ordinances.
- Maintains a follow-up activity file (often referred to as a tickler file) and a calendar of scheduled municipal events.
- Receives and opens bids for public contracts.
- Issues permits and collects fees and special taxes.
- Serves as administrative assistant to the mayor and the council.
- Serves as city manager (chief executive officer).
- Represents the governing authority on various public boards and commissions.
- Attests or certifies documents.
- Accepts petitions and subpoenas on behalf of the municipality.
- Provides public information as needed.

COUNCIL MEETINGS

The municipal clerk is the officer chiefly responsible for preparing council meetings. Duties pertaining to this task include preparing the agenda, posting and publishing the meeting notice, preparing any documents needed for the meeting, and setting up the meeting area.

Preparing the agenda. The purpose of a council agenda is to provide a concise, well-organized framework for conducting a council meeting. If prepared sufficiently ahead of time, the use of the agenda could reduce actual meeting time, avoid deviation, and promote orderly procedure. Local governing bodies may pass a resolution or ordinance which sets a deadline for the submission to the municipal clerk's office any new items to be placed on the agenda. Any additional legislation would then be introduced as provided

for by each council's rules of procedure. Rules of procedure may require that such added matters only be considered when approved by a special (usually, either a two-thirds or three-fourths) majority vote, or unanimous consent, as determined by the council.

Many communications, notices, and petitions that the municipal clerk receives may be addressed to the municipality or to its governing body. The municipal clerk often must determine each such document's final disposition. Depending upon the administrative guidelines that have been laid out for the clerk to follow, he or she might suggest that steps be taken to convene a special meeting of the council [R.S. 33:405], that they be included on the agenda of the next regularly scheduled council meeting [R.S. 33:421], that they be dispatched to the appropriate municipal department or designated public officials for action, or that the matter be handled by the municipal clerk's office.

If the matter is to be placed on the council agenda, all pending and new business relating to the subject should be placed together in a prepared file folder appropriately labeled, and sequenced among the similar file folders in which it is to be taken up on the adopted agenda.

The agenda should be prepared several days prior to the council meeting to allow time for duplication. This day usually coincides with the deadline for the receipt of new items to be placed on the agenda. The mayor and department heads should be consulted about the contents of the agenda. After such consultations, the clerk should not make any changes unless the officials involved are notified of the changes. The agenda is then prepared (typed) by the clerk's office and reproduced for distribution to officials in advance of the meeting and for citizens attending the meeting. The agenda should be distributed to local news media organizations that request advance copies.

A review of council agendas from various municipalities suggests that there are almost as many agenda forms as municipalities. The agenda forms exhibited in this chapter include items that are likely to come before a council and are intended only as an example. The order in which items are placed must be at the discretion of the individual council and the agenda must fit the needs of the municipality. These forms are not submitted with the intention of attempting to displace the use of an agenda that may be more valuable and workable for a particular municipality.

To effect shorter and more efficient council meetings, municipal clerks in some areas are utilizing a "consent calendar" which permits grouping of routine matters under a particular heading to be handled by one motion. *A word of caution:* Use of the consent calendar should be authorized by the council through adoption of an ordinance or resolution. Following such authorization, ordinances for adoption, ordinances for introduction, and resolutions may be included on the consent calendar.

It is recommended that the categories "New Business" or "Other Business" always be included on the agenda (even for a special council meeting) to allow for the discussion of items not specifically listed on the agenda. *A suggested agenda follows.*

SUGGESTED AGENDA (with consent calendar)

1. Call to order.
2. Pledge of Allegiance.
3. Invocation.
4. Roll Call.
5. Ceremonial Matters.
6. Consent Calendar*
 - a. Approval of Minutes.
 - b. Approval of Warrants.
 - c. Payments on Public Works Projects.
 - d. Authorization for Call for Bids.
 - e. Approval of Final Tract Maps and Acceptance of Dedications.
 - f. Claims Against the City.
 - g. Award of Bids.
7. Public Hearings.
8. Resolutions.
9. Ordinances.
 - a. For Adoption.
 - b. For Introduction.
10. New Business.
11. Unfinished Business.
12. Reports.
 - a. Council.
 - b. Administrative.
 - c. Staff.
13. Written Communications.
14. Oral Communications.
15. Adjournment.

***Notice to the Public**

All matters listed under Item 6, Consent Calendar, are considered to be routine by the Council and will be enacted by one motion in the form listed below. There will be no separate discussion of these items. If discussion is required on an item, that item will be removed from the Consent Calendar and will be considered separately. Vote may be by roll call.

Preparing the Meeting Area. In preparing the council chambers for a meeting, the municipal clerk's office may be responsible for the following tasks, which may be considered a "checklist":

- Place gavel and sounding board at the mayor's place.
- Place pens and sharpened pencils at the council member's places.
- Provide water pitchers and glasses.
- Set up public address system and microphones and check out entire system.
- Set up recorder and record introduction for identification of meeting date, time, and location.
- Distribute council and staff agenda materials.
- Place supply of agendas for public.
- Check supply of speaker cards and pencils.
- Check lights, windows, shades, heat, and ventilation.
- Provide materials prepared for use by the news media.
- Provide a reserved table with several chairs and several extra packets of agendas with background material for local news media representatives. When council meetings are televised regularly through a local cable television franchise agreement, or broadcast live by a local radio station, the municipal clerk must arrange in advance for permanent physical installations or for the direct wiring into the council chamber's public address system.
- Have an ample supply of blank forms and roll-call slips to record council actions; blank paper for memoranda, notes, and amendments; a stapler; a copy of the municipality's budget; a copy of the municipality's Code of Ordinances; and a current set of *Louisiana Revised Statutes*.

Public Hearings. On occasion, the council may be required by ordinance or statute to hold public hearings before taking action upon a particular matter. An example of statutory requirement would be zoning [R.S. 33:4724-4726]. Other instances in which public hearings are required might be in the adoption of public improvement assessment ordinances or to satisfy citizen participation requirements for the Housing and Urban Development Act of 1974. It is essential that the minutes recite the facts showing that the meeting was held in compliance with the governing statute or ordinance, that the notice was given in accordance with the statute or ordinance, and that the meeting was held at the time and place specified in the public notice.

The record should show who testified orally before the council and in what interest and it should refer to affidavits, maps, photographs, and other matter filed at the hearing. The minutes should carefully record the findings and action taken by the council.

DUTIES DURING COUNCIL MEETINGS

Chief among the municipal clerk's duties at council meetings include ensuring that no business is transacted without a quorum, presenting the council agenda, and taking minutes of the proceedings.

Quorum. Before any business can be conducted under either the Lawrason Act or the commission plan, it is necessary that a majority be present for a quorum. The Lawrason Act also provides: "If any meeting, regular or special, fails for want of a quorum, any number of the aldermen less than a quorum may adjourn the meeting to another specified date, but, in no case, shall meetings be prolonged beyond the end of the month in which they are scheduled to take place or be continued or adjourned more than once or to any date except that specified at the first continuance or adjournment [R.S. 33:405].

If at any time during the course of the meeting, a council member departs from the chamber and leaves the council without a quorum, it is the municipal clerk's duty to bring this fact to the attention of the mayor. No further binding action may be taken until a quorum is restored.

Presentation of the Council Agenda. The municipal clerk is required by statute to attend all the regular, adjourned, and special meetings of the council and to keep a full and complete record of its proceedings in a book to be labeled, "Municipal Minutes, City of ____/Town of ____/Village of ____" [R.S. 33:421]. In the absence of the mayor, the mayor pro-tem shall preside. In the absence of both, another council member may be selected to carry out their duties [R.S. 33:401.29].

The municipal clerk will usually be called upon to perform some or all of the following tasks during the course of the meeting:

- Call the roll for attendance records.
- Handle council correspondence.
- Read minutes and titles of ordinances and resolutions.
- Note the names of council members who introduce and second motions, ordinances, and resolutions.
- Repeat motions upon request.
- Call the roll for ordinances, resolutions, and other roll-call votes.
- Open bids when necessary.

- Note when individual council members leave or return to the meeting (for the record).
- Record names and addresses of members of the public who speak at the meeting.
- Maintain the council's future schedule of hearings or presentations.
- Present reports to the council.
- Adjourn the meeting if all council members are not present.

Municipal Minutes. The municipal clerk's principal duty, as the recording officer for the municipality, is to maintain a book titled "Municipal Minutes, City of _____/Town of _____/Village of _____," in which he or she must record the proceedings of the mayor and the council. He or she should maintain the book, indexing items alphabetically or using some other method to ensure that all entries in the minutes can be easily found [R.S. 33:421].

The importance of the municipal minutes cannot be emphasized enough. They constitute a "picture" of current events of vital importance to the municipality, and if the minutes do not accurately reflect official actions taken, the municipality may be seriously affected by decisions based upon their content. The official journal of the council proceedings should be a strict copy of the full notes of the meeting, outlining only what occurred. Speeches, discussions, or statements should not be copied into the minutes, except when the council's rules of order provide for statements to explain votes or a council member may specifically order.

If the minutes are to be transcribed from a tape recording made at the council meeting, the municipal clerk should take care to specify the date, the time, and the place of the meeting; whether it is a regular, recessed, or special meeting; and the names of all council members present. After approval of the minutes of the previous meeting, all of the actions and motions should be recorded in the order of their occurrence during the council meeting.

In preparing a rough draft of the minutes, the municipal clerk's office should use the topical headings of the adopted council agenda as a guide to sort out the various items of business, to develop continuity and uniformity, and to save time in the final composition of the record. The minutes need only reflect the following actions taken by the council:

A. Petitions and Communications

- Date of the document
- Subject
- Authors
- Number of signers, if numerous
- Action taken

The minutes need not record the comments made by the council members concerning the merit or lack of merit of the petition, unless expressly requested by the council member making such comment.

B. Consideration of Bids

- Record of bids filed and opened
 - a. The subject matter of the bids
 - b. The compliance with all requirements for the advertising of such bids
 - c. The names of all bidders, and the total amounts of their respective bids
- Action taken with respect to bids
 - a. It is preferable that a resolution be used in awarding contracts to the successful bidder
 - b. If the council accepts a bid which is not the lowest in amount because the low bid does not represent the "lowest responsible bidder," it is advised that the minutes show that the council determined that the higher bid was the "lowest responsible bid" and the reasons for such determination

C. Ordinances and Resolutions

- Introduction
 - a. The title or the subject matter
 - b. The names of councilmembers introducing and seconding
- Compliance with any legal requirements prior to final action on ordinances and resolutions.
- Votes cast *for* and *against* adoption of ordinances and resolutions.

D. Reports of Public Officials

- Written reports
 - a. Name or title of the official presenting the report
 - b. Date of the report
 - c. Subject or title of the report
 - d. Disposition of the report, if any
- Oral reports
 - a. Name or title of the official presenting the report
 - b. Subject or topic of the report
 - c. Disposition of the report, if any

E. Oral Debates, Arguments, and Discussions

The caution against setting forth oral remarks in council minutes also extends to oral statements made by council members. No reference should be made to the council's remarks in the minutes, unless a council member specifically requests that his or her remarks be included. The reason for these views is based upon the principle that these entries should only record the "actions" taken by the council, and they were never meant to be included as "reasons" for taking such action.

F. Hearings

- Jurisdictional expansion on authority

Minutes should record the fact that the notice required by such statute or ordinance was given in accordance therewith and that the hearing was held at the time and the place specified in the notice.

- Presentations at the hearings

- Written material* -- Appropriate reference should be made to any written material in the form of statements, affidavits, maps, photographs, or other objects filed at the hearing.
- Oral statements* -- There is no requirement that an exact report or record be made of testimony produced at such a hearing. A brief condensation of such report or record might be set forth.
- Findings of the council* -- Reference should be made to materials such as the adoption or rejection of a particular ordinance or resolution voted upon by the council.
- Arguments and debates at hearings* -- Statements of this nature need not be included in the minutes of the proceedings.

G. Adjournment

The minutes should record adjournment.

H. Signatures

Once the minutes are in final form, they should be signed by the municipal clerk and by such other public official(s) as the council may designate for this purpose.

I. Ordinances

Please refer to Chapter 13, "Enacting Ordinances and Resolutions," in this handbook for a discussion of this subject matter.

Roll Calls. The most common method for taking roll calls on a motion which has no apparent opposition is for the mayor to call for "All those in favor?" and to call for "All those opposed?" and to declare that the motion is carried or is rejected. When a council member is silent, he or she is recorded as abstaining. Where the mayor senses a difference of opinion or where the majority vote is not clear, he or any council member may request that a roll call vote be taken by the municipal clerk in accordance with one of the following sequences:

- Alphabetically, with the mayor last.
- In order of seating, from left to right, with the mayor last.
- Maker and seconder of the motion first, then in order of seating, from left to right, with the mayor last.

One advantage of the last recommendation is that the order of voting will tend to vary, eliminating the appearance of one particular councilmember always being the "swing" or deciding vote.

Roll calls may be kept by hand on a standard form.

Electric voting machines which simultaneously record and display all votes may also be used. This method also avoids the appearance of "swing" votes.

If a two-thirds or three-fourths vote is required by statute or ordinance to carry a motion, it is also the municipal clerk's duty to call this to the attention of the mayor. Board action should be recorded on an Action of Council form.

Adjournment. Many municipalities have adopted the "unanimous consent" format by which the mayor may simply declare the council meeting adjourned. Other municipalities have adopted rules of order which permit the mayor to entertain a motion for adjournment from the council. Where there are no council members present at a regular, recessed, or special council meeting, the municipal clerk must adjourn the meeting and note in the minutes the time of such closing.

AFTER THE COUNCIL MEETING

The municipal clerk must perform many duties after the adjournment of the council meeting, as described below.

Meeting Area. The clerk has the responsibility of closing the municipal council chambers, whether or not custodial assistance is provided. A possible checklist might include the following items:

- Close recorder, being sure to record a statement identifying the meeting and giving the time of adjournment.
- Secure the building (lights, doors, and so on).
- Remove and store microphones, name plates, gavel and sounding block, writing pads, pencils, and other supplies.
- Post notice of adjournment and the time, place, and date of the next meeting on the bulletin board for all adjourned meetings and hearings which have been continued.
- Retrieve any original documents used by the council during the meeting.

Publication of Adopted Ordinances. Refer to Chapter 13, "Enacting Ordinances and Resolutions," for a discussion of this subject matter.

Preservation of Ordinances. The Lawrason Act directs the municipal clerk to be the custodian of a book, "Ordinances, City (or Town or Village) of _____," in which shall be filed the original of each ordinance after it has been adopted. This book is the official record of the legislative body's actions. The clerk shall attach to it a record slip which shall state its date of passage and cite the book and the page of the minutes where the record of its passage is found [R.S. 33:406].

When the loose-leaf binder is full, the clerk may take the ordinances, have them bound into a permanent book, and re-use the binder for the next group of ordinances. When the municipal clerk periodically pulls together, organizes, and indexes the entire body of ordinances to make them more accessible, a compilation occurs which does not require further legislative action by the council. On the other hand, the repeal of duplicate, invalid, or obsolete ordinances, or portions thereof, and the restatement and revision of the municipality's ordinances without substantive changes in their texts to make them more understandable must take place through the passage of amending ordinances.

Upon repeal of an ordinance, the municipal clerk should enter a notation upon the original ordinance which would state its repeal as follows: "Repealed by Ordinance No. ____" and the date of the repeal. A similar notation also should be entered upon ordinances that have been amended. An ordinance may be repealed only by another ordinance.

Publication of Council Minutes. The copy of the council minutes must be published in the municipality's official journal within 10 days of the meeting, under penalty of fine and imprisonment [R.S. 43:143]. If duplicating facilities are available, the municipal clerk's office should have the minutes copied and sent to council members in advance of the next regular meeting to permit constructive criticism and corrections to be noted by the council members.

Indexing and Filing of Council Minutes. All records, books, writings, letters, and documents kept or received by the municipal clerk during his or her incumbency are considered to be public records within the definition of R.S. 44:1. For a detailed discussion on public records, see Chapter 5. Such records must be retained for examination "by an elector, or by a taxpayer" for a minimum of six years, under penalty of fine or imprisonment [R.S. 44:31, 32, 36, 37]. Only the municipal clerk and his or her assistants should have access to these files. When specific documents are temporarily removed from the files for use by other public officials, a signed receipt slip should be utilized and retained in a file setting forth the file number and the title of the document as well as the date of its removal.

When not in use, these documents and records should be kept in fireproof rooms, safes, or vaults. Original documents, especially those which contain signatures, should not be permitted to be removed from the municipal clerk's custody, except in those instances where it is deemed necessary in the public interest, or where they are subpoenaed as evidence in a court case. Any public official who unlawfully keeps in his possession any public record, or unlawfully removes it from the room in which it is customarily kept, or alters, defaces, destroys, or mutilates it in any way is subject to imprisonment [R.S. 42:322].

Some method of indexing the council minutes and other documents should be followed to enable the municipal clerk to quickly find any record of council action. It should point out the things sought in plain and ordinary terms familiar to all, and it should not depend upon the memory of one person. A minimum breakdown for such an index might include an "A" to "Z" index, a biographical index, and an ordinance index by subject and number. A cross-referenced subject-card index would promote continuity in indexing practice where there are many constantly recurring items, and would allow for almost unlimited expansion and eliminate the time- and space-consuming practice of maintaining an index in each of the bound minute books.

Before a new file number is assigned to a document when the council meeting's proceedings are being prepared, the municipal clerk's office should search through the index for possible previous considerations and/or file numbers to make sure that the item of business does not relate to a matter to which a file number has already been assigned. Papers relating to the same general subject matter should be filed together with the same file number, appear together in the journal of the proceedings along with the summary of the action taken by the council, and be differentiated only by a subnumbering system if it is desirable.

Because most of these documents and records are single-paged items, it will usually be satisfactory for the municipal clerk's office to group or file numbers together in a single legal-sized folder. When an individual file folder is created for any number, an 8-1/2 inch by 11 inch referral sheet should be inserted in its normal place within the regular numerical file folder and marked, "See Separate File Number ____." All paper should be filed in an unfolded condition, unless they are larger than legal size. When a large number of items is accumulated under a single file number over a period of time, it may be necessary to organize the material in a chronological sequence and provide insert folders or packets to preserve them.

When leaving office, the municipal clerk must deliver to his or her successor all of the documents and the records which have been entrusted to the clerk during his or her term in office. This includes all monies the clerk has received as trust funds from any person, or otherwise, in the course of his or her official business.