

Forms of Municipal Government

One of the difficult things about municipal government in Utah is determining what form of government a particular city or town is operating under. The potential forms of government are established by the legislature and were initially determined by the municipality's classification, with the limited exception that the Constitution of Utah provides that any incorporated city may frame and adopt a charter for its own government. Currently, the only Utah city that has a municipal charter is Tooele. This section does not apply to Tooele. All the rest of the Utah cities and towns are operating under one of the forms of government created by the legislature. The legislature can change the forms, functions, and powers of local government almost at its whim. Over the past 50 years it has done so on more than one occasion. The history of these changes can help in understanding current municipal forms of government.

The traditional form of municipal government that persisted since territorial times was government by committee. There were no legislative or executive branches. The committees were called commissions, boards or councils depending on the size of municipality and the existing state code. They varied in number of members depending on the era, law and population of the municipality. Almost always there was a chief officer usually called a mayor, but in past times in towns they were also called town presidents

It was not until 1959, that the Legislature provided for options from the traditional form. It did so by an act entitled Strong Mayor Form of Government Act, which enabled cities of the first and second class to adopt, at their option, a strong mayor form of government. The Mayor was known as "strong" because he or she now had individual executive powers. That legislation was significantly innovative since it not only vested municipal government in a mayor and a board of commissioners, it also expressly separated the executive and legislative powers by vesting the former in the Mayor, as chief executive officer and by vesting the latter in the board of commissioners.

In 1975, the legislature repealed the Strong Mayor Form of Government Act and enacted substantially similar provisions in what was known as the Forms of Municipal Government Act. This Act provided for optional forms of government known as council-mayor and council-manager forms and made them available to all municipalities, regardless of their classification. The council-manager and council-mayor options separated the legislative and executive functions of government. The council-mayor form mimicked the federal and state systems and has a legislative branch and an elected executive (mayor). The council-manager optional form had an elected legislative body, which hired a professional executive officer (city manager). This is a mimic of the private business corporate form of governance. The only way a city or town could have either optional form of government was if an election was held. The election could occur either when the city or town is incorporated or at a special election held for that purpose. Once an optional form was established it could not be discontinued or changed without another election.

In 1977, when the Utah Municipal Code was last comprehensively re-written and re-codified, it was simple to tell what traditional form of government any city or town had. The form was established by class of city or town. There were four classes of municipalities-- towns and cities classed by population as third through first class. Towns had a five-member council form of government. Third class cities had a six-member council form of government; second class cities had a three member commission form of government; and first class cities had a five member commission form of government. All forms had a mayor as part of the council or commission. This mayor had some individual ceremonial, administrative and executive powers that other members of the body did not have. It was not long before all second and first class cities opted for one of the then available optional forms of government—council-mayor or council-manager form--and the commission form existed in statute only and not in practice.

At about this same time the legislature also provided that cities and towns that were in the traditional five or six member council form of government could, by ordinance, create the position of city manager and transfer some of the mayor's administrative and executive powers to this position. This enabled the traditional form cities to have a system that mimicked the council-manager form of government without holding an election to change to that form.¹ Needless to say this was very controversial among some mayors. They did not like having their powers taken from them and given to a hired professional that did not answer directly to them. To assuage these concerns the legislature gave these traditional form city mayors a vote on whom to hire or fire as a city manager, but did not take away the enabling authority to create the position or give the mayor a vote on the ordinance creating the city manager position.

In 2008, the legislature repealed the Optional Forms of Municipal Government Act and most of the former references to commission, and rewrote and recodified the provisions on the five and six member council forms of government in what is now called the Forms of Municipal Government chapter of state law.² This new law clarified the respective powers and duties of the mayor and council in the available forms of government and got rid of the council-manager form referred to above, thus leaving three forms of government: 1. the five member council form; 2. the six member council form; and 3. the council–mayor form, as the only options for cities and towns (unless they want to do their own charter).

Municipalities that had the now repealed council-manager optional form of government were grandfathered into that form. These municipalities are West Valley City, Orem City, Cottonwood Heights, West Jordan City, Holladay City, and Brian Head Town. They will remain in this form, governed by a repealed section of state law, until their voters or the legislature changes their respective minds.

¹ This authority was found first in Utah Code 10-3-926 and later in Utah Code 10-3-830 now both repealed. References to these sections of law are still sometimes found in some municipal ordinances or codes.

² Utah Code 10-3b-101 et seq.

Municipalities that had previously adopted the mayor-council optional form continue on in the new mayor-council form of governments. Those municipalities are Logan, Ogden, Hooper, Marriott-Slaterville, Salt Lake City, South Salt Lake City, Taylorsville City, Murray City, Sandy City, and Provo City. They will have this form of government, which is now re-established in state law³, unless they change by vote of their electors or the legislature changes its mind again.

Municipalities that were either five or six member council forms remained in that form of government. Towns are specifically assigned to be five member council forms. The law also froze in place the ordinances passed before May 5, 2008, that created the position of city manager, or established other administrative systems, policies or procedures in cities and towns that had the traditional five or six member council forms of government.⁴

The current Utah municipal code establishes the beginning (default) form of municipal government for the three available forms. It allocates powers and duties between mayors and councils and generally defines the forms of government. The following then is just the starting point, or default provisions, found in the state code. These can be changed, or may already have been changed, by local ordinances.

Each municipality that is organized under the five or six member council form of government will have a governing body that exercises both legislative and executive powers. It is government by committee. The governing body in the six member council form is a council of six members; one of whom is the mayor and the remaining five are council members.⁵ The five member council governing body is a council of five persons; one of whom is the mayor and the remaining four are council members.⁶ Mayors in these forms have power that council members do not have.⁷ They are established in law, but subject to change by local ordinance. The mayor's administrative and executive powers can be voluntarily delegated by him or her or taken from him or her by the council. The administrative and executive powers can then end up in the hands of the council or in appointed officers. What these powers are, and the limitations on the council taking them, will be more fully described in the subsequent chapters of this handbook. The council, which includes the mayor, is the legislative body of the city or town. Council members have their vote and the potential to have administrative powers but not direct grant of such, by the legislature. This will also be discussed in the section on municipal councils.

Cities organized under the council-mayor form of government have two branches of government—legislative and executive.⁸ The mayor is the chief executive officer, and does not sit on or chair the council. The council is limited to legislative matters only. The mayor has a veto. Local ordinances cannot change these basic roles and duties. All

³ Utah Code 10-3b-201 et seq.

⁴ Utah Code 10-3b-104(2).

⁵ Utah Code 10-3b-301.

⁶ Utah Code 10-3b-401.

⁷ Utah Code 10-3b-104 and 10-3b-302 and 402.

⁸ Utah Code 10-3b-201.

of this will be more specifically discussed in the following sections of this handbook. These duties and the separate branches are set in legislative stone. They can only be changed by acts of the legislature or with a vote of the municipal electors changing the form of government to the six or five member council forms.

The end result of the 2008 legislation is that you cannot tell what the powers and duties of any individual mayor, council-member, city manager, or city administrator in any city or town, unless it is one of those cities or town specifically named in the above paragraphs, simply by knowing what its population is, what officers it has, or by an examination of the current state code. All of these may be helpful, but you have to also know the history of the municipality's form of government and examine its individual ordinances, to know the form and the power and duties of the individual officers of any municipality.