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Forms of Municipal Government

Alabama currently has 454 incorporated municipalities located in 67 counties. These entities are designated by state law as either cities (2,000 or more population) or towns (under a population of 2,000). These municipalities range in size from the state's largest city, Huntsville (population approximately 215,006) to the town of Oak Hill (population 14). Alabama is predominantly a state of small municipalities. This is illustrated by the following population breakdown:

- Cities more than 100,001 4 .86%
- Cities between 50,001-100,000 6 1.29%
- Cities between 25,001-50,000 14 3.02%
- Cities between 12,001-25,000 35 7.54%
- Cities between 6,001-12,000 35 7.54%
- Cities between 2,001-6,000 90 19.40%
- Towns between 1,001-2,000 73 15.73%
- Towns between 501-1,000 73 15.73%
- Towns less than 500 134 28.88%

There are 280 municipalities with a population less than 2,000 with 134 out of the 280 with a population less than 500.

The Code of Alabama authorizes two distinct forms of municipal government for Alabama municipalities. This article presents a general discussion of these three forms of municipal government and the variations of each one.

Classification of Municipalities

Section 104(18) of the Alabama Constitution, 1901 prohibits the Legislature from creating or amending by local legislation the charter powers of municipal corporations. The only exception to this restriction is the power to change or alter the corporate limits of cities and towns by local acts. Because of this constitutional provision, the laws governing the incorporation, organization and operation of cities and towns in Alabama are general in nature and either apply to all municipalities in the state or to all municipalities within a specified population group. The basic statutes providing for the creation, organization and functioning of cities and towns are found in Title 11, Code of Alabama 1975.

Prior to 1978, the state Legislature adopted numerous statutes to provide powers for municipalities with very narrow population ranges. These laws were known as **general laws of local application**. In 1978, the Alabama Supreme Court, in the case of *Peddycoart v. Birmingham*, 354 So. 2d 808, held that the state Legislature could no longer adopt general bills of local application. The court held that the Legislature could pass only statewide general bills affecting every jurisdiction in the state or local bills affecting single jurisdictions. Since Section 104 of the Alabama Constitution prevents amendment of municipal charters by local acts, another method of enacting such amendments was needed.

The League was successful in obtaining passage by the Legislature, and ratification by the voters, of Amendment 397 (Section 110) Alabama Constitution, 1901, which authorizes the Legislature to establish no more than eight classes of municipalities based on population. This provision also allows legislation to be passed which affects one or more of such classes and provides that any such legislation shall be deemed to be general laws rather than local laws.

Sections 11-40-12 and 11-40-13, Code of Alabama 1975, established the eight classes of municipalities as follows:

Class 1 – Cities of 300,000 inhabitants or more

Class 2 – Cities of not less than 175,000 and not more than 299,999 inhabitants

Class 3 – Cities of not less than 100,000 and not more than 174,999 inhabitants

Class 4 – Cities or not less than 50,000 and not more than 99,999 inhabitants

Class 5 – Cities of not less than 25,000 and not more than 49,999 inhabitants

Class 6 – Cities of not less than 12,000 and not more than 24,999 inhabitants Class 7 – Cities of not less than 6,000 and not more than 11,999 inhabitants Class 8 – Cities and towns with a population of 5,999 or less.

The population figures refer to the 1970 federal decennial census. Any municipality incorporated after June 28, 1979, shall be placed in one of the above classes according to the population of the municipality at the time of its incorporation.

Amendment 389 (Section 106.01) Alabama Constitution, 1901, validates most general acts of local application, which were enacted prior to January 13, 1978, that were otherwise valid and constitutional even though they were not advertised as required by Section 106 of the State Constitution. This provision provides that the acts shall forever apply only to the county or to the municipality to which they applied on January 13, 1978, despite changes in population. Such acts can only be amended by advertised local bills. In cases where a general law exempts cities of a certain stated population from being subject to said law, Section 106.01 will not help the city maintain its exemption when a change of population has caused them to fall outside the protected population bracket. *Birmingham v. George*, 988 So. 2d 1031 (2007).

Mayor-Council Government

The mayor-council form of government is found in most Alabama cities and towns. This form is provided for by Chapter 43, Title 11, Code of Alabama 1975, as amended. There are two variations of the mayor-council form of government. In cities with 12,000 or more inhabitants, the governing body is generally composed of a mayor and five councilmembers. These officials are elected by the voters of the city or town at-large unless the council, at least six months prior to an election, has voted to elect the councilmembers from districts. Section 11-43-2 and Section 11-43-63, Code of Alabama 1975. In Class 1, 2, and 3 municipalities where councilmembers are elected from districts, Section 11-43-63, Code of Alabama 1975, permits up to nine councilmembers. Section 11-43-64, Code of Alabama 1975, provides an additional means of increasing the size of the city council in a Class 3 municipality. The mayor and the members of the council are elected to serve four-year terms.

In municipalities with less than 12,000 in population, the legislative functions are exercised by the council which is generally composed of the mayor and five councilmembers. Section 11-43-63, Code of Alabama 1975, permits up to seven councilmembers in municipalities which are districted. The mayor presides over all deliberations of the council. At his or her discretion, the mayor may vote as a member of the council on any issue coming to a vote except in the case of a tie vote, in which event he or she **must** vote. Section 11-43-2, Code of Alabama 1975. However, the mayor may never vote more than once on any issue that comes before the council, even in the case of a tie vote. *Jones v. Coosada*, 356 So. 2d 168 (Ala. 1978). All of the legislative powers of the municipality are exercised by the council acting as a whole.

In **all** cities and towns with an even number of council seats, regardless of the population size, the mayor may vote as a member of the council in the case of any tie vote of the council, provided that the council has adopted a resolution authorizing the mayor to act. Section 11-43-2(a)(2), Code of Alabama 1975.

Municipalities with less than 12,000 in population according to the immediate past federal decennial census that have a population of 12,000 or more, but less than 25,000 after the most recent federal decennial census may continue to operate as a municipality with population less than 12,000 if, by ordinance adopted by a majority vote of the council at least six months prior to the next municipal general municipal election, the council votes to do so. See Section 11-43-2, Code of Alabama 1975. However, once a municipality that has elected to continue to operate as a municipality of under 12,000 population goes over 25,000 population according to the most recent federal decennial census, it must operate under Section 11-43-2(a) which provides that the mayor shall no longer sit with the council nor have a vote in its proceedings.

In general, the mayor is the chief executive officer of the municipality and has general supervision and control over all other officers and affairs of the city or town. The council may not enact an ordinance authorizing council committees or individual councilmembers to direct or supervise the work of departments assigned to their study and observation. The mayor has exclusive authority to supervise and control the administrative personnel of the municipality. AGO to Hon. Gilbert Watson, October 8, 1957; Section 11-43-81, Code of Alabama 1975.

The mayor has the power to appoint all officers of the city or town, but state law may provide for a different appointing authority. The mayor may remove for good cause any non-elected officer appointed by him or her and fill the vacancy permanently. The mayor may remove any officer elected by the council or approved with its consent and **temporarily** fill the vacancy. The mayor must report such removal and the reasons therefor to the council at its next regular meeting. If the council sustains the mayor's act of removal, the vacancy shall be filled permanently as provided by law. Section 11-43-81, Code of Alabama 1975. The Supreme Court of Alabama has limited this authority where the council is voting on whether to dismiss an employee or whether to uphold the mayor's dismissal of an employee. In the Court's opinion, the mayor can cast a vote on the question for the purpose of documenting his or her position on the issue. However, the mayor's vote cannot be

counted in determining whether a sufficient number of those elected to the council approved the officer's removal. *Hammonds v. Priceville*, 886 So. 2d 67 (Ala. 2003).

In cities with a population of 12,000 or more and a mayor-council form of government, the legislative functions of the city must be exercised by the council, except as provided in Section 11–43–2 as it relates to the legislative functions of the mayor in cities and towns having a population of 12,000 or more but less than 25,000 inhabitants according to the last or any subsequent federal decennial census. Section 11-43-40, Code of Alabama 1975, provides several alternate council structures for such cities. The number of councilmembers may vary from five to twenty persons elected for four-year terms from the city at-large or from districts. The population of the municipality may have some bearing on the council form chosen.

The council is presided over by a president who is a voting member of the council. In some cities, the council president is elected by the voters at-large. In other cities, he or she is chosen by the council membership at their organizational session. Cities with populations of 12,000 or more with five councilmembers elected from single-member districts pursuant to a federal court order may provide for eight councilmembers elected from districts and a council president elected at-large. The city council of a Class 8 municipality having a population of 60,000 or more inhabitants may provide that the city council be composed of seven members elected at large. Section 11-43-40, Code of Alabama 1975.

The mayor of a city with a population of 12,000 or more has the same powers and duties as the mayor of a smaller municipality with the exception being that he or she is not a member of the council, However, all ordinances and resolutions of general and permanent nature are subject to the veto power of the mayor. Any ordinance or resolution vetoed can be overridden by a two-third vote of the council. Section 11-45-4, Code of Alabama 1975. The mayor of a city or town who operates pursuant to Section 11–43–2 as it relates to the legislative functions of the mayor in cities and towns having a population of 12,000 or more but less than 25,000 inhabitants according to the last or any subsequent federal decennial census, may not exercise veto power pursuant to this section and his or her signature as the mayor may not affect the validity of an ordinance or resolution passed by the council while the mayor is a voting member of the council. Section 11-45-4(b) 1975.

Although the general law provides for the mayor and council to be elected at the same election for four-year terms, the state Legislature has adopted several laws applicable to specific cities and towns establishing staggered four-year terms for councilmembers. In addition, Section 11-43-40, Code of Alabama 1975, authorizes the city council of a Class 6 municipality elected citywide to provide for the election of the city council for staggered terms.

For further discussion on the role and authority for the Mayor and Council, see the article entitled "Duties of the Mayor and Council" found on the League legal team's Selected Readings page, here: *https://almonline.org/SelectedReadingsfortheMunicipalOfficial.aspx*. Further, more detailed information on the mayor-council form of government can be found in the League's *Handbook for Mayors and Councilmembers*.

Council-Manager Government

Any municipality in the State of Alabama can hire a city manager as provided for in Title 11, Chapter 43, Article 2, Code of Alabama 1975. But the fact that a city has a manager hired under the provisions of this statute does not give the municipality a true council-manager form of government. In view of this fact, the state Legislature adopted the Council Manager Act of 1982, codified at Sections 11-43A-1 through 11-43A-52, Code of Alabama 1975, as amended, to allow all Class 2 through Class 8 municipalities the option of becoming a city or town with a true council-manager form of government.

The governing body of a municipality organized under the council-manager form of government is known as a council and is composed of five or seven members. One member shall be the mayor who is elected at large, who shall be a voting member of the council. And either four or six members shall be council members elected either at large or from single-member districts, as the resolution shall provide. Section 11-43A-1.1, Code of Alabama 1975. If a municipality has single-member districts for the election of council members when the council-manager form of government is adopted in the municipality, the municipality must continue with either four or six council members elected from single-member districts and the mayor shall be elected at large. The officers elected shall serve four-year terms. In Class 6 cities, the governing body may elect to have a nine-member governing body composed of a mayor elected at-large and two councilmembers from each of four dual-member wards. The mayor is the presiding officer of the council and may vote on any issue coming before that body. Section 11-43A-8, Code of Alabama 1975.

All powers of the municipality are vested in the council. The council has the power to appoint and remove a city manager and to establish other administrative departments and distribute the work of such departments. Section 11-43A-17, Code of Alabama 1975.

The city manager is the head of the administrative branch of the municipal government and is responsible to the council for the proper administration of all affairs of the municipality. These powers are listed at Section 11-43A-28, Code of Alabama 1975.

Currently, Auburn, Tuskegee, Vestavia Hills, and Homewood operate under this form of government.

An additional council-manager act was enacted in 1991. This law is codified in Article 2, Chapter 43A, Code of Alabama 1975.

Other City Governments

The state Legislature has adopted specific legislation to provide either a form of government for a particular municipality or to provide a procedure by which the form of government of certain municipalities may be altered. These laws generally apply only to a single city or town. Those municipalities affected by specific enactments are:

- **Anniston** – Council-Manager, Act No. 71-1049
- **Phenix City** – Council-Manager, Act No. 77-71
- **Montgomery** – Mayor-Council, Act No. 73-618
- **Birmingham** – Mayor-Council, Act No. 55-452
- **Troy** – Mayor-Council, Sections 11-44A-1 through 11-44A-16, Code of Alabama 1975
- **Opelika** – Mayor-Council, Sections 11-44D-1 through 11-44D-21, Code of Alabama 1975
- **Prichard** – Mayor-Council, Sections 11-43C-1 through 11-43C-92, Code of Alabama 1975
- **Tuscaloosa** – Mayor-Council, Sections 11-44B-1 through 11-44B-22, Code of Alabama 1975
- **Bessemer** – Mayor-Council, Sections 11-43D-1 through 11-43D-22, Code of Alabama 1975
- **Gadsden** — Mayor-Council, Sections 11-43B-1 through 11-43B-32, Code of Alabama 1975
- **Mobile** – Mayor-Council, Sections 11-44C-1 through 11-44C-93, Code of Alabama 1975
- **Dothan** – Class 5 cities with a mayor-commission-manager, Sections 11-44E-1 through 11-44E-221, Code of Alabama 1975
- **Talladega** – Council-Manager – Amendment 738 (Talladega 13), Alabama Constitution, 1901 provides that the city shall operate under the council-manager form of government authorized by Chapter 43A of Title 11 of the Code of Alabama 1975, with certain modifications.

Additional laws have been enacted to assist Class 7 and Class 8 municipalities change to the mayor-council form of government. Sections 11-44A-30 through 11-44A-32, Code of Alabama 1975, apply to Class 7 municipalities; Sections 11-44F-1 through 11-44F-3, Code of Alabama 1975, apply to Class 8 municipalities.

In addition to these laws, certain cities and towns have laws applicable to them which modify the general laws pertaining to their forms of government.

Changes in Form of Government

Many of these statutes provide procedures to be used in adopting or changing the form of government. Any change from one form of government to another requires compliance with the applicable statutes. AGO 1999-0254.