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Council Meeting Procedure

Sir Winston Churchill once observed that a country which does not bother with legislative procedure is "an enigma wrapped in a mystery." This observation is particularly applicable to any legislative assembly purporting to represent the people of a nation, state or a political subdivision. Only through established and known rules of legislative procedure can voters trust their representatives will have the opportunity to express their ideas about items of business before the assembly.

From a practical and fundamental viewpoint, the rules of procedure followed by a legislative assembly are second in importance only to the constitution or charter under which the assembly is formed. Thus, it is imperative that the people's representatives assemble and proceed under rules known and available to all under similar circumstances. Otherwise, the result is an assembly at the mercy of a few who claim to know the answer to a profound secret beyond human comprehension.

Cities and towns under the mayor-council form of government express themselves through the council, which is their legislative assembly. Rules of procedure are as necessary for a municipal council as they are for the state Legislature or the Congress of the United States. The only difference is the degree of confusion that would result without such rules.

There are not many procedural requirements mandated for mayor-council municipalities by the Legislature. Beyond these, the council is authorized to assemble, organize and adopt its own rules of procedure, and keeping a journal (minutes). The following paragraphs list the statutory provisions providing the procedure of municipal councils, cases which have been decided on procedural questions and recommendations for rules to be adopted by municipal councils.

Council is Legislative Body

The legislative functions of a municipality under the mayor-council form of government are vested in the council by statute in Sections 11-43-2 and 11-43-40, Code of Alabama 1975. It has been ruled that the legislative authority vested in the council can only be exercised by the council as an organized body, and the members of the council acting individually can do nothing. Therefore, a petition carried to each member of the council individually and signed by each councilmember amounts to nothing. *Mobile v. Kiernan*, 170 Ala. 449, 54 So. 102 (Ala. 1910). A city council cannot conduct business by correspondence between council meetings. *City Council of Prichard v. Cooper*, 358 So.2d 440 (Ala. 1978). If the council does not have a quorum present it cannot legally transact business. Informal agreements of the mayor and council which are not entered on the minutes are not legal or binding on the municipality.

A councilmember not present at a council meeting may not cast a vote for or against a measure being considered by the council over the telephone. *Penton v. Brown Crummer Inv. Co.*, 222 Ala. 155, 131 So. 14 (Ala. 1930). However, Section 36-25A-5.1 of the Code allows councils comprised of members from two or more counties to participate in meetings electronically, provided the equipment being used allows all persons participating in the meeting to hear each other at the same time. Additionally, Section 36-25A-5.2 allows councilmembers to participate in meetings electronically; however, certain requirements must be met first. Please refer to the article entitled "The Open Meeting Act" found on the League legal team's Selected Readings page, here: *https://almonline.org/SelectedReadingsfortheMunicipalOfficial.aspx* for a more complete discussion of the requirements of Section 36-25A-5.2.

Participation by electronic means, though, cannot be counted toward the establishment of a quorum. You must have a quorum of the members participating in any given meeting physically present to conduct any business or deliberation. However, when conducting a council meeting pursuant to Section 36-25A-5.1, participation by electronic means shall constitute presence for all purposes; provided, that at least three members, or a majority of a quorum of members, whichever is less, are physically present at the physical meeting location. Also, members cannot participate by electronic means in any hearing which could result in loss of licensure or professional censure.

The law requires a record of the proceedings of the council so that those acting under it may have no occasion to look beyond the record. This avoids leaving such proceedings to be proved by parol or oral evidence and makes certain that rights

arising under such proceedings shall not depend on the mere recollection of witnesses. *Alabama City G. & A. Ry. Co. v. Gadsden*, 185 Ala. 263, 64 So. 91 (Ala. 1913).

The wisdom, propriety or expediency of a city ordinance is not a matter for review by the courts. Such matters are within the province of the lawmaking body (council). The courts will only look to the constitutionality and validity of the action of the council under the Constitution and laws of the state. *Estes v. Gadsden*, 266 Ala 166, 94 So.2d 744 (Ala. 1957).

Organization of Council

Members elected to the municipal council are required to assemble and organize the council on the first Monday in November after their election. Section 11-43-44, Code of Alabama 1975. In cities and towns of less than 12,000, the mayor is a member of the council and presides over its deliberations. Section 11-43-2(b), Code of Alabama 1975. As a member of the council, the mayor of municipalities of less than 12,000 in population is entitled to vote on any measure called to question by the council, provided he or she is not otherwise disqualified from voting. If the mayor fails to vote on an issue and the vote ends in a tie, the mayor is **required** to cast the deciding vote. See Section 11-43-2, Code of Alabama 1975. 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.

If the mayor votes and the vote ends in a tie, the mayor may not vote a second time to break the tie. A mayor cannot vote twice under any circumstance. See, *Jones v. Coosada*, 356 So.2d 168 (Ala. 1978) and AGO 1982-0280 (to Hon. Gwin Wells, April 5, 1982). A tie vote leaves the matter being voted on undecided. AGO 1996-0056.

In most cities of 12,000 or more in population, the council is presided over by the president of the council who is a member of the council and is entitled to vote upon questions before the council. See, Section 11-43-40, Code of Alabama 1975; See also, Sections 11-43-2(c)(1) through (c)(2), Code of Alabama 1975.

When the council organizes, it is required to establish the time and place to hold regular meetings. These meetings are required to be open to the public. When organizing, in cities and towns of less than 12,000, the council is directed to elect a temporary chairperson, sometimes referred to as a mayor pro tempore, to serve when the mayor is absent. In cities of 12,000 or more, the council is required to elect a president pro tempore to act during the absence of the council president. Section 11-43-49, Code of Alabama 1975.

The council is required to hold at least two regular meetings each month. An exception is made for towns where only one regular meeting each month is required. Section 11-43-50, Code of Alabama 1975; See Section 11-40-6, Code of Alabama 1975 ("All incorporated municipalities containing less than 2,000 inhabitants shall be called towns.").

Section 11-43-51 Code of Alabama 1975, gives the council the power to compel the attendance of absent members in such manner and under such penalties as it may prescribe. While this statute authorizes the council to take action to compel attendance, the council cannot act unless a quorum is present. It is strongly advised that the council establish the manner in which members may be compelled to attend council meetings soon after organization while a quorum is present.

Sometimes councils become hamstrung when councilmembers refuse to come to meetings in order to defeat a quorum. The ordinance should specifically spell out the penalties for failure to attend. The council may not remove members who fail to attend meetings. Councilmembers may only be removed by impeachment proceedings in a court of competent jurisdiction. AGO to Hon. Al Tidwell, March 6, 1978. While the Attorney General has held that a council may compel attendance of its members by adopting an ordinance to this effect and prosecute councilmembers in municipal court for violating the ordinance (AGO to Mrs. Melba Henry, February 11, 1974), a better practice is to base the members' salaries on attendance at meetings. AGO 1985-0219 (to Hon. John Kellum, February 15, 1985).

However, municipal elected officials who fail to attend all regular and special called council or commission meetings for 90 consecutive days, beginning on the date of any absence, shall be removed from office by operation of law. Section 11-40-25, Code of Alabama 1975. This Section requires the clerk to make a record of all elected municipal officials present or absent at all meetings, regardless of whether or not a quorum is present. If an elected municipal official fails to attend all meetings with 90 consecutive days, the removal is automatic. No vote to remove is required.

At the next council meeting following the date an elected municipal official was removed from office, the council may vote to reinstate an official who was removed pursuant to this Section. To reinstate an official pursuant to this Section, a majority of the remaining council (including the mayor if the mayor is a voting member of the council) must vote to reinstate the official for any mitigating or extenuating circumstances justifying the reinstatement. If the council does not reinstate the removed elected municipal official, the council or commission shall fill the vacancy as provided by law.

The council is required to elect a clerk and a treasurer in cities of 6,000 or more inhabitants. The offices of clerk and treasurer may be combined by a two-thirds vote of the council and the consent of the mayor. The consent of the mayor is not

required in cities with population of 12,000 to 25,000 that continues to operate as a city having a population less than 12,000 and the mayor is a voting member of the council. Section 11-43-3(b), Code of Alabama 1975. Municipalities of less than 6,000 are required to elect a clerk. Section 11-43-4, Code of Alabama 1975. The council in all mayor-council municipalities is authorized to elect a municipal judge and shall provide appropriate facilities and such other necessary supportive personnel to operate the municipal court. Section 12-14-2 through Section 12-14-3, Code of Alabama 1975.

All elections of officers shall be made viva voce (roll call vote), and a concurrence of a majority of the members to the council shall be required, and all members of the council may vote any provision of law to the contrary notwithstanding. On the vote resulting in an election or appointment, the name of each member and for whom he or she voted shall be recorded. Section 11-43-45, Code of Alabama 1975. The Attorney General has ruled that when the council votes to fill a vacancy on the council this Code provision requires a majority of the remaining members on the council. AGO to Hon. E. B. Overton, April 23, 1957; see also Section 11-43-4, Code of Alabama 1975 ("In cities having a population of less than 6,000 and in towns, the council…shall fill all vacancies in the council by a majority vote of the council….").

No legal business can be transacted by the council at a meeting where fewer than a quorum is present. A *quorum* of the council consists of a majority of the whole number of members to which the municipality is entitled to have on the council, including the mayor in municipalities of less than 12,000 in population. Section 11-43-48, Code of Alabama 1975 and; AGO 2004-0054.

Section 11-45-2, Code of Alabama 1975, requires the affirmative vote of a majority of the whole number of members of the council, including the mayor in cities and town less than 12,000, to pass an ordinance of permanent nature. On the other hand, where a specific vote requirement is **not** set out by the Code, passage only requires the affirmative vote of a majority of those voting on the issue, provided a quorum of the council is present.

The number of members required to make a quorum does not change when a council has vacancies. Council members who are present at a council meeting that have a conflict of interest on a particular issue can be counted for purposes of making a quorum even though they cannot vote on a particular issue and abstain.

Where the affirmative action of a majority of the entire council or a majority of the members present is required, a refusal to vote (abstention) may result in the defeat of the proposition. A refusal to vote cannot be counted on the affirmative side. AGO 1991-0020. The nature and effect of a blank ballot cast by a member of a city council at an election for an officer has been held to be a mere nullity which cannot be counted for or against either of the candidates voted upon. *Reese v. State*, 184 Ala. 36, 62 So. 847 (Ala. 1913).

Particular care should be taken by the council to see that the vote of the council is polled by the clerk for the election of officers and for the passage of ordinances and resolutions of a permanent nature. In such cases, the vote of each member should be recorded.

Section 11-45-2 Code of Alabama 1975, requires that no ordinance (or resolution) of a permanent nature shall be adopted at the meeting when it is first introduced unless the unanimous consent of all members present is given for the immediate consideration and passage of the ordinance. In such instances, the minutes must reveal that a roll call vote was made and that each member voted "aye" for immediate consideration. Here it is to be noted that the mayor of a city or town of less than 12,000 is a member of the council, and his or her consent should be revealed in the poll of members. This consent provision is mandatory. *Cooper v. Valley Head*, 212 Ala. 125, 101 So. 874 (Ala. 1924). If unanimous consent for consideration is given, the council then takes a second vote on whether or not to approve the measure. This vote does not have to be unanimous. If unanimous consent is not obtained on the first vote, the ordinance or resolution intended to be of permanent operation that is introduced at a regular council meeting may subsequently be considered by the council at a future regular or properly called special meeting. AGO 2004-0053. If the issue being voted on is not an ordinance or resolution of permanent nature, only a majority of those members voting is required for passage, provided a quorum is present.

Council Minutes

The council is required to keep a journal of its proceedings which shall be open to the inspection and examination of all citizens and shall have the force and effect of a record. A copy of the journal, certified by the clerk, shall be prima facie evidence in any court or elsewhere. Section 11-43-52, Code of Alabama 1975. The clerk of the municipality is required to attend all meetings of the council and to keep the journal of its proceedings. Section 11-43-100, Code of Alabama 1975. In the absence of the clerk, the council has the duty to appoint some person to act in his or her stead to keep the journal for the meeting. The council may appoint one of its own members to perform this duty. While that councilmember is engaged in the performance of this duty, he or she is not deprived of voting upon questions coming before the council. *Clark v. Uniontown*, 4 Ala. App. 264, 58 So. 725 (Ala. App. 1912).

In court, the record of council proceedings cannot be impeached by collateral attack. In order to force a council to change its minutes, it is necessary that the claimant bring action directly by mandamus petition in circuit court. *Penton v. Brown Crummer Inv. Co.*, 222 Ala. 155, 131 So. 14 (Ala. 1930). The council, though, retains control over the record of its proceedings at all times. It may amend them at any subsequent meeting to make them speak the truth. *Guntersville v. Walls*, 252 Ala. 266, 39 So.2d 567 (Ala. 1957); *Estes v. Gadsden*, 266 Ala. 166, 94 So.2d 744 (Ala. 1957).

A meeting at which no minutes are kept is no meeting at all for all legal intents and purposes. Parol (oral) evidence cannot be received in court to show that a meeting of the mayor and council was held as required by statute when the record of the proceedings of the council does not show that such meeting was held. *Parker v. Doe*, 20 Ala. 251 (Ala. 1852).

The law contemplates that the record of council proceedings shall be permanent in nature and not susceptible to corruption or destruction. *Chenault v. Russellville*, 233 Ala. 60, 169 So. 706 (Ala. 1936).

Types of Council Meetings

Meetings of the municipal council may generally be classified as regular, adjourned, and special meetings. First, there is the **regular meeting**, the time and place of which is established by the council when it organizes. The council shall determine the time and place for its regular meetings, which at all times shall be open to the public. Section 11-43-49, Code of Alabama 1975. The council must hold at least two regular meetings each month. Towns (municipalities of less than 2,000 inhabitants) are only required to meet once per month, but the town council can adopt an ordinance to require two or more meetings per month. Section 11-43-50, Code of Alabama 1975.

Second, there is the **special meeting**. The presiding officer of the council (the mayor in cities of less than 12,000 inhabitants) shall call special meetings whenever in his or her opinion the public interest requires it. Also, whenever two councilmembers or the mayor request, in writing, a special meeting, the presiding officer has the duty to make the call. If the presiding officer fails or refuses to call such a meeting when requested, the two councilmembers making the request or the mayor have the right to call such a meeting. Section 11-43-50, Code of Alabama 1975; See also AGO 2003-0237.

For a special meeting to be valid, all members of the council must have been duly notified. This requirement is excused where all members are present at the meeting or where it is a practical impossibility to notify a particular member because of absence from the municipality. *Ryan v. Tuscaloosa*, 155 Ala. 429, 46 So. 638 (Ala. 1908). It is customary for the clerk to prepare waivers of notice for councilmembers to sign when special meetings are held. Waivers of notice signed by all councilmembers are generally appended to the minutes of special meetings.

Subjects not covered by the notice, other than routine business, may not be considered at a special meeting unless the councilmembers unanimously consent thereto. Since the Code of Alabama does not require written notice be given to governing body members, it is presumed that oral notice designating the subject in general terms is sufficient. It is a good practice for the journal of the council to stipulate, in the minutes of the special meeting, the type of notice given to councilmembers. Proceedings at a special meeting where all members were not notified may be validated by ratification at a subsequent meeting. Rhyne, *Municipal Law*, Section 5-5 (1957). If a notice calling a special meeting states that it is replacing a canceled regular meeting, the council may discuss business it would have discussed at the regular meeting and the introduction of new ordinances for consideration by the council would constitute regular business. AGO 2002-0111.

Finally, there is the **adjourned meeting** where the council votes at the close of a legally held meeting to convene again at a particular time and place. Such meetings are regarded as a continuation of the meeting that was adjourned. No notice to the councilmembers of such a meeting is required. The council is authorized to consider any business which it might have entertained at the meeting which was adjourned. *Culpepper v. Phenix City*, 216 Ala. 318, 113 So. 56 (Ala. 1927).

In addition to regular, adjourned, or special meetings, municipal councils may hold committee meetings and conduct workshops before or after meetings. These informal meetings are held to enable the council to expedite official meetings. It is important to remember that these sessions are open to the public when a quorum of the council is present. AGO 1992-0267; *Auburn University v. Advertiser Co.*, 867 So.2d 293 (Ala. 2003).

Laws Governing Open Meetings

Meetings of most municipal entities, including municipal council meetings, committee meetings, work sessions and similar gatherings, are subject to the requirements of the Alabama Open Meetings Act (OMA). The OMA sets specific standards regarding how to notify the public of meetings, when an entity can hold an executive session, and many other requirements that must be followed.

Please refer to the article entitled "The Open Meeting Act" found on the League legal team's Selected Readings page, here: *https://almonline.org/SelectedReadingsfortheMunicipalOfficial.aspx* for a more complete discussion of the requirements of the OMA.

Council Rules

While the foregoing statutory rules govern in the circumstances where they apply, they fall far short of being a complete guide for the council in the conduct of its proceedings. The Legislature realized this when it provided that the council shall determine the rules of its own proceedings. Section 11-43-52, Code of Alabama 1975. If this has not been done, and for situations not covered by the council's rules of procedure, the city council usually follows *Robert's Rules of Order*.

Under *Robert's Rules of Order*, if there is a motion to reconsider a previous vote on a matter before the council, the motion to reconsider must be made by a councilmember who voted with the prevailing side on the previous vote. Additionally, the motion to reconsider must be made at the same meeting in which the action being reconsidered took place, or in the next succeeding meeting of the council. AGO 2001-0182.

Rules of procedure for the council may be compared to the rudder of a ship, for without them the assembly would wander aimlessly, wasting the valuable time of its members and dissipating the potential power of accomplishment which rests in its membership. Rules of procedure do not have to be complicated for a municipal governing body. The main idea is to have a minimum set of rules for guidance to conduct routine business which could come before the assembly.

Each time a municipal council organizes, it is empowered to adopt its own rules of procedure. The same is true of the state Legislature and of Congress. In practice, each house of the Legislature and of Congress generally adopts the rules of the preceding Legislature or session of Congress with only slight modifications. The same might be followed by a municipal council.

If the preceding council established rules of council procedure, it is very likely that the new council will vote to adopt the rules of procedure already established. But that decision is strictly a matter for the new council to make. Each new councilmember-elect is advised to review the rules of procedure of the old council to determine if only a few changes or a whole new set of rules is needed. Of course, if the old council had no rules, new councilmembers should be prepared to introduce an ordinance establishing rules of procedure at the organizational session.

Sample Ordinance

The following sample ordinance might be used as a guide for the council to establish its rules of procedure.

An Ordinance

BE IT ORDAINED BY THE COUNCIL OF _____, ALABAMA, that the order of procedure in all instances for meetings of the council shall be as follows:

Section 1. That the rules or order of procedure herein contained shall govern deliberations and meetings of the council of _____, Alabama.

Section 2. Regular meetings of the council shall be held on the following dates: the first and third Tuesdays of each month. **[Note:** ***The day of the week and weeks of the month on which regular council meetings will be held are left to the discretion of the council, provided that at least two council meetings are held each month. Only one meeting per month is required in municipalities of less than 2,000 population*****.]**

Section 3. Special meetings may be held at the call of the presiding officer by serving notice on each member of the council not less than 24 hours before the time set for such special meetings; or special meetings may be held as otherwise provided by Section 11-43-50, Code of Alabama 1975 or other law. Notice of all special meetings shall be posted on a bulletin board accessible to the public at least 24 hours prior to such meeting.

Section 4. A quorum shall be determined as provided by Section 11-43-48, Code of Alabama. The number of members required to make a quorum does not change when a council has vacancies. Council members who are present at a council meeting that have a conflict of interest on a particular issue can be counted for purposes of making a quorum even though they cannot vote on a particular issue.

Section 5. All regular meetings shall convene at ___ o'clock ____ [***a.m. or p.m.***] at the city hall and all meetings, regular and special, shall be open to the public.

Section 6. The order of business shall be as follows:

1. A call to order
2. Roll call
3. Reading and approval of the minutes of the previous meeting

4. Reports of standing committees
5. Reports of special committees
6. Reports of officers
7. Reading of petitions, applications, complaints, appeals, communications, etc.
8. Auditing accounts
9. Resolutions, ordinances, orders and other business.
10. Public comments

Section 7. No member shall speak more than twice on the same subject without permission of the presiding officer.

Section 8. No person, not a member of the council, shall be allowed to address the same while in session without permission of the presiding officer.

Section 9. Every officer, whose duty it is to report at the regular meetings of the council, who shall be in default thereof, may be fined at the discretion of the council.

Section 10. Motions shall be reduced to writing when required by the presiding officer of the council or any member of the council. All resolutions and ordinances and any amendments thereto shall be in writing at the time of introduction.

Section 11. Motions to reconsider must be made by a member who voted with a prevailing side and at the same or next succeeding meeting of the council.

Section 12. Whenever it shall be required by one or more members, the "yeas" and "nays" shall be recorded and any member may call for a division on any question.

Section 13. All questions of order shall be decided by the presiding officer of the council with the right of appeal to the council by any member.

Section 14. The presiding officer of the council may, at his or her discretion, call any member to take the chair, allow him or her to address the council, make a motion or discuss any other matter at issue.

Section 15. Motions to lay any matter on the table shall be first in order; and on all questions, the last amendment, the most distant day and the largest sum shall be first put.

Section 16. All meetings of the council shall be open to the public, except when the council meets in executive session as authorized by state law.

Section 17. The council may meet in executive session only for those purposes authorized by state law. When a councilmember makes a motion to go into executive session for an enumerated purpose, the presiding officer shall put the motion to a vote. If the majority of the council shall vote in favor of the motion to go into executive session, the body shall then move into executive session to discuss the matter for which the executive session was called. No action may be taken in an executive session. When the discussion has been completed, the council shall resume its deliberations in public.

Section 18. A motion for adjournment shall always be in order.

Section 19. The rules of the council may be amended in the same manner as any other ordinance of general and permanent operation.

Section 20. The rules of the council may be temporarily suspended by a vote of two-thirds of the members present.

Section 21. The chairman of each respective committee, or the councilmember acting for him or her, shall submit or make all reports to the council when so requested by the presiding officer or any member of the council.

Section 22. All ordinances, resolutions or propositions submitted to the council which require the expenditure of money shall lie over until the next meeting; provided, that such ordinances, resolutions, or propositions may be considered earlier by unanimous consent of the council; and provided further, that this rule shall not apply to the current expenses of, or contracts previously made with, or regular salaries of officers or wages of employees of the city.

Section 23. The clerk, engineer, attorney, chief of police and such other officers or employees of the City [or Town] of _____, shall, when requested, attend all meetings of the council and shall remain in the council room for such length of time as the council may direct.

Section 24. No ordinance or resolution of a permanent nature shall be adopted at the meeting at which it is introduced unless unanimous consent be obtained for the immediate consideration of such ordinance or resolution, such consent shall be by roll call and the vote thereon spread on the minutes.

Section 25. *Robert's Rules of Order* is hereby adopted as the rules of procedure for this council in those situations which cannot be resolved by the rules set out in this ordinance.

Section 26. This ordinance shall go into effect upon the passage and publication as required by law.

_____

_____

_____

_____

_____

[Signatures of Councilmembers]

Approved this the ___ day of _____, 20__.

_____ Mayor

Passed and approved this the ___ day of _____, 20__.

_____ Clerk

The above is, of course, only a suggested ordinance and the council could revise it to meet any local circumstances. We strongly urge, however, the adoption of an ordinance governing council procedures if an adequate ordinance does not already exist.

This example is an ordinance of permanent operation and must be adopted and published in the manner prescribed by law for ordinances of permanent operation.