



## The Municipal Manager/Administrator

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Municipal officials and employees today face an uphill battle trying to keep up with the changes affecting them. Every day brings new court decisions, new laws, and new regulations which increase the duties and responsibilities imposed on them. It's no wonder that these overburdened officials are seeking new methods to ensure that every "i" is dotted and every "t" is crossed.

One possible solution is to hire a municipal manager or administrator to assist in the administration of municipal affairs. Municipalities thinking about hiring a municipal manager or administrator have three options: formally transitioning to the council-manager form of government, appointing a city manager to take on certain administrative responsibilities, and hiring an executive administrator to work alongside the mayor.

Municipalities in Alabama have had the authority to hire a manager since 1936, when the legislature adopted Alabama Code Sections 11-43-20 through 11-43-22. However, merely hiring a manager pursuant to these provisions does not mean that the municipality has formally adopted the council-manager form as its form of government. A manager who is hired without the official adoption of the council-manager form does not have all the administrative powers of a manager who operates under an officially adopted council-manager form of government. Specifically, a manager hired under this article does not take over responsibilities that are assigned by law to the mayor.

In April 2018, the mayor of the City of Fairfield challenged the city council's authority to appoint a city manager to be the administrative head of city government, with the power and duty to appoint any necessary employees under Section 11-43-20 of the Alabama Code. The mayor also challenged the council's authority to make the office of the mayor ceremonial in nature without first changing the City's form of government to a council-manager form of government. In response, the Jefferson County Circuit Court granted an injunction against the council setting aside the council's hiring of the city manager. Later in January 2019, the Jefferson County Circuit Court ruled that the two ordinances passed by the council that stripped the mayor of his statutory powers were void because the mayor was not given an opportunity to vote on the ordinance creating the position and was not present for the council's vote to appoint the city manager.

More recently, in December 2024, the Alabama Supreme Court heard a case in which a citizen of Tarrant challenged the Tarrant city council's decision to create a city manager position, and transfer most of the mayor's responsibilities and authorities to the city manager, by ordinance. The Alabama Supreme Court affirmed the decision of the trial court, which held that the city council did not have the authority to "strip the mayor of all or virtually all of his rights, duties, responsibilities, and powers" simply by passing an ordinance. To avoid these and similar complications, many municipalities have chosen to appoint a municipal administrator or an administrative assistant to the mayor to help oversee the executive functions of municipal government, rather than a city manager.

This article examines the role of the city manager or administrator in each of these circumstances. Please note that the title given the position varies among localities in Alabama and is largely a matter of semantics. The important feature of

each of the positions is the way in which the position was created. Therefore, the relevant question to ask is: Was the person hired to fulfill the duties of a council-manager municipality, to exercise the powers set out in Section 11-43-21, or simply to assist the mayor with the administrative functions of the municipal operations?

### **Adopting the Council-Manager Form of Government**

Sections 11-43A-1 through 11-43A-52 of the Code of Alabama govern the creation and operation of municipalities which elect to adopt the council-manager arrangement as their official form of government. It is important to note that the provisions of these sections apply only to municipalities which operate under this form of government. Municipalities which continue to operate under the mayor-council form are not subject to these regulations and duties.

All Class 2 through Class 8 municipalities (in other words, all Alabama municipalities except Birmingham) have the authority to adopt the council-manager form of government by following the procedures set out in these provisions of the Code. The process begins when 10 percent of the number of qualified voters who voted in the last general municipal election in the municipality file a petition with the probate judge requesting an election to determine whether the municipality should adopt the council-manager form of government. The probate judge must determine whether the signatures are genuine and, if he or she is convinced, must certify that fact to the mayor within 15 days of receiving such petition. Ala. Code § 11-43A-2 (1975).

Within 10 days of receiving the probate judge's certification, the mayor must issue a proclamation ordering a special election to be held. If the mayor fails to act within the requisite time, the probate judge orders the election. Unless a general election is scheduled within 120 days of the day the mayor received the probate judge's certification, the election is held between 40 to 90 days of the mayor's receiving the certification. If a general election is scheduled, the question of changing the form of government is submitted to the voters at that election. Ala. Code § 11-43A-3 (1975).

### **Conducting the Election**

Pursuant to Ala. Code § 11-43A-5, ballots at the election are required to be printed separately and should ask:

Shall the council-manager form of government as provided by the Council Manager Act 1982 be adopted for the municipality of \_\_\_\_\_.

Yes \_\_\_\_\_ No \_\_\_\_\_

Voters mark their ballots with a cross mark (X)

Additionally, the question on the ballot shall indicate the composition of the mayor and council should the council-manager form of government be adopted. Ala. Code § 11-43A-1.1 (1975).

The election is conducted, and results are determined as provided for other municipal elections, which means that the council canvasses the vote the day following the election. If the majority of the votes are in favor of changing the form of government, the mayor must certify that fact to the Governor, the Secretary of State, and the probate judge within five days of the election. Ala. Code § 11-43A-6 (1975).

The change in the form of government takes effect on the first Monday in November after the date of the next general municipal election held to elect members of the governing body. If the voters fail to approve the change in the form of government, the question cannot be resubmitted for two years. Ala. Code §§ 11-43A-4, 11-43A-7 (1975).

### **The Governing Body**

The governing body of a municipality organized under the council-manager form of government is known as a council. The composition of the council can differ depending on the action taken by the municipality and the municipal Class.

One option is after the judge of probate has certified the sufficiency of the petition to the mayor, any Class 4, 5, 6, 7 and 8 municipality, the council may elect for the council to be composed of either five or seven members as follows:

One member shall be the mayor 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. 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 shall continue with either four or six council members elected from single-member districts and the mayor shall be elected at large. Ala. Code § 11-43A-1.1 (1975).

However, if the municipality does not pass a resolution to have either five or seven members districted as provided in §11-43A-1.1, then the council shall be composed of five members as follows:

One member shall be the mayor who is elected at-large. One councilmember shall be elected by the voters at-large. Three members shall be elected by the voters from each of three single-member districts. The officers elected shall serve for 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. Generally, the mayor is the presiding officer of the council and may vote on any issue coming before that body. Ala. Code §§ 11-43A-8, 11-43A-9 (1975).

The first officers are elected at the next general election. Before then, the governing body must divide the municipality into districts containing as nearly an equal number of people as possible. In Class 6 municipalities who elect to have a nine-member council, the governing body can by ordinance subdivide and establish geographic post boundaries of approximately equal population for each of the two posts in any or all of the four districts. The ordinance must be adopted no later than 75 days prior to the date of the election. Ala. Code § 11-43A-9 (1975).

Candidates must qualify to run for the position of mayor or councilmember. Candidates, other than those running at large, must reside in the district they seek to represent. A voter may cast one vote for mayor, one for councilmember at-large (if applicable), and one vote for a candidate for the district in which he or she resides (one vote for each of the two candidates in each district in Class 6 municipalities who elect to have nine councilmembers). In Class 6 municipalities who have elected to have a nine-member council and that have subdivided and designated by ordinance geographic post boundaries for a district, each voter within that district may cast one vote for a candidate for the post position of the subdivision of the district where they reside. Ala. Code § 11-43A-9 (1975).

To be elected, a candidate must receive a majority of the votes cast. If no candidate receives a majority a runoff election is required. Winners take office the first Monday in November following the election. However, in Class 6 municipalities who elect to have a nine-member governing body, the council first elected shall take office on the first Monday in October in an even numbered year designated by the municipal governing body. Ala. Code § 11-43A-8, 11-43A-9 (1975).

The mayor presides over council meetings and is recognized as the head of the municipal government for all ceremonial purposes but has no other administrative duties. The councilmember-at-large, where applicable, is the assistant mayor and acts as mayor when the mayor is absent or otherwise unable to act. Any vacancy in the office of mayor shall be filled by the councilmember at-large. Ala. Code § 11-43A-16 (1975).

In Class 6 municipalities that elect to have a nine-member council, Class 7 municipalities with a council consisting of a mayor and four council members at large and municipalities organized under Section 11-43A-1.1, the mayor pro tem, who is elected from the membership by a majority vote of the council, acts as the mayor when the mayor is absent or otherwise unable to act. Additionally, any vacancy in the office of the mayor shall be filled by the mayor pro tem. Ala. Code § 11-43A-16 (1975).

As for vacancies on the council, the council fills such vacancies at the next regular meeting following the vacancy. Only residents of a district are eligible for appointment to fill a vacancy in one of the districted council seats. In Class 6 municipalities with nine-member councils the person must receive five affirmative votes and in municipalities organized under Section 11-43A-1.1 a person must receive the affirmative vote of the majority of the elected members of council. Ala. Code § 11-43A-16 (1975).

### **Powers of the Council**

All powers of the municipality given it by the Council-Manager Act and by the State Constitution, the general and local laws of the state, and the determination of all matters of policy are vested in the council. The council also has the power to appoint and remove the manager, and to establish other administrative departments and distribute the work among them. Ala. Code § 11-43A-17 (1975).

The council, by ordinance, may create, change, and abolish offices, departments, boards or agencies other than those established by the Council-Manager Act. Further, the council may by ordinance, assign additional functions or duties to offices departments boards, or agencies created by the Act but may not discontinue or assign to any other office, department, board or agency any function or duty specifically assigned by the Council-Manager Act. Ala. Code § 11-43A-19 (1975).

All meetings of the council are public. The council must meet at least twice a month and may establish its own rules of procedure. A majority of the whole qualified membership of the council constitutes a quorum. Permanent ordinances and resolutions must be presented in writing and read in full unless the council prescribes otherwise in its rules of procedure. Permanent ordinances and resolutions are adopted and published as in mayor-council municipalities. The clerk is required to keep minutes of council meetings. The mayor and clerk both must sign the minutes. Ala. Code §§ 11-43A-21, 11-43A-23, 11-43A-24 (1975).

Each month, the council must make available in the office of the manager a detailed statement of all municipal receipts and expenditures and a statement of the council proceedings during the preceding month. At the end of the year, the council shall have a full examination of all books and accounts of the municipality made by a certified public accountant. The results of this audit must be published in pamphlet form and made available for public inspection in the offices of the manager, the Clerk, and at the public library. Ala. Code § 11-43A-27 (1975).

### **Appointment of the Manager**

The council is responsible for appointing the manager by majority vote of the whole council. The manager is an officer of the city or town. No civil service act applicable to the municipality applies to the appointment or dismissal of the manager. Ala. Code § 11-43A-18 (1975).

In two cases, the council may appoint a temporary manager, who may serve for no more than four months. First, the initial council elected under the council-manager form of government has the right to appoint a temporary manager. Second, a temporary manager may be appointed following the removal of a permanent manager. If the temporary manager serves for more than four months, he or she becomes the permanent manager. While the manager does not have to be a resident when appointed, he or she must reside within the corporate limits during his or her tenure. The manager serves an indefinite term but may be removed by the council at any time by majority vote. Terms of removal in Class 6 cities with nine-member councils and Class 7 cities organized under § 11-43A-3.3 can be determined by contract. Ala. Code § 11-43A-18 (1975).

### **Powers and Duties of the Manager**

The manager is the head of the administrative branch of the municipal government and is responsible to the council for the proper administration of all municipal affairs. Subject to local Civil service or merit system laws and the Council Manager Act, the manager has the power to

- Enforce all laws and ordinances;
- Appoint and, when necessary, remove all officers and employees of the municipality, except members of certain boards;
- Exercise administrative supervision and control over all officers, employees, offices, departments, boards and agencies created by the Act or by the council, except as otherwise provided in the Act;
- Keep the council advised as to the financial condition of the municipality;
- Prepare and submit an annual budget;
- Be responsible for the administration of the budget after adoption by the council;
- Recommend actions to the council;
- Prepare and submit to the council such reports as may be required; and
- Perform any other duty not inconsistent with the Act.

Ala. Code § 11-43A-28 (1975).

When the manager is temporarily absent or disabled, the manager may designate by letter filed with the city clerk a qualified administrative officer of the municipality to perform the managerial duties. However, if the manager fails to make such designation, the council by resolution can appoint a qualified administrative officer of the municipality to perform the managerial duties until the manager returns from their temporary absence. Ala. Code § 11-43A-28 (1975).

The council and its members are prohibited from requesting the manager to appoint or employ any person, or in any manner taking part in the appointment or removal of officers or employees. Except for inquiries, councilmembers, including the mayor, shall only deal with the administrative side of the municipal government through the manager. The mayor and councilmembers are prohibited from giving orders to subordinates of the manager. Violations are punishable as Class C misdemeanors. A second conviction results in forfeiture of office. Ala. Code § 11-43A-18 (1975).

The manager, department heads, and other municipal officers may attend council meetings, but may not vote. The manager may participate in matters coming before the council and must be notified of any special or adjourned meetings. The manager must be bonded in an amount approved by the council. The municipality shall pay the premiums. Both the manager and the council have the authority to inquire into the conduct of any office or board of the municipality and to require the production of books, papers, and other evidence needed to further those investigations. Ala. Code §§ 11-43A-46, 11-43A-47, 11-43A-49 (1975).

### **The Municipal Clerk and the Treasurer**

Municipalities which elect to operate under the council-manager form of government must also appoint a municipal clerk who has the powers and duties as set out in the Code. The clerk, unless subject to a civil service or merit system, shall be elected by a majority vote of the councilmembers. Ala. Code §11-43A-20 (1975).

The council may establish the office of treasurer and assign whatever duties and responsibilities it deems necessary. A treasurer shall be elected by a majority vote of the qualified members of the council. The treasurer serves as the custodian over municipal funds and keeps books showing the financial condition of the municipality. The council may, by ordinance combine the offices of clerk and treasurer. Ala. Code §11-43A-30 (1975).

### **Financial Affairs**

The fiscal year of the municipality begins on the first day of each October and ends on the last day of each September. The fiscal year is also the budget and accounting year. The manager, at least 45 days before the beginning of the budget year, must submit a budget proposal to the council. The council shall adopt a budget, by ordinance, prior to the beginning of each fiscal year. Once adopted, the budget is a public record and is available for inspection by the 'public. Changes in the budget during the year must be done by ordinance. Ala. Code §11-43A-29 (1975).

The council shall prescribe, by ordinance, the method of paying out funds of the municipality. Checks and warrants shall be signed by at least two officers of the municipality designated by ordinance. All funds shall be deposited as provided by the council. No contract involving the payment of money out of the appropriation of more than one year shall be made for a period of more than five years, nor shall any such contract be valid unless made or approved by ordinance and signed in the name of the municipality by the mayor and countersigned by the manager. Ala. Code §§11-43A-31, 11-43A-48 (1975).

### **Other Provisions**

The Act also contains provisions relating to establishing council districts, reapportionment of districts, and the effect of a change in the form of government on existing officers, employees, offices, departments, civil service or merit systems, contracts, pending litigation, pension and retirement funds, and existing laws.

An additional council-manager form of government is found at Sections 11-43A-70 through 11-43A-116. This Act was passed to address the needs of one municipality, and it does not generally affect other cities or towns.

## City Managers Appointed Under Article 2 of Chapter 43 of Title 11 (Sections 11-43-20 through 11-43-22)

As mentioned above, any mayor-council or commission municipality may elect to hire a manager without formally changing its form of government. Sections 11-43-20 through 11-43-22 govern the appointment and duties of a manager hired by one of these municipalities.

The council of any municipality which wishes to employ a manager must adopt an ordinance to that effect, setting a date not less than 30 or more than 60 days following the date of its passage upon which the manager shall assume his or her duties. Ala. Code §11-43-20 (1975).

A manager hired under these provisions serves as the administrative head of the municipal government and must be chosen without regard to his or her political beliefs. The manager's salary is set by ordinance and is payable in 12 monthly installments. The manager must serve full-time and is responsible to the governing body. Ala. Code §11-43-21 (1975).

The manager has specific authority set out by Ala. Code § 11-43-21 which includes:

- see that all laws and ordinances are enforced;
- appoint and employ all necessary employees, except for the police chief, the fire chief, and the utility superintendents, which are appointed by the council;
- remove employees appointed by him or her without the consent of the governing body, with certain exceptions;
- attend all meetings of the governing body and to participate in all discussions;
- receive notice of all special meetings;
- make recommendations to the governing body;
- see that all terms and conditions imposed by franchises are kept;
- make and execute all contracts concerning matters within his or her jurisdiction, provided that no contract involving more than \$100 is binding until the council approves;
- keep the governing body advised of the financial condition and needs of the municipality;
- make a full report to the governing body on the first of each month, showing the operation and expenditures of all municipal departments during the prior month;
- fix all salaries and compensation of municipal employees subject to council approval;
- perform the clerk's duties when directed to do so by a council resolution;
- act as the municipal purchasing agent; and,
- perform other duties as prescribed by law or by ordinance or resolution of the governing body.

The manager's term is coextensive with the term of office of the governing body. He or she may be dismissed upon 60 days' notice following a two-thirds vote of the entire governing body. Ala. Code § 11-43-21 (1975).

It is important to remember, however, that a council may not use Sections 11-43-20 through 11-43-22 to transfer the mayor's authority to a city manager. If the municipality intends to have a manager take on responsibilities that are statutorily assigned to the mayor, then an ordinance is insufficient; in that case, the municipality must comply with the process laid out in the Council-Manager Act of 1982. See *Brown v. State ex rel. Ceasor*, No. SC-2024-0066 (Ala. Dec. 13, 2024) (Cook, K., concurring specially).

## Hiring a Municipal Administrator

As pointed out above, apparent internal conflicts among Code sections have caused many municipalities, which wanted an executive administrator but who did not want to change their form of government, to look more closely at appointing an employee to assist the mayor with overseeing the daily functions of the municipal executive branch. The municipal administrator, or the administrative assistant to the mayor, as the position is sometimes called, is usually an Officer of the municipality, who performs whatever functions are assigned to him or her by the council ordinance creating the position. The administrator, while given a great deal of discretion in the performance of his or her duties, is subject to the daily supervision of the chief executive officer of 'the municipality.

The administrator is usually a person with a great deal of experience or training in the operation of municipal government. He or she is knowledgeable about the laws and regulations governing the municipality and has a working knowledge of how to interpret and apply them.

What is the difference between a manager appointed pursuant to the Code of Alabama and an administrator? The duties of an administrator are established by the municipality, often in the ordinance creating the position, and they do not have to mimic the powers enumerated in Section 11-43-21. The extent of the administrator's powers varies from place to place in line with local needs, traditions and experience. However, in most cases the reason for hiring an administrator is the same in all places: the desire to have a centralized person, who is familiar not only with local needs but with national trends and ideas, to supervise municipal functions. This person's job is not to usurp the mayor's powers, but to enhance them. The administrator can advise the mayor and the council on municipal needs and keep them informed on the implementation of municipal projects.

The administrator can also help depoliticize city or town hall. The mayor and council are sometimes forced to resolve highly polarizing political conflicts. While the administrator must keep his or her employer happy to stay employed, he or she can help resolve opposing political desires by providing an objective source to whom the mayor and council can look to for advice. A sample ordinance creating the position of administrator accompanies this article.

### **Conclusion**

Each municipality must determine for itself whether a manager or administrator is needed. After all, a form of government that works for one municipality may fail in another. The important feature of all successful municipalities appears to be the cooperation among officers and employees. This article, thus, should not be read as an endorsement or a condemnation of any of the options, or of the endorsement of hiring a manager at all. What is clear is that, as municipal government becomes more and more diverse and complex, municipalities must be aware of the options available to make government work better and more efficiently.