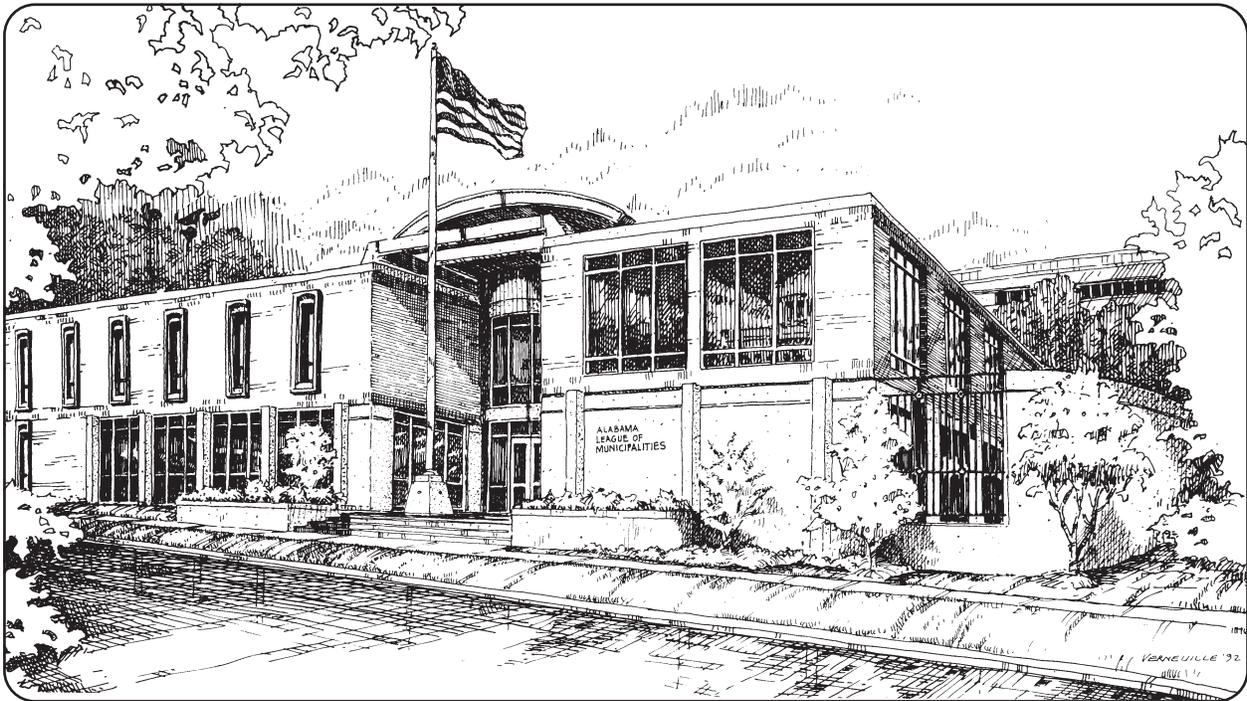


# Municipal Clerk's Manual

2021 Edition



Prepared by:

Lorelei A. Lein, General Counsel

Teneé R. J. Frazier, Assistant General Counsel

© 2021 Alabama League of Municipalities



This publication is available in PDF format.

For more information, contact:  
**The Alabama League of Municipalities**  
**P.O. Box 1270, Montgomery, AL 36102**  
*Phone: 334-262-2566*  
or visit  
**[www.almonline.org](http://www.almonline.org)**.

# Foreword

Originally prepared many years ago, this manual is revised after every municipal election cycle to answer many of the questions we receive concerning the duties and responsibilities of municipal clerks in cities and towns operating under the mayor-council form of government. The manual is not intended to take the place of special reminders which the League sends to municipal clerks from time to time nor should it be used in lieu of basic statutes, court decisions and opinions of the attorney general. Rather, this manual is designed to be a quick reference for busy municipal clerks when time is not available for extensive research.

Duties of municipal clerks originate from several sources. Some duties and responsibilities of the office are imposed by statute, some by ordinance and still others by long-practiced custom. The duties in the statutory group are relatively fixed. However, the manner of performing those duties is not rigid unless a particular statute mandates a prescribed procedure. Relatively few statutes establish rigid procedures clerks must follow in performing their duties. For this reason, any comments relating to the manner of performing the clerk's duties must be regarded as suggested means of accomplishing the job.

It is impossible to outline all of the duties and responsibilities which have been imposed upon municipal clerks by all of the cities and towns of the state. Often these duties are outlined by specific ordinances or municipal code provisions to which additional duties have been imposed by subsequent ordinances and resolutions dealing with specific subjects. Because duties are imposed by local ordinance, each municipal clerk must know the exact requirements prescribed for the office by the local governing body.

In addition to the duties imposed by statute and ordinance, many duties are established by custom. These customary practices vary from municipality to municipality. However, certain customs are generally uniform. While not regarded as legally-imposed responsibilities, many customs are extremely important to the successful administration of municipal affairs. This handbook endeavors to point out certain customary practices which are generally followed in cases where statutes and ordinances are silent.

History has proven that municipal governing bodies show wisdom in the selection of their clerks. Many clerks have served for decades and have helped maintain the continuity of their municipal governments. It cannot be overemphasized that the manner in which the office of the municipal clerk is conducted determines to a large extent the success or failure of the whole municipal operation.

We wish to thank all municipal clerks for their fine cooperation with the Alabama League of Municipalities throughout the years. We especially acknowledge the many helpful suggestions clerks have made from time to time on subjects that should be included in this manual.

Greg Cochran  
Executive Director

Revised  
January 2021

# Table of Contents

<b><u>The Office of the Municipal Clerk</u></b> .....	5	<u>Award of Contracts on Bids</u> .....	16
<b><u>Selection of the Clerk and Term of Office</u></b> .....	5	<b><u>Signature on Ordinances and Resolutions</u></b> .....	17
<u>In Cities and Towns of Less than 6,000 Inhabitants</u> .....	5	<u>Upon Passage by Council</u> .....	17
<u>In Cities of 6,000 Inhabitants or More</u> .....	6	<u>Cities of 12,000 or More</u> .....	17
<b><u>Qualifications of the Clerk</u></b> .....	6	<u>Voting Requirements</u> .....	17
<u>Residency Requirements</u> .....	7	<u>Publication and Recording of Ordinances</u> .....	18
<u>Nepotism</u> .....	7	<u>Effective Date of Ordinances</u> .....	18
<b><u>Salary of the Clerk</u></b> .....	7	<u>Amending Ordinances</u> .....	18
<u>Fixed by Council</u> .....	7	<u>Codification of Ordinances</u> .....	19
<u>Salary in Lieu of All Other Compensation</u> .....	7	<u>Custody of Ordinances and Resolutions</u> .....	19
<u>Change of Salary During Term of Office</u> .....	7	<u>Access to Public</u> .....	19
<u>Fringe Benefits</u> .....	7	<u>Proof of Official Documents of Municipality</u> .....	19
<u>Statement of Economic Interests</u> .....	8	<u>Indexing</u> .....	19
<b><u>Clerk's Surety Bond</u></b> .....	8	<b><u>The Municipal Corporate Seal</u></b> .....	19
<u>Individual Surety Bond</u> .....	8	<b><u>Fiscal Duties of the Clerk</u></b> .....	19
<u>Public Improvement Assessment Bond</u> .....	8	<u>Generally</u> .....	19
<u>Combined Clerk/Treasurer</u> .....	8	<u>Handling Claims and Demands</u> .....	20
<b><u>Working Hours of the Clerk</u></b> .....	8	<u>Depository</u> .....	20
<b><u>Council Meetings</u></b> .....	8	<u>Issuance and Payment of Warrants (Payment Orders)</u> .....	20
<u>Attendance Required</u> .....	8	<u>Fiscal Year</u> .....	21
<u>Agenda</u> .....	8	<u>The Annual Audit</u> .....	21
<u>Regular and Special Meetings</u> .....	9	<u>Reports to the Mayor and Council</u> .....	21
<u>Notice to Councilmembers</u> .....	9	<u>The Municipal Budget</u> .....	21
<u>Alabama Open Meetings Act</u> .....	9	<u>Municipal Purchasing</u> .....	21
<u>Meeting Notice Requirements</u> .....	10	<u>Tax Exemptions</u> .....	22
<u>Executive Sessions</u> .....	11	<u>Insurance</u> .....	22
<b><u>Council Minutes</u></b> .....	11	<u>Social Security</u> .....	22
<u>Importance of Keeping Accurate Minutes</u> .....	11	<u>Tax Withholdings</u> .....	22
<u>Work Sessions</u> .....	11	<u>Non-Employee Compensation Reporting Requirements</u> .....	22
<b><u>Form and Content of Minutes</u></b> .....	11	<u>Garnishment</u> .....	22
<u>Generally</u> .....	11	<u>Handling of Cash and Special Funds</u> .....	22
<u>Approval of Minutes</u> .....	12	<b><u>Licenses Issued by the Clerk</u></b> .....	23
<u>Record of Petitions and Communications</u> .....	12	<b><u>Collection of other Permits and Fees</u></b> .....	23
<u>Record of Bids Received and Opened</u> .....	12	<b><u>Receiving State-Shared Revenues</u></b> .....	24
<u>Records of Council Reports</u> .....	12	<b><u>Receiving Tax Collections from County Officers</u></b> .....	25
<u>Audit Exception</u> .....	13	<b><u>Confidentiality of Tax and License Information</u></b> .....	25
<u>Examples of Reports Received by Council</u> .....	13	<u>Sales and Use Tax</u> .....	25
<u>Records of Public Hearings</u> .....	13	<u>Business Licenses</u> .....	25
<u>Adjournment of the Meeting</u> .....	13	<b><u>Administration of Oaths, Issuance of Warrants,</u></b>	
<u>Signing the Minutes</u> .....	14	<u>Approval of Bonds</u> .....	26
<u>Preparation of Minutes</u> .....	14	<b><u>Attesting Acts of the Mayor</u></b> .....	26
<u>Indexing the Minutes</u> .....	14	<b><u>Secretary to Municipal Boards</u></b> .....	26
<u>Publication of the Minutes</u> .....	14	<b><u>Custodian of Municipal Records</u></b> .....	26
<b><u>Ordinances and Resolutions</u></b> .....	14	<b><u>Use of Certified Mail</u></b> .....	27
<u>Generally</u> .....	14	<b><u>Election Duties of the Clerk</u></b> .....	27
<u>Ordinances of a General or Permanent Nature</u> .....	14	<b><u>Other Duties of the Clerk</u></b> .....	27
<u>Ordinances v. Resolutions</u> .....	15	<b><u>Assistance from the Alabama League</u></b>	
<u>Style of Ordinances</u> .....	15	<b><u>of Municipalities</u></b> .....	27
<u>Numbering of Ordinances</u> .....	15		
<u>Adoption of Ordinances or Resolutions of a</u>			
<u>Permanent Nature</u> .....	15		

## The Office of the Municipal Clerk

The title “clerk” as employed in municipal charters, ordinances and statutes, usually refers to those persons whose duties are principally clerical, as compared to those of an administrative or executive character. *McQuillin, Municipal Corporations*, 3rd Edition, Section 12.34. In another sense, the “municipal clerk” has been held to be an officer who performs ministerial duties in obedience to the mandate of legal authority without regard to, or in the exercise of, personal judgment upon the propriety of the act performed.

While these observations are correct, they fall short of the full range of activities which take place in the office of the municipal clerk in Alabama. A literal reading of the duties imposed upon the clerk by statutes and ordinances does not reveal that the office of the municipal clerk is the local intelligence center or that the clerk is relied upon by the governing body of the municipality, the people of the community, and the employees of the municipality, for accurate information concerning the welfare of the city or town. The following observation was made in the October 1949 issue of the newsletter of the National Institute of Municipal Clerks:

“The Clerk’s office can be truly called the hub of local government. It is the Clerk who is the contact between the citizens and the government. It is he *or she* to whom most complaints are brought. He *or she* gives advice on many subjects, not necessarily relating to the government, but by his *or her* contact with the public, they for a great part place confidence in him *or her* [to] answer most any question. The Clerk, can, if he *or she* so desires, wield a great measure of influence in his *or her* community.” (emphasis added).

This manual endeavors to cover the basic duties of municipal clerks serving under the mayor-council form of government. For the most part, the duties covered are those imposed by statute. It must be remembered, however, that local governing bodies are authorized to impose additional duties upon clerks and that each clerk must be familiar with those duties imposed by the local governing body. **For those municipalities operating under a form of government different from the Mayor Council form of government, please keep in mind that different duties and responsibilities may apply to you other than or in addition to those outlined in this manual.**

Certain customary practices and duties of the clerk are pointed out in this manual. But references to those customs and practices are provided merely as a guide for the consideration of the municipal clerk and the local governing body. They are not intended to conflict with any local ordinances or customs which have been established for the performance of any particular municipal function.

## Selection of the Clerk and Term of Office

**In Cities and Towns of Less than 6,000 Inhabitants:** In municipalities having a population of less than 6,000 inhabitants, the council shall elect a clerk. Section 11-43-4, Code of Alabama 1975. Election of officers by the council shall be made by roll call voice vote. A concurrence of a majority of the whole number of elected members to the council shall be required. Section 11-43-45, Code of Alabama 1975. Since a municipal clerk is so important to the operation of the council, the clerk is usually elected by the council at its first regular meeting after the original organizational meeting.

Section 11-43-4, Code of Alabama 1975, provides that the council shall fix the term of office of the clerk, but that section does not specify the length of the term of office. The term of the clerk must be established by the council in light of Section 11-43-46, Code of Alabama 1975. That section states that the council shall fix, by ordinance, the terms of service, not to exceed the term of the mayor, of all officers appointed or elected, whose terms are not prescribed by law. Therefore, the term of the clerk in such cities and towns is left to the sound discretion of the council, but it may not exceed the term of the mayor, which is four years, except to the extent that a clerk serves until a successor is elected and qualified. Because the term of office of a municipal officer ends by operation of law, it is necessary for these municipal officers to be “reappointed” at each organizational meeting of a new council or as soon as practicable thereafter. AGO 2013-020.

Municipal clerks are subject to removal at any time, for good cause, by a 2/3 vote of the governing body pursuant to Section 11-43-160, Code of Alabama 1975, or by impeachment pursuant to Section 175, Alabama Constitution, 1901. Section 175 provides that an officer of an incorporated city or town may be tried for impeachment for any of the causes specified in Section 173 and upon conviction be removed from office by a court having jurisdiction to try felony cases in the county or

circuit in which the officer holds his or her office. Section 175, Alabama Constitution, 1901.

Section 173 provides that an officer can be impeached and removed from office for the following causes:

1. Willful neglect of duty;
2. Corruption in office;
3. Incompetency;
4. Intemperance in the use of intoxicating liquors or narcotics to such an extent in view of the dignity of the office and importance of its duties as unfits the officer for the discharge of such duties;
5. Any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith.

Section 36-11-1(b), Code of Alabama, 1975; Section 173, Alabama Constitution, 1901.

Impeachment proceedings are filed in the circuit court or other courts of like jurisdiction. *Day v. Andrews*, 279 Ala. 563, 565, 188 So. 2d 523, 526 (1966). Impeachment proceedings may be initiated in two ways:

1. By a grand jury and prosecuted by the district attorney as specified in Section 36-11-4 of the Code.
2. By five resident taxpayers who must post bond as required by Section 36-11-6 of the Code. Opinion to Honorable H. C. Wiley, Jr., Attorney, Walker County Commission, dated September 10, 1997, AGO 97-276; AGO 2102-035.

**In Cities of 6,000 Inhabitants or More:** In cities having a population of more than 6,000, there shall be elected by the council, at its first regular meeting, or as soon thereafter as practicable, a city clerk. Section 11-43-3, Code of Alabama 1975. The manner in which the council of such cities elects a clerk is controlled by Section 11-43-45, just as in cities and towns of less than 6,000 inhabitants.

Unlike the clerk in municipalities of less than 6,000 inhabitants, the clerk of a municipality of 6,000 inhabitants or more is elected to serve until the next general municipal election and until a successor is elected by the council and qualified. Section 11-43-3, Code of Alabama 1975. Clerks serving under appointment or election pursuant to the provisions of this section are subject to removal for good cause by a 2/3 vote of the governing body pursuant to Section 11-43-160, Code of Alabama 1975, or by impeachment pursuant to Section 175, Alabama Constitution, 1901.

Also, in municipalities with a population over 6,000, the council, by a two-thirds vote of the members elected, by and with the consent of the mayor, may consolidate the office of the city treasurer and the city clerk and may abolish any of the offices; provided, that the term of office of no incumbent shall be diminished. The consent of the mayor is not necessary to consolidate or abolish offices if the mayor is operating 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. Section 11-43-3, Code of Alabama 1975.

Regardless of the code provisions cited above, additional rules may apply in municipalities where clerks are covered by personnel systems established by local acts of the state legislature.

## Qualifications of the Clerk

Sections 11-43-3 and 11-43-4, Code of Alabama 1975, do not establish any qualifications for the person who is elected to serve as clerk. The selection of the clerk is left entirely to the discretion of the council. Local personnel rules and ordinances may, however, establish qualifications for the clerk.

No officer, alderman, or employee of the municipality shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the treasury. Section 11-43-12, Code of Alabama 1975. This section has been held by the Attorney General to prevent a member of the municipal governing body from serving as municipal clerk if any compensation is provided for the performance of the clerk's duties. AGO to Hon. Bobby Newman, December 8, 1976. However, a municipal clerk may be employed by a separately incorporated utility board and receive compensation for their service. AO 93-1.

Also, Section 11-43-53, Code of Alabama 1975, provides that, “No member of any city or town council shall, during the time for which he has been elected, be appointed to any municipal office which shall be created or the emoluments of which shall be increased during the term for which he shall have been elected; nor shall he be interested, directly or indirectly, in any contract or job for work or material, or the profits thereof or services to be performed for the corporation, except as provided in (Title 11).”

## Residency Requirements

Alabama law does not require a municipal clerk in a municipality of less than 6,000 to reside in Alabama. AGO 1997-057. However, in cities with a population over 6,000, the council may, by ordinance, require the city treasurer and the city clerk to be residents of the city. Section 11-43-3, Code of Alabama 1975.

## Nepotism

The State nepotism statute does not apply to municipalities. Therefore, a municipal clerk can continue to serve in that capacity even if the clerk is related to a member(s) of the council or city employees. AGO to Hon. Oscar H. Beard, February 23, 1977 opining that the town clerk may be the wife of a member of the town council; AO 92-85 opining that a municipal clerk may continue to serve in their capacity though three of her family members were elected to the city council. While the State nepotism statute does not apply, nepotism may be addressed locally by personnel policy.

## Salary of the Clerk

**Fixed by Council:** The power to establish salaries for municipal clerks in all cities and towns under the mayor-council form of government rests in the council. Sections 11-43-3 and 11-43-4, Code of Alabama 1975. There are no statutory limits on this authority.

**Salary in Lieu of All Other Compensation:** All employees of any city or town whose compensation is not fixed by law shall receive such salary or fees for their services as the council may by ordinance from time to time prescribe. Section 11-43-7, Code of Alabama 1975. The council may provide by ordinance that the clerk shall receive a salary in lieu of all other compensation. In such cases, the clerk shall not receive for personal use any fees or other compensation for services he or she may provide by virtue of the position of clerk. The clerk shall collect the fees authorized by law or ordinance and pay the same into the city or town treasury. Section 11-43-6, Code of Alabama 1975.

As noted later in this manual, a clerk is required, upon request, to attest and certify transcripts from municipal records. For the performance of this duty, the clerk is entitled to charge fees not in excess of those allowed county officers for like services. The fees must be treated as public money and must be placed in the municipal treasury when the clerk receives a salary or fixed compensation. Section 11-43-7, Code of Alabama 1975.

**Change of Salary During Term of Office:** Section 11-43-9, Code of Alabama 1975 prohibits the increase or decrease of fees, salaries, compensation or emoluments of any officer whose election or appointment is required or authorized by law during the term for which he or she shall have been elected or appointed. The clerk of a municipality of over 6,000 inhabitants has a statutorily fixed term of 4 years in office. The council, in municipalities of less than 6,000 inhabitants, may fix the term of the clerk as it deems wise and expedient within the 4-year term of the mayor. The Attorney General has ruled that the salaries of the clerk, treasurer, auditor and police and fire chiefs may be increased at any time. AGO 1991-321.

**Fringe Benefits:** Cities and towns in Alabama have the authority to contract for, obtain and maintain policies for group life, health, accident and/or hospitalization insurance. They also have the authority to contract for, obtain and maintain individual annuity contracts, retirement income policies or group annuity contracts to provide retirement plans for the benefit of such of the officers and employees of the municipality as may be determined by the governing body of the city or town. Section 11-91-1, Code of Alabama 1975. Cities and towns can also allow their employees to participate in a deferred compensation plan and may provide health insurance benefits to their employees and retirees. The current rules of the RSA-1 deferred compensation plan, as administered by the Retirement Systems of Alabama, do not allow employer contributions. AGO 2019-011.

Municipalities whose employees are not covered by a recognized retirement program are subject to the provisions of the federal Social Security law. As will be noted later, the duty of the clerk generally includes handling Social Security records, reports and requirements for the municipality.

**Statement of Economic Interests:** All municipal clerks are required to file a statement of economic interests with the State Ethics Commission. Section 36-25-14, Code of Alabama 1975.

## Clerk's Surety Bond

**Individual Surety Bond:** A clerk is required to give bond with sureties, approved by the mayor, in such sum as the council may prescribe. Section 11-43-104, Code of Alabama 1975. This is an individual bond which must be signed by the clerk, and it is usually conditioned upon the faithful performance of duties. Where the bond is furnished by the clerk and a corporate surety, the municipal governing body has the authority to pay the premium on the bond. AGO to Hon. Frank Gwaltney, October 22, 1957.

**Public Improvement Assessment Bond:** If the clerk is charged with the duty of collecting public improvement assessments from which improvement assessment bonds are payable, then an additional bond is required equal to not less than 5 percent of the total amount of the sinking funds maintained for such purposes. Section 11-81-115, Code of Alabama 1975.

**Combined Clerk/Treasurer:** If the office of the clerk has been combined with the office of the treasurer in a municipality, the bond of the clerk-treasurer should cover the duties of both offices. The treasurer's bond is conditioned not only upon the faithful performance of duties, but also upon the safe custody of municipal funds. Therefore, the bond of the clerk-treasurer should include this feature in its coverage. Section 11-43-120, Code of Alabama 1975.

## Working Hours of the Clerk

No statutory provisions specify the hours to be kept by the office of the city clerk. Therefore, office hours are at the discretion of the municipal governing body. Each municipality should adopt an ordinance prescribing the days of the week when the office shall be open and the hours to be kept on such days. In the same ordinance, the governing body might prescribe the holidays to be observed by the office, how vacation and sick leave may be accumulated, dates of pay periods and other related provisions. If the municipal governing body does not specify the office hours/working hours, the mayor has the authority to set those hours.

## Council Meetings

**Attendance Required:** Clerks are required to attend all meetings of the council. Section 11-43-100, Code of Alabama 1975. On the date and time of any regular or special called council or commission meeting of a municipality, the clerk shall make a record of all elected municipal officials present or absent regardless of whether or not a quorum is present. Section 11-40-25, Code of Alabama 1975. It is customary for the municipal clerk to prepare the regular meeting place—table, chairs, pencils, pads, water and seating for citizens—to accommodate the council and the public expected to attend the meeting. It is a generally accepted custom for the clerk to call members of the governing body by telephone to remind them of the meeting. Where council committees have been appointed and are expected to report to the council, the clerk usually reminds the committee chairmen in sufficient time to allow the compilation of reports. Some municipalities follow the practice of having the clerk make copies of the minutes from the last meeting. Those copies are distributed to each member of the council far enough in advance of the meeting for the members to read and note any needed corrections when the minutes are offered for approval.

**Agenda:** In addition to preparing the meeting place and reminding members of the council, it is customary for the clerk to prepare the agenda of business for council consideration. This means that the clerk will have:

- The minutes of the last meeting prepared and ready for approval;
- All bills and claims requiring council approval checked for accuracy, verified and listed to show the departments to which charged;

- All petitions and notices to the governing body collected and ready for consideration;
- All written ordinances and resolutions proposed for introduction, or awaiting final action, ready for council consideration;
- All written correspondence requiring council attention arranged for presentation;
- All reports scheduled for consideration prepared in sufficient quantity for each councilmember to have a copy;
- A list of reminders for the council from the clerk's tickler file, such as renewal of insurance policies, appointments required to fill vacancies on municipal boards, bonds or notes due for payment and amendments to be considered for license and tax ordinances; and
- A report on actions taken by the clerk pursuant to direction of the council at its last meeting.

**Regular and Special Meetings:** The city council is required to hold at least two regular meetings each month, except in towns with a population less than 2,000 where only one meeting per month is required. The presiding officer may 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. Section 11-43-50, Code of Alabama 1975. Usually the call of a special meeting is handled by the municipal clerk. Keep in mind that when a city council specifically requests that a special meeting be held on a specific date and at a specific time, Section 11-43-50 of the Code of Alabama requires the mayor to call for the meeting on the date and time requested by the council. AGO 2003-237.

**Notice to Councilmembers:** When a special meeting is to be held, the clerk generally prepares a waiver of notice for the signature of each of the members of the council to be incorporated into the minutes of the meeting. The waiver might be in the form substantially as follows:

“We, the undersigned members of the City [Town] Council of the City [Town] of \_\_\_\_\_, Alabama, hereby waive notice of \_\_\_\_\_ for the purpose of \_\_\_\_\_ and do consent that said meeting for said purpose be held at the City [Town] Hall in the City [Town] of \_\_\_\_\_, Alabama, at \_\_\_ o’clock A.M. [P.M.], on the \_\_\_ day of \_\_\_\_\_, 20\_\_.”

Each member’s signature to the waiver should be secured *before* the meeting.

Meetings of the council held pursuant to the adjournment of a regular meeting are legal and do not require special notice to councilmembers. *Culpepper v. Phenix City*, 113 So. 56 (Ala.1927). Telephone consent by a councilmember, who is absent from the meeting, to action of the council cannot prevail to render action of the council legal. *Penton v. Brown Crummer Inv. Co.*, 131 So. 19 (Ala. 1930). In one instance, the Attorney General ruled that 45 minutes notice to councilmembers of a special meeting was sufficient. AGO 1991-334 (NOTE: The Open Meetings Act requires a minimum of 24 hours’ notice to the public of a special called meeting, and no less than 1 hour in emergency circumstances requiring immediate action to avoid physical injury to persons or damage to property; or a meeting solely held to accept the resignation of a public official or employee. Section 36-25-3, Code of Alabama 1975.) Clerks should ensure that they comply with the amount of notice required by the Open Meetings Act and the rules of procedure adopted by the municipal council.

**Alabama Open Meetings Act:** Meetings of all “governmental bodies” are subject to the Alabama Open Meetings Act (OMA) codified in Sections 36-25A-1 through 36-25A-11, Code of Alabama 1975. Clearly, municipal governing bodies themselves must conduct open meetings pursuant to the requirements of the OMA. The Act defines “governmental bodies” to include: (1) all municipal “boards, bodies, and commissions” which “expend or appropriate public funds”; and (2) all municipal “multimember governing bodies of departments, agencies, institutions, and instrumentalities “including, without limitation, all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by” the municipality. Thus, any municipal board or agency that has the power to expend or appropriate municipal funds must conduct open meetings pursuant to the requirements of the Act. Additionally, the Act applies to any instrumentality, including separate corporations, whose membership is composed of at least a majority of members who were appointed by the municipality.

The OMA makes it clear that there must be a quorum present for the law to apply. A quorum is a majority of the whole number of members which the municipality is entitled to have on the council, including the mayor in municipalities under

12,000 in population. Section 11-43-48, Code of Alabama 1975. To be counted towards establishing a quorum, members of a governing body covered by the OMA are required to be physically present. There is no provision for obtaining a quorum by telephone conference. AGO 2006-071. Even if a quorum is physically present, additional members of a governmental body that are not present may not participate or vote in meetings through electronic means. A member of the governmental body may, however, listen to a meeting through electronic means. AGO 2010-070.

The quorum requirement applies to both the governing body itself and all committees of the governing body. The law applies to prearranged gatherings, which includes regular as well as special meetings. Further, any gathering of a quorum of members where deliberations of actions that are expected to come before the body later are subject to the Act. Fortunately, the Act also makes it clear that certain types of get-togethers are not covered. This allows members to attend social events or conventions, or similar activities together, provided that they do not deliberate matters that are expected to come before the body at a later time.

The Open Meetings Act also prohibits serial meetings. Section 36-25A-2(13), Code of Alabama 1975, defines a “serial meeting” as “any series of gatherings of two or more members of a governmental body, at which:

1. Less than a quorum is present at each individual gathering and each individual gathering is attended by at least one member who also attends one or more other gatherings in the series;
2. The total number of members attending two or more of the series of gatherings collectively constitutes a quorum;
3. There is no notice or opportunity to attend provided to the public in accordance with the Alabama Open Meetings Act;
4. The members participating in the gatherings deliberate specific matters that, at the time of the exchange, the participating members expect to come before the subcommittee, committee or full governmental body at a later date;
5. The series of gatherings was held for the purpose of circumventing the provisions of this chapter;
6. At least one of the meetings in the series occurs within (7) calendar days of a vote on any of the matters deliberated.”

**Meeting Notice Requirements:** The municipal clerk is responsible for providing notice of meetings. The OMA requires that notice be given to the public of meetings which are subject to the Act. Notice is provided by posting notice on a public bulletin board at city hall. The Attorney General has ruled that at least 7 days’ notice is required by the OMA for a regularly scheduled meeting of the council or standing committee of the council when a meeting date and time is established by organizational ordinance or resolution. The posting of a municipality’s organizational ordinance or resolution specifically stating the place, date, and time of regular council meetings and standing committee meetings, and a general description of the nature and purpose of those meetings is sufficient to meet the notice requirements of the OMA. This notice should be posted permanently.

For meetings of the council or of a standing committee that do not have regularly scheduled meetings set by ordinance or resolution, as well as special meetings that are called pursuant to Section 11-43-50, Code of Alabama 1975, notice is to be posted as soon as practicable after the meeting is called, but in no event less than 24 hours before the meeting is scheduled to begin. The notice must include the time, date and place of the meeting. If a preliminary agenda is created, the agenda must be posted as soon as practicable in the same location or manner as the notice. AGO 2006-027. If a preliminary agenda is not available, the posted notice shall include a general description of the nature and purpose of the meeting. Please note that the Act specifically provides that the governing body may still discuss at a meeting additional matters not included in the preliminary agenda.

If practicable, the clerk must provide direct notification of a meeting to any member of the public or news media who has registered to receive notification of meetings. The municipality may require the person requesting notice to pay the actual cost of issuing notices, if there is one, in advance. Direct notice to persons who have registered shall, at a minimum, contain the time, date, and place of the meeting. This notice must be given at the same time the general notice is provided. The governing body may promulgate reasonable rules and regulations necessary for the uniform registration and payment for direct notice and for the distribution of the notices. The governmental body has the authority to choose the method of providing direct notice. This may include using electronic mail, telephone, facsimile, the United States Postal Service, or any other method reasonably likely to provide the requested notice.

**Executive Sessions:** The OMA specifically states that executive or closed sessions are not required for any reason. Section 36-25A-7(a). It does, however, permit the body to enter into executive sessions for 9 specified reasons. For more information on the specified reasons to enter into executive session, please refer to the “Open Meetings Act” article in the League’s *Selected Readings for the Municipal Official*.

The OMA spells out the specific procedure for entering into an executive session. **First**, a quorum of the governmental body must first convene a meeting as defined in the Act. **Second**, a majority of the members of the governmental body present must adopt, by recorded vote, a motion calling for the executive session. If the stated reason requires an oral or written declaration to justify the executive session as required by the OMA, the oral or written declaration must be made prior to the vote. **Third**, the vote of each member, as well as the written or oral declaration, shall be recorded in the minutes. **Fourth**, prior to calling the executive session to order the presiding officer shall state whether the governmental body will reconvene after the executive session and if so, the approximate time the body expects to reconvene. See Section 36-25A-7, Code of Alabama 1975 for more details. Minutes are not kept during an executive session and nothing in the law requires that the clerk be in attendance at an executive session.

## Council Minutes

**Importance of Keeping Accurate 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 thereof, certified by the clerk shall be prima facie evidence in any court or elsewhere. Section 11-43-52, Code of Alabama 1975.

The importance of the clerk’s duty to keep the minutes of council proceedings cannot be overemphasized. As the Court said in *Penton v. Brown Crummer Inv. Co.*, cited above.

“Section 1915 (Section 11-43-100, Code of Alabama 1975) requires the city clerk to attend meetings of the council and keep a record of its proceedings. They do not have to be written at the session of the council or during any other time fixed by law. Any errors in such records may be corrected at any subsequent session of the council. It does not lose control of its minutes by the lapse of any definite time, as with the courts . . . *And such record is the only evidence of the acts of the council . . .* And, as said in *Anniston v. Davis*, 13 So. 331 (Ala.1893), ‘So long as the minutes of the meeting ... remain as the minutes of the council, they cannot be impeached or varied in a collateral proceeding by parol testimony.’ And in *McQuillin, Municipal Corporations*, pp. 499, 500, Section 561 (621), it is said: ‘Records imperatively required by law, made by the proper officers, are conclusive of the facts therein stated, not only upon the corporation, but upon all the world as long as they stand as records. Their accuracy can be contradicted or impeached only in proceedings instituted directly for the purpose and to the end that the record may be corrected. So long as they are in existence and can be produced they are the only competent evidence of the acts of the corporation.’” [Emphasis added.]

Going further, the court pointed out:

“If the record does not speak the truth, it should be made to do so, for the council has the right at a subsequent meeting to amend it, and, if the council should fail to do so on proper petition, mandamus will lie to require it.”

If the clerk is absent, the council may appoint some other person—even one of its members—to perform the clerk’s duties at the council meeting(s) from which the regular clerk is absent.

**Work Sessions:** With regard to work sessions, it is important to note that if a quorum is present at a work session, then the work session meets the definition of a meeting under the OMA and therefore minutes of the work session must be kept.

## Form and Content of Minutes

**Generally:** First and foremost, it is essential that the minutes reveal that the council has complied with the jurisdictional requirements for holding a legal meeting. The *Penton* case, noted above, pointed out that while council minutes cannot be collaterally attacked, if when offered in evidence they show on their face that the council failed to meet the requirements of a legal meeting, then such proceedings are void. To avoid this pitfall, clerks should be careful to include the following facts:

- The **date, hour** and **place** of the meeting;
- Whether the meeting is a **regular, adjourned** or **special** meeting;
- That **proper notice** was given to each councilmember in the event it was a special meeting and that proper notice was given to the public, especially in the case of a special meeting;
- The **names** of the members of the council in attendance (a quorum must be present to transact business);
- The **names** of members of the council who are absent;
- The time of late arrivals and early departures;
- Any action taken;
- A record of the work session; and
- Whether the council held an executive session.

The minutes of the council need not, and should not, include verbatim reports of the discussion and comments which take place at the meeting, unless a councilmember specifically requests that his or her remarks be included as presented in detail. It is essential, however, that a sufficient record of council activities is made which furnishes satisfactory evidence about the subject matter on which decisions are made, together with evidence that these decisions were adopted in accordance with the law governing the council in its deliberations on the subject.

**Approval of Minutes:** While no legal requirement mandates council approval of the minutes (unless approval is required by local ordinance), this custom is universally followed. The major objection to the reading and approval of minutes lies in the delay and monotony caused by the reading prior to approval. As pointed out earlier, copies of the minutes of the last meeting could be distributed to each councilmember prior to the meeting at which they are to be approved to eliminate the detailed reading of the minutes.

**Record of Petitions and Communications:** The record of petitions and communications presented to the council should show:

- The date of the document;
- The subject to which it relates or the request contained therein;
- The name of the author or authors if few in number (where the number of signers is very large, then a record of the number of signatures on the petition);
- The action taken by the council with respect to the document; and
- Where the document may be found in the files of the municipality if the council orders it filed.

**Record of Bids Received and Opened:** Where the council receives and opens bids, the record should show:

- An accurate list of the bids filed and opened;
- The subject matter of the bids;
- Compliance with all requirements for the advertising for such bids;
- The amounts bid by each respective bidder; and
- The action taken by the council.

The action of the council on acceptance of a bid must be done by resolution. Section 11-45-2, Code of Alabama 1975.

**Records of Council Reports:** Reports to the council should be shown in the minutes by setting forth:

- The name or title of the reporting officer;
- The date of the report;
- The subject of the report;
- Disposition of the report; and
- If ordered filed, then the minutes might show where the report may be found in the municipal records.

If the report is made orally, the minutes should show:

- Who made the report;
- The subject; and
- The action taken by the council.

It should be remembered that the original written report is the best evidence. The report should not be transcribed into the minutes unless the council orders it done. A copy of the report may be attached to the minutes. The clerk should not endeavor to enter the substance of oral reports—stating the subject and recording the disposition is sufficient.

If the report is so important that a record must be made, then the officer making the report should reduce it to writing instead of relying on the clerk to cover it in the minutes of the council meeting. The danger of having the clerk transcribe an oral report lies in the probability of misquoting the officer.

Clerks should remember that the record of the proceedings should state what was done by the assembly and not what was said. Guiding principles to follow in keeping minutes can be summed up by the words brief, clear and factual.

**Audit Exception:** There is an exception to the rule that written reports need not be spread upon the minutes unless ordered by the council. The annual audit report submitted to the council by the mayor pursuant to the requirements of Section 11-43-85, Code of Alabama 1975 is required by law to be spread upon the minutes. The clerk should explore the possibility of having the auditor submit a verified copy of the audit report on pages which will insert into the minute book. This will relieve the clerk of copying the report and will also provide a verified copy, signed by the auditor, for the minutes.

**Examples of Reports Received by Council:** Depending on the size of the municipality, the governing body must act principally upon reports from persons delegated particular responsibilities. The larger the municipality, the more necessary it is to parcel out definite portions of municipal activities. To a large extent, legislative decisions of the governing body are dependent upon accurate factual reporting of information pertinent to the subject considered.

Some of the many reports received by municipal governing bodies include the following: treasurer's report (required by statute); periodic departmental reports from the police department, street department, fire department, sanitation department, recreation department, engineering department, license inspector, personnel and such others as the municipality might have; council committee reports; and reports of any independent boards established by the council.

Clerks should establish a set of report files to cover each reporting officer or agency. A review of past reports provides valuable information for the council when establishing regulations in a particular field and when adopting annual budgets.

Standardizing written (and oral) reports is highly desirable. Because of familiarity with reporting procedures, clerks are in a good position to recommend standardized forms to those who are required to make reports. Clerks should emphasize the importance of reporting facts and not reasons or rationale.

**Records of Public Hearings:** Occasionally, councils are required by law to hold public hearings before acting on a particular subject. For example, public hearings are required before the adoption of public improvement assessment ordinances, zoning ordinances, improvement assessment rolls, and before the adoption of ordinances published in pamphlet form by reference, among others.

Minutes of a public hearing must show that the meeting was held in compliance with the statute governing the subject, that the notice was given in accordance with the statute, and that the meeting was held at the time and place specified in the notice. The minutes should refer to affidavits, maps, photographs, and other material filed at the hearing, but the clerk should not try to transcribe such material into the record. The record should show who testified orally before the council and in what interest, but it should not contain detailed transcriptions of the testimony. The minutes should carefully record the findings of the council and the action taken by the council on the subject. Upon making specific findings, the League recommends a statement such as "it therefore is in the best interests of the Town/City of \_\_\_\_\_ to (take whatever action is taken).

**Adjournment of the Meeting:** The minutes should show that the council adjourned either sine die or to another specific

time prior to the next regular meeting. If the meeting is adjourned until a particular hour of the same day, it is recommended that the record show the time of adjournment. This record of adjournment evidences the termination of the meeting and signifies that the minutes thereof are all contained in the record.

**Signing the Minutes:** It is customary for the clerk to sign the minutes, in order to validate that the minutes were taken and prepared by the officer imposed with that duty. Although not required it is general practice for the presiding officer of the council to sign the minutes also to show the approval of the council.

**Preparation of Minutes:** No statute requires the minutes of the council to be prepared within a particular time. However, good practice and custom point out the necessity of drafting the minutes while events of the meeting are fresh in the mind of the clerk. A rough draft should be prepared as soon as possible after the meeting. At this point, clerks can appreciate the advantages of arranging materials, prior to the meeting, according to the council agenda and of keeping this material arranged in order of consideration by the council. This procedure allows the clerk to cross-check notes from the meeting. The minutes should, at a minimum, set forth the date, time, place, members present or absent, and action taken at each meeting. Section 36-25A-4, Code of Alabama 1975.

The final draft of the minutes should be prepared far enough in advance of the next regular council meeting to allow any councilmember to review them before the meeting. If the city or town customarily furnishes each councilmember with a copy before the meeting, the clerk should be certain to place this task on the calendar of required action.

As a final note on preparing the minutes, it is good practice to follow standard phraseology. After having determined a wording which will meet jurisdictional requirements, it is best to use it for the record in all meetings where similar items are on the agenda. While this might prove monotonous, it saves time and ensures against omission of what might prove to be an important detail.

**Indexing the Minutes:** There are no statutory requirements for indexing the council minutes. Some municipalities have ordinances which require indexing while other cities and towns have established this practice by custom. While not a part of the minutes, an index is invaluable in saving time. For example, when the annual audit is made, the auditor must refer to the council minutes to verify various expenditures. Indexing can reduce the time spent by the auditor in those searches, thereby reducing the cost of the audit for the municipality. An index also saves time at council meetings when a councilmember asks to review previous actions on particular subjects.

**Publication of the Minutes:** Alabama municipalities are not required to publish the journal of their proceedings. The minutes are a public record which all citizens have a right to inspect at reasonable times. Clerks are required to furnish certified transcripts of the minutes upon request. Municipalities are entitled to a fee for this service equal to the fee charged for like service by county officers.

## **Ordinances and Resolutions**

**Generally:** Municipal governing bodies rely on clerks for guidance when adopting ordinances and resolutions. Whether an ordinance or resolution is adopted according to statutory requirements very often depends upon the municipal clerk. Therefore, clerks must be thoroughly familiar with the entire procedure whether specifically required by statute or not. While it is recommended that all ordinances and resolutions adopted by the governing body be drafted, or at least checked, by the municipal attorney, at times the clerk may be called upon to draft these instruments. In such instances, a clerk must be familiar with ordinance and resolution construction in addition to knowing the legal requirements pertaining to amendment, passage, approval, publication and recording.

Volumes have been written on this subject. Therefore, only the procedures required by Alabama statutes and certain interpretations made by courts will be covered in this manual. For more detailed information on ordinances, please consult the "Municipal Ordinances" article in the *Selected Readings for the Municipal Official*.

**Ordinances of a General or Permanent Nature:** Section 11-45-2, Code of Alabama 1975, states that no ordinance or resolution of a permanent nature shall be adopted at the first meeting at which it is introduced, unless unanimous consent of those present is given for the immediate consideration of such ordinance or resolution. Section 11-45-8, Code of Alabama

1975, provides that “all ordinances of a general or permanent nature except as otherwise provided shall be published ...” Section 11-45-3, Code of Alabama 1975, provides, “In cities having a population of 12,000 or more, all resolutions or ordinances intended to be of a permanent operation, after having been passed by the council, shall be transmitted by the clerk, within 48 hours after their passage, to the mayor or acting mayor for his or her consideration ...” These terms – a permanent nature, a general or permanent nature, and permanent operation – should be construed as synonymous. AGO to Hon. Charles E. McConnell, February 6, 1957.

In construing these words and phrases to mean the same thing, the Attorney General pointed out that these terms apply to ordinances and resolutions which constitute legislative acts of the council, as distinguished from acts of a temporary nature which dispose of a particular item of administrative business of the municipality. If an ordinance or a resolution is continuing in nature, and general in its application, then it is of “permanent operation” even though an expiration date has been inserted into the ordinance or the resolution by the council. AGO to Hon. Charles B. McConnell, February 6, 1957.

**Ordinances v. Resolutions:** Generally, ordinances are used to adopt legislative acts of the council, while resolutions are used to exercise the ministerial functions of the governing body. Nevertheless, the name given the enactment does not determine the formality with which it must be treated. Whether the action of the council is executed in the form of an ordinance or a resolution, if it involves the exercise of legislative power, as distinguished from ministerial functions, the required statutory formality must be observed. This is pointed out because of the wording in Section 11-45-2, cited above, which states “and no ordinance or resolution intended to be of a permanent operation ...”

In an opinion to Hon. C. W. Dismukes, dated January 31, 1961, the Attorney General ruled that the council’s action in the appointment and discharge of employees is not of a permanent nature or permanent operation, but is an action of a ministerial nature. In the case of *Newberry v. Andalusia*, 57 So.2d 629 (Ala. 1952), the Supreme Court of Alabama held that a resolution authorizing the issuance of revenue bonds under the Wallace Act (Section 11-54-20, et seq., Code of Alabama 1975) was adopted in the performance of a ministerial function of the municipality and that publication of such a resolution is not required by Section 11-45-8, Code of Alabama 1975.

As a rule of thumb, if the legislature, in authorizing a municipality to perform a particular act, prescribed that it be done by ordinance, then the municipality should treat it as an ordinance of a permanent nature, which is a legislative act. If the legislature prescribes that the particular function be performed by resolution, without setting out any other requirements such as publication and adoption, then the municipality should treat it as a ministerial function. If an enabling statute prescribes definite procedures for the performance of the function authorized, the municipality should treat it as jurisdictional and carefully follow the prescribed actions. Examples of statutes of this type are found in Sections 11-48-2 through 11-48-65, relating to public improvements, and in Sections 11-52-70 through 11-52-85, relating to zoning.

**Style of Ordinances:** The only specification in Alabama statutes about the style of municipal ordinances states that the text shall begin: “Be it ordained by the City [Town] Council of \_\_\_\_\_, as follows:” Section 11-45-2, Code of Alabama 1975. This requirement has been held to be directory rather than mandatory. *See, Glenn v. Prattville*, 71 So. 75 (Ala. 1916).

**Numbering of Ordinances:** It is suggested that each municipality assign a numerical sequence to its ordinances and that each ordinance be given a short title which states concisely the subject covered by it. By assigning a number and short title, the ordinance can be recorded in the council minutes by number and title rather than by copying the whole ordinance into the minutes. As will be noted later, clerks are required to keep all ordinances adopted by the council in a well-bound book dedicated especially for that purpose.

**Adoption of Ordinances or Resolutions of a Permanent Nature:** No ordinance or resolution of a permanent nature shall be adopted at the first meeting at which it is introduced, unless unanimous consent of those present is given for the immediate consideration of such ordinance or resolution, such consent to be shown by a vote taken by yeas and nays, and the names of the members voting to be entered upon the minutes. The vote for unanimous consent is separate from the vote on final passage of the ordinance. To have unanimous consent, all members present, assuming there is a quorum, must affirmatively vote to take up the ordinance. If a member abstains then there is no unanimous consent.

No ordinance or resolution intended to be of a permanent operation shall become a law unless on its final passage a majority of the members elected to said council shall vote in favor. Section 11-45-2, Code of Alabama 1975. It must be remembered

that in municipalities of less than 12,000 inhabitants, the mayor is a voting member of the council.

Alabama courts have been strict in requiring that the minutes reveal unanimous consent for passage of an ordinance at the first meeting at which it is introduced; the yea and nay votes must be shown. *See, Thompson v. Wingard*, 34 So.2d 606 (Ala.1948); *Cooper v. Valley Head*, 101 So. 874 (Ala.1924). Unanimous consent requires that the record show that the mayor (if present) of a municipality under 12,000 voted yea, since the mayor is considered a member of the council. Also, in cities of 12,000 and over, the council president's yea vote must be shown if he or she was present at the meeting. In keeping with the above decisions, the minutes should show:

- That the ordinance or resolution (of permanent nature) was introduced by Councilmember \_\_\_\_\_ and read at length. (**NOTE:** The ordinance may be referred to by number and title without setting it out at length in the minutes.)
- That Councilmember \_\_\_\_\_ moved that all rules governing the council which might, unless suspended, prevent the passage and adoption of the ordinance (or resolution) at this meeting, be and the same are hereby suspended for the purpose of permitting the said ordinance to be presented for immediate consideration at this meeting.
- That Councilmember \_\_\_\_\_ seconded this motion.
- That the question was put before the council and on roll call the vote was as follows:  
    Yea \_\_\_\_\_ (list)  
    Nay \_\_\_\_\_ (list)
- [If vote is unanimous] That the presiding officer declare the motion adopted by unanimous vote of the members present.
- That Councilmember \_\_\_\_\_ moved that the said ordinance (or resolution), giving number and title as introduced, be finally passed and adopted as introduced.
- That Councilmember \_\_\_\_\_ seconded this motion.
- That the presiding officer put the question of final passage and the adoption of said ordinance (or resolution) to vote of the council, and on call of the roll the results were as follows:  
    Yea \_\_\_\_\_ (list)  
    Nay \_\_\_\_\_ (list)
- That the presiding officer announced the result of the vote, and declared the ordinance finally passed and adopted, or that it failed to pass. Note: Refer to Section 11-45-2, Code of Alabama 1975, for the required vote on final passage.

**Award of Contracts on Bids:** Alabama cities and towns are required to use competitive bid procedures, set out in Sections 41-16-50 through 41-16-63, Code of Alabama 1975, for the purchase of goods and services and for leases involving the expenditure of \$15,000 or more. Municipalities must also comply with the public works bid law, set out in Chapters 1 and 2 of Title 39 of the Code of Alabama 1975, for public works projects which will cost more than \$50,000. The law also allows certain types of contracts to be exempt from bidding. Those exceptions are too numerous for inclusion in this handbook. More information is available in the "Competitive Bid Law" and "Public Works Bid Law" articles in the *Selected Readings for the Municipal Official*.

Contracts and purchases of less than the bid amounts mentioned above may be let either by bid or on a negotiated basis. Where such contracts are made by bids, care should be taken to make the award of contracts by resolution. *See*, Sections 11-47-6 and 11-45-2, Code of Alabama 1975.

Such a resolution should state in its preamble that:

- The council had determined to let the contract to the lowest responsible bidder;
- Special specifications were determined and placed on file with the clerk;
- The invitation for bids was advertised with the date set forth in the bids;
- Bids were opened on the date and time advertised and were as follows: [List bids showing amounts.]
- The bids were transmitted to the council at the next meeting of the council following the bid openings.

The resolution should declare which of the bidders was the lowest responsible bidder, that the contract will be awarded to such bidder, and that the mayor is authorized to sign the contract in the name of the municipality, with the clerk's attestation to the mayor's signature.

## Signature on Ordinances and Resolutions:

**Upon Passage by Council:** There is no statutory direction governing the signing of ordinances or resolutions after passage by the council. It is customary in all cities and towns, regardless of size, for the presiding officer of the council to sign all ordinances and resolutions, with the clerk attesting that signature. These signatures evidence the adoption of the measure by the council, and the clerk's authentication of the ordinance or resolution is required.

**Cities of 12,000 or More:** In cities of 12,000 or more, the clerk is required to transmit all ordinances and resolutions intended to be of a permanent operation to the mayor for consideration and approval. This must be done within 48 hours after the council passes the measure. The clerk should sign a certificate under the signature of the presiding officer of the council showing the time when the ordinance or resolution was transmitted to the mayor. Under this certificate, the clerk should prepare a blank space for the mayor to sign or indicate his approval or disapproval, and to show the time of the mayor's signature.

If the mayor signs approval, then the measure is finally adopted and no further action is required except for the clerk to record, authenticate and publish as stipulated by Section 11-45-8, Code of Alabama 1975.

If within 10 days after the council passes an ordinance or resolution intended to be of a permanent nature, the mayor disapproves the measure and returns it to the clerk, the clerk must report this action to the council at its next regular meeting. The clerk should sign a certificate on the ordinance or resolution showing that this report was made. The council may pass the ordinance or resolution (intended to be of permanent operation) over the mayor's veto by 2/3 vote of the members elected to the council. The vote of the council must be by yeas and nays which must be spread upon the minutes of the council. While there is no statutory requirement, it is good practice for the clerk to append a certificate to the ordinance showing that it was passed by 2/3 vote of the council, the mayor's veto notwithstanding. The names of the councilmembers and how they voted are generally included in such a certificate, together with the page in the minutes where the action may be found. *See*, Sections 11-45-3 and 11-45-4, Code of Alabama 1975.

If the mayor fails or refuses to act on an ordinance or resolution of permanent operation within 10 days after its first passage by the council, then the measure is treated as approved. The clerk is required to record, authenticate and publish as provided in Section 11-45-8, Code of Alabama 1975.

Section 11-45-5, Code of Alabama 1975, states that ordinances and resolutions fixing the salaries of officers and employees in cities of 12,000 or more are to be submitted to the mayor in the same manner as ordinances and resolutions of a permanent nature. The clerk should append the same certificates to these ordinances and resolutions as are attached to other ordinances and resolutions of a permanent nature. The mayor may approve such measures in part and disapprove in part. The manner for handling an ordinance or resolution of this type is specifically set out in Section 11-45-5 and should be followed as a mandatory direction. (**NOTE:** 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 the 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.)

**Voting Requirements:** The voting requirements for the passage of ordinances and resolutions of a general and permanent nature are set out above. *See*, Section 11-45-2, Code of Alabama 1975. Other voting requirements include the following:

- To pass an ordinance over the mayor's veto in cities of 12,000 or more requires a vote of 2/3 of the members elected to the council. Section 11-45-4, Code of Alabama 1975. (**NOTE:** 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.)

- Election of officers must be made by roll call voice vote of the council and requires the concurrence of a majority of the whole number of elected members to the council. Section 11-43-45, Code of Alabama 1975.
- Removal of officers requires a 2/3 vote of those elected to council, including the mayor in municipalities having a population of less than 12,000 inhabitants. *See*, Section 11-43-160, Code of Alabama 1975.
- Action sustaining the mayor's removal of an officer or employee appointed by the council requires a majority of members elected to the council. Section 11-43-81, Code of Alabama 1975.
- Changing the size of the council requires 2/3 vote of the council in cities of 12,000 or more, at least 6 months prior to a general municipal election. Sections 11-43-40 and 11-43-42, Code of Alabama 1975.
- Combining the duties of 2 offices requires the concurrence of 2/3 of the members elected to council in cities of 6,000 or more. *See*, Section 11-43-3, Code of Alabama 1975.

Unless the required vote is otherwise specified, the affirmative vote of a majority of the members voting on a measure, provided a quorum is present, is sufficient to adopt a measure by the council.

**Publication and Recording of Ordinances:** Clerks should be thoroughly familiar with Section 11-45-8, Code of Alabama 1975, relating to the publication and recording of ordinances. This section states that all ordinances, as soon as practicable after passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the clerk.

Publication is required for ordinances of a general or permanent nature. Ordinances in municipalities of less than 2,000 in population according to the 1950 census may be published by posting in 3 public places in the municipality, one of which shall be the post office or the mayor's office. Section 11-45-8(b), Code of Alabama 1975. In municipalities of 2,000 and above in population, publication must be by newspaper if a newspaper is published in the municipality. If no newspaper is published in the municipality, then publication may be by posting in 3 public places, as described above, or by publication in a newspaper which has general circulation in the municipality. A newspaper is published where it is entered into the post office and where it is first put into circulation. AGO 1995-127.

Proof of publication in a newspaper is discussed in Section 12-21-68, Code of Alabama 1975, which states as follows: "The publication of any notice in a newspaper, when required by law or by order of court, may be proved by the production of a copy of the notice, with the affidavit of the printer, publisher, clerk, or superintendent of the newspaper, specifying the respective numbers and dates of the newspaper in which publication was made; and such affidavit shall be evidence." Proof of publication of a legal notice as required by Section 12-21-68 of the Code of Alabama, 1975, may be provided by electronic means. AGO 2020-052.

**Effective Date of Ordinances:** The clerk is required to append a certificate to the record of the ordinance showing the manner in which it was published. An ordinance published in a newspaper becomes effective immediately upon the first publication; only one insertion is required. Ordinances published by posting become effective 5 days after the date of posting. When an ordinance is published by posting, the municipality shall take reasonable steps to maintain the posting for not less than 30 days. In addition, if the municipality maintains an Internet website, the municipality, at a minimum, shall include a copy of the ordinance or notice of the substance of an ordinance on its website for 30 days. Section 11-45-8(b)(3), Code of Alabama 1975.

Sections 11-52-76 and 11-52-77, Code of Alabama 1975, as amended, address the publication of zoning ordinances.

Special provision is made in Section 11-45-8 for the publication of certain ordinances published in code or pamphlet form by reference.

A duty often overlooked by municipal clerks is that of proofreading the printer's galley proof of the ordinance before it is published. Correcting errors made in setting the type for publication will ensure that the ordinance is printed as it was adopted.

**Amending Ordinances:** It is a general rule that an ordinance may be amended only by an ordinance adopted with equal

dignity and formality. Section 11-45-6, Code of Alabama 1975, specifically provides that ordinances may not be amended by striking, adding, or inserting words. To amend an ordinance section or subsection, the proposed amendment must be written out in full to read as it would be codified if adopted.

**Codification of Ordinances:** Statutory authority for the codification of municipal ordinances is provided in Section 11-45-7, Code of Alabama 1975. A municipal governing body should consult with the municipal attorney before undertaking such codification. Codification calls for close cooperation between the municipal clerk and the person or firm employed for the job. The clerk's familiarity with the minutes of the governing body and with the records of the municipality generally proves to be an invaluable timesaver in the codification process.

Ordinances, resolutions and bylaws purporting to be published by authority of the council or other governing body, in book or pamphlet form, and any written or printed book, code or revision of the bylaws, resolutions or ordinances of any municipality purporting on its face to be written or printed by authority or to be a code of ordinances, resolutions or bylaws of such municipality, or certified on such book or pamphlet under the hand of the clerk or recording officer of such municipality as being an official publication of ordinances, resolutions or bylaws, shall be prima facie evidence of the due adoption, publication and continued existence of the bylaws, resolutions or ordinances therein written or printed or certified as correct, in any of the courts or in any legal proceeding in this state without further proof. Section 12-21-95, Code of Alabama 1975.

**Custody of Ordinances and Resolutions:** Municipal clerks are charged with the duty of keeping safe the rules, ordinances and resolutions of the council. Section 11-43-100, Code of Alabama 1975. These are permanent records of the municipality. The council should provide the clerk with proper and adequate space for protection of the records.

**Access to Public:** The records of the ordinances and resolutions adopted by the municipal governing body are public records. They should be accessible to the public at all reasonable times upon request. Section 36-12-40, Code of Alabama 1975. Clerks should never allow permanent records of ordinances, resolutions or minutes of the council to be taken out of the office where they are stored. Transcripts of such records prepared by the clerk must be received in evidence in all courts. Section 12-21-35, Code of Alabama 1975.

**Proof of Official Documents of Municipality:** Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing. Section 36-12-41, Code of Alabama 1975. As an additional or alternative mode of proof of documents in court proceedings, acts of a municipal corporation, or of any board or department thereof, may be proved by a copy, certified by the legal keeper thereof, or by a printed book published by authority of the municipal corporation. Section 12-21-73, Code of Alabama 1975. For a detailed discussion on public records, please see the "Public Records" article in the *Selected Readings for the Municipal Official*.

**Indexing:** Unless provided by local ordinance, no legal requirements govern the indexing of municipal ordinances and resolutions. If a municipality has codified its ordinances, the outline of the index is usually established, and the municipal clerk carries it forward as additional ordinances are adopted. If a municipality does not have a code, it is important that some sort of ordinance index is created to simplify searches when reference is necessary. A clerk could prepare a chronological list of ordinances in effect and then prepare a topical index from that list.

## The Municipal Corporate Seal

Incorporated cities and towns are bodies politic and corporate, using a common seal, which may at any time be changed. Section 11-40-1, Code of Alabama 1975. The municipal clerk shall have custody of the city or town seal. Section 11-43-100, Code of Alabama 1975. Few Alabama statutes make reference as to when the seal is required to be used. However, it is a generally accepted practice for the seal to be used whenever the clerk signs, certifies or authenticates any official act of the municipality.

## Fiscal Duties of the Clerk

**Generally:** Keeping the financial records of the municipality is one of the principal duties of a municipal clerk. The clerk must keep records of all revenues collected by the municipality, records of appropriations made to each municipal

department, and records of charges for warrants drawn against each department. A clerk must also keep any other accounts which are necessary to show the financial condition of the municipality and each municipal department. The clerk shall not allow any warrant to be drawn unless sufficient funds actually be in the treasury to the credit of the fund upon which such warrant is drawn unless specifically authorized by an ordinance. Section 11-43-102, Code of Alabama 1975.

In most Alabama cities and towns, the offices of clerk and treasurer have been combined by ordinance so that the clerk performs the duties of both offices. Actually, the duties prescribed for the treasurer include primarily the safe custody of municipal funds. The council shall provide bylaws that all moneys due the municipality or any department thereof shall be paid directly to the treasurer and no moneys shall be collected by departments or officials therein as a part of the duties of the department, except as provided in Title 11, Code of Alabama. Section 11-43-123, Code of Alabama 1975. Where there is a separate treasurer, all funds received by authorized officers of the municipality must be turned over to the treasurer, who then approves the disbursement of such funds by warrants (payment orders) drawn by the clerk. Treasurers are also required to keep accurate records of the funds of the several departments and to keep books showing accurately the financial condition of the municipality. The treasurer shall make report once a month or oftener [sic] if required by the council of the financial condition of the account of each department authorized to draw on the treasurer and shall make a quarterly statement, under oath, of the financial condition of the city or town to the council. Section 11-43-120, Code of Alabama 1975. By combining the offices of clerk and treasurer, a municipality can eliminate duplication of work.

The term of office for the city clerk-treasurer is 4 years. Because the term of office of a municipal officer ends by operation of law, it is necessary for these municipal officers to be “reappointed” at each organizational meeting of a new council or as soon as practicable thereafter. The council, with the consent of the mayor and a 2/3 vote of the majority, may divide the offices of clerk and treasurer as provided for in Section 11-43-3 of the Code. Any such action should be done at the beginning of a new council to assure that the term of office for an officer is not diminished. AGO 2013-020.

**Handling Claims and Demands:** A clerk must submit all claims, requisitions and demands against the municipality to the council at its next regular meeting for approval, unless the council previously adopted an ordinance or resolution providing for the creation and payment of the same. After the council approves the claim or demand, the clerk checks it again, certifies its correctness by initialing the claim, issues a warrant (payment order) against the treasury for payment, and enters the charge on the books of account against the municipal department which is chargeable. In general practice where the clerk is also the treasurer, the clerk makes the double entry of crediting the depository and charging the expense to the proper department. Claims (usually in the form of invoices) should be filed in special indexed files for each reference for the auditor at the end of the fiscal period.

**Depository:** If the offices of clerk and treasurer are combined, the clerk should see that the council adopts an ordinance or resolution specifying where municipal funds will be deposited. Where such an ordinance or resolution has been adopted, neither the clerk-treasurer nor his or her bondsman, if the clerk-treasurer has exercised due care, is liable for any loss occasioned by failure of such depository. Section 11-43-122, Code of Alabama 1975.

**Issuance and Payment of Warrants (Payment Orders):** A question often arises about who is required to sign checks drawn against the municipal depository. Warrants, payment orders or checks are drawn by the clerk. Section 11-43-101, Code of Alabama 1975. This action requires the clerk’s signature. In cities under 6,000 and in towns, the treasurer may not approve the check unless the check is approved by the signature of the mayor or some person the council has designated with this authority. Section 11-43-102, Code of Alabama 1975. Thus, in cities under 6,000 and in towns, where there is a treasurer, checks must be signed by the clerk, the mayor (or person designated by the council) and the treasurer. Usually, the signature of the mayor acts as a countersignature at one end of the check.

In cities under 6,000 and in towns, where the office of clerk has been combined with that of treasurer, the signature of the clerk-treasurer (one signature) and the countersignature of the mayor (or person designated by the council) are sufficient.

In cities of 6,000 or more, the countersignature of the mayor is not required provided the mayor has inscribed approval upon the voucher (invoice) for which the check has been drawn. Thus, in such cities, a check must be signed by the clerk who drew it and by the treasurer, showing his or her approval. A regular procedure should be established to handle check signatures. If the mayor intends to countersign all checks, then that countersignature should be registered at the bank along with that of the clerk and the treasurer. If the offices of clerk and treasurer have been combined, only one signature, that of the clerk-treasurer, is required on a check unless the mayor’s countersignature is also required.

**Fiscal Year:** No statutory period is prescribed for the fiscal year of cities and towns in Alabama.

**The Annual Audit:** At least once each year, the mayor is required to appoint an independent public accountant or the Department of Examiners of Public Accounts to make a detailed examination of all books and accounts of the municipality, to cover the period since the preceding examination, and to make a full report thereof in writing, under oath, which shall be submitted to the council at its first meeting after completion. The audit is required to be spread upon the minutes of the council. Section 11-43-85, Code of Alabama 1975.

Clerks can save municipalities considerable expense with the audit by keeping records in a manner that allows auditors to verify records with minimal effort. It is a good practice for an auditor to be appointed early in the fiscal year so the records can be audited periodically during the year. Periodic audits expedite the final report at the end of the fiscal year. Also, if an auditor is appointed early in the fiscal year, certain procedures may be recommended which will streamline the auditing procedure for the remainder of the year.

**Reports to the Mayor and Council:** The mayor and the council may direct any officer of the municipality to make reports at any time. Every 6 months, mayors are required to make a written statement to the council showing the financial condition of the municipality. Section 11-43-84, Code of Alabama 1975. In particular, the mayor's report must show all temporary indebtedness and for what purposes it was created. This report is generally prepared by the clerk and approved by the mayor for submission to the council.

Additionally, treasurers in cities of 6,000 or more are required to make a monthly report to the council showing the financial condition of each department plus a quarterly report, under oath, showing the financial condition of the treasury. In cities where the clerk also performs the duties of the treasurer, the clerk is required to make these reports. Section 11-43-120, Code of Alabama 1975.

Most cities and towns now adopt budgets which show projected revenues and expenses for each fiscal year. When budgets are adopted, clerks customarily make monthly reports to the council showing the actual revenues and disbursements for that month and to that date during the year and comparing those figures against the budgeted revenues and expenditures for the year. This procedure informs the council about the fiscal status of the various departments, about the status of revenue collections, and about the availability of funds over and above operating expenses.

**The Municipal Budget:** In all cities, councils must appropriate the sums necessary for the expenditures of the several city departments and for the interest on its bonded and other indebtedness, not exceeding in the aggregate within 10 percent of its estimated receipts. Such cities shall not appropriate in the aggregate an amount in excess of its annual legally authorized revenue. But nothing shall prevent such cities from anticipating their revenues for the year for which such appropriation is made, or from contracting temporary loans, or from bonding or refunding outstanding indebtedness, or from appropriating anticipated revenue. Section 11-43-57, Code of Alabama 1975.

Municipalities which budget revenues and expenses in detail prior to the beginning of the fiscal year invariably operate more efficiently and get more for their money than municipalities which refuse to operate on a budget. Where budgets are adopted, clerks play a major part in providing information and materials necessary for its compilation. Accurate records of various revenues and expenses for prior years are basic to the preparation of a reliable budget for the next fiscal year. Usually councils appoint a budget committee to work with the mayor in preparing a budget. This work should be initiated several months before the beginning of the period to be budgeted. The clerk is usually called upon to do a major part of the work.

**Municipal Purchasing:** No provision in the law directs clerks to be purchasing officers for municipalities, but it is general practice for councils to place this responsibility on clerks. Clerks should be thoroughly familiar with the competitive bid law and public works bid law procedures for municipalities in Alabama. For a detailed discussion of the bid law see the *Selected Readings for the Municipal Official*.

A purchasing officer can save on purchases by keeping a file of suppliers of materials used by the municipality. The purchasing officer is then able to invite quotations of prices from those suppliers. The purchasing officer is required to send invitations to suppliers who request notice of purchases over \$15,000 (\$50,000 for public works) that are not exempt from the competitive bid law. Section 41-16-54, Code of Alabama 1975. Sample specifications are available from the State Purchasing Officer. Purchasing officers should remember that purchases may not be made from any officer or employee of a municipality, except

under limited conditions, in cities and towns with a population less than 12,000 as determined by the 1970 federal decennial census. Sections 11-43-12 through 11-43-12.1, Code of Alabama 1975.

**Tax Exemptions:** Cities and towns are exempt from paying state sales tax and federal excise taxes. Section 40-23-4(a)(II), Code of Alabama 1975. A clerk should ensure that these exemptions are secured for the municipality when statements for purchases are received and approved for payment. Cities and towns are not exempt from the lodgings tax when paying for the accommodations of their agents or employees. AGO 1987-077. They are also not exempt from payment of the state 2-cents inspection fee on gasoline, but they are exempt from most other state gasoline taxes. In addition, municipalities are required to pay the 9-cent federal excise tax on gasoline, although they are permitted to apply for a refund. Tax-exempt entities, including municipalities must apply for a *Fuel Tax Exemption License* to purchase gasoline or diesel fuel tax-free, beginning Oct. 1, 2012. Failure to apply for and receive a *Fuel Tax Exemption License* will result in the exempt entity being charged Alabama fuel tax. Act 2011-565.

**Insurance:** As custodian of municipal records, a clerk is required to safely keep insurance policies covering municipal property. The council generally relies on the clerk for information on the expiration dates for such policies. The clerk should include such dates in a “reminder file.”

All cities and towns are authorized to contract for group life, health, accident and hospitalization insurance covering officers and employees and to contract for and maintain individual annuity contracts, retirement income policies or group annuity contracts to provide a retirement plan. Section 11-91-1, Code of Alabama 1975. This provision authorizes municipalities to pay part or all of the premiums on such policies. AGO 1996-180. The administration of such insurance coverage involves withholding portions of employees’ wages and salaries and the payment of the municipality’s share of the premiums. This responsibility falls upon the clerk. Furthermore, employees of a municipality generally rely upon the clerk to keep them informed of the benefits to which they are entitled and to assist them in the presentation of claims against the policies. The compensation of employees should be fixed by ordinance where not fixed by state law. Section 11-43-7, Code of Alabama 1975.

**Social Security:** Municipalities whose employees and officers are not covered by a recognized retirement program are subject to the federal Social Security program. Clerks are responsible for handling Social Security withholdings and reports and for the punctual remittance of payments covering municipal employees. Quarterly reports on IRS Form 941 are made directly to the Internal Revenue Service at the address listed on the report form.

**Tax Withholdings:** Keeping the fiscal accounts of a municipality involves maintaining payroll records and withholding state and federal income tax deductions. Clerks should maintain a separate payroll account for each employee to be kept current with each wage or salary payment, showing the amount of withholding for Social Security, state income tax, federal income tax, group insurance (life, accident, health and/or hospital), and any other program established by the municipality involving withholding from employees’ wages and salaries.

**Non-Employee Compensation Reporting Requirements:** A 1099-MISC must be filed for non-employees who are unincorporated and are paid \$600 or more in any one year. These payments include fees, commissions, prizes and awards for services performed or for other forms of compensation for services performed for a municipality by an individual or unincorporated business. This 1099 form must be given to the individual or company performing the service by January 31 and filed with the Internal Revenue Service by the last day of February each year. Substantial penalties can be imposed for failure to file this form on a timely basis.

**Garnishment:** Money due officials or employees of a city, county or state government, or any department or institution thereof, as salary for services performed for or on behalf of the city, county, or state, or any department or institution thereof may be garnished. Section 6-6-481, Code of Alabama 1975. Every clerk at one time or another experiences the service of a writ of garnishment in connection with funds which are due or will be due an employee as salary for services performed for the municipality. For self-protection, clerks should adhere strictly to the order of the court issuing the writ and withhold the salary and wage payments as ordered by the court. Failure to do so might involve the clerk in liability for the claim. **Further, information relating to an employee’s garnishment of wages is not public information and must be protected from public disclosure.**

**Handling of Cash and Special Funds:** Good business practice calls for daily reconciliation of cash receipts against receipts

issued and for daily deposit of receipts in the municipal depository. Except for only the very smallest purchases, checks should always be used to make purchases. A very small petty cash account may be maintained for such items as freight delivery charges and postage but use of this account should be kept to a minimum.

Unless special provision is made for the deposit of revenue receipts in separate depository accounts, all general fund revenues may be deposited in one account. Collections made on public improvement assessment accounts must be deposited in separate bank accounts if they are pledged to the payment of municipal indebtedness—that is, the receipts from each project which are pledged to the payment of municipal indebtedness must be kept in a special account. Pledged public improvement assessment funds may not be used for purposes other than those specified in the ordinance setting up the project. A clerk, if custodian of the funds, is liable if such funds are not kept separate or if the funds are diverted to uses other than for the payment of the indebtedness to which they are pledged. Section 11-81-115, Code of Alabama 1975. Municipal clerks are usually appointed as the official charged with the collection of such assessments.

## **Licenses Issued by the Clerk**

Clerks are specifically required to issue all licenses unless otherwise provided by ordinance, and to receive all payments therefor, and to pay the same over immediately to the treasurer. The authority of Alabama cities and towns to levy privilege license taxes for any business, trade or profession entered into within the corporate limits or police jurisdictions governed under the provisions of the Municipal Business License Reform Act of 2006. Municipal clerks must be familiar with the provisions of this Act which is codified in Articles 2 through 5 of Chapter 51 of Title 11 of the Code of Alabama 1975. The League is always available to help clerks who have questions about the levy and collection of license fees. For detailed information on the collection and enforcement of business licenses, please see the articles on this subject in the *Selected Readings for the Municipal Official*.

Three principal methods can be used to enforce the payment of licenses. The most commonly used method is to arrest the person doing business without a license and have him or her appear before the municipal court to answer the criminal charge. The second method, which is rarely used, is to have the municipal attorney file a civil action against such person for money owed on unpaid licenses. The third method is to have the municipal attorney bring a bill or petition in equity court for the recovery of the licenses due the municipality and seek the injunction of the business pending the payment of past due licenses. *See*, Section 11-51-93 and Sections 11-51-50 through 11-51-161, Code of Alabama 1975. Preliminary assessments for business licenses due may generally be entered up to 4 years from the due date or from the date the license form is filed, except it may be entered at any time if no license form was filed or if there is fraud involved. A preliminary assessment may be entered for up to 6 years if the taxpayer underreported more than 25 percent of its revenue and for up to 5 years if an extension was not timely filed. Section 11-51-191, Code of Alabama 1975.

It is essential for a clerk to keep license records in a manner that allows accurate testimony to be given if required by a court action to collect any particular license claimed to be unpaid. For statistical purposes and to help collect licenses in future years, most clerks keep an up-to-date list, by license classification, of licensed businesses in the municipality. A municipality is required to notify existing licensees on or before December 31<sup>st</sup> of the current license year of their need to renew their license. The Business License Reform Act of 2006 requires all municipalities to collect their business licenses on a calendar year.

## **Collection of other Permits and Fees**

Collection of license fees is the only statutorily required activity of this type specifically placed on clerks. In general practice, however, clerks are charged with the responsibility of issuing all permits and collecting all fees due the municipality. Permits and fees generally issued and collected by the clerk may include, among others, building permits, sewer tap-on fees, public address system permits, garbage collection fees, and recreational facility fees. In larger municipalities, the collection of fees for building permits and municipal court fines and costs may be handled through specially appointed officers who remit such collections to the clerk or treasurer. But in medium-sized cities and towns these collections usually rest with the clerk. Often the issuance of licenses and permits by the clerk is conditioned upon the prior approval of some other officer of the municipality, such as the police chief, street maintenance superintendent, building inspector, fire chief or the examiner for plumbers and electricians.

## Receiving State-Shared Revenues

Municipalities are entitled to a share of certain revenues collected in the state. The following is a list of some of the revenues received by municipalities pursuant to state law:

- Wet municipalities receive a share of State ABC store profits. *See*, Section 28-3-74, Code of Alabama 1975. (Note: Distributions have been low or nonexistent in the last several years.)
- All municipalities receive a share of the state 7-cents per gallon gasoline tax. 40-17-359, Code of Alabama 1975. This tax must be kept in a separate account and can only be used for transportation planning, construction, reconstruction, maintenance, widening, alteration and improvement of public roads, bridges, streets and other public ways.
- All municipalities receive a share of the state motor vehicle license tag tax. *See*, Section 40-12-270, Code of Alabama 1975. This revenue can only be used for construction, improvement, and maintenance of public highways or public streets, including administrative expenses in connection therewith and retirement of securities evidencing obligations incurred for payment of costs of such construction, improvement and maintenance.
- Municipalities with financial institutions located therein receive a share of the state financial institutions excise tax. Section 40-16-6, Code of Alabama 1975.
- Municipalities with oil or gas wells located therein receive a share of the state privilege tax on oil or gas production. *See*, Section 40-20-8, Code of Alabama 1975.
- Municipalities located in TVA-served areas and dry municipalities in areas not served by TVA receive a share of the payments made by TVA to the state in lieu of taxes. Sections 40-28-1 through 40-28-4, Code of Alabama 1975, as amended.
- Municipalities in which coal or lignite is severed receive a share of the state coal severance tax. Sections 40-13-30 through 40-13-36, Code of Alabama 1975.
- All municipalities receive a share of the state 4-cent per gallon tax and the 6-cent diesel fuel excise tax. Sections 40-17-359 and 40-17-362, Code of Alabama 1975. This tax must be used for resurfacing, restoration, and rehabilitation of roads, bridges, and streets within the municipality. The use may also be for bridge replacement within the municipality. From time to time, the funds may also be used to construct new roads and streets within the municipality. These funds must be kept in a special fund.
- All municipalities receive a share of the state 5-cent per gallon gasoline tax which may be commingled with the 4-cent per gallon gasoline account and used for the same purposes. Sections 40-17-325; 40-17-359 and 40-17-362, Code of Alabama 1975.
- Municipalities also receive a share of the 2-cent gasoline inspection fee (Section 8-17-87) which can be kept in the 7-cent gasoline tax fund, but must be accounted for and used for transportation planning, the construction, reconstruction, maintenance, widening, alteration, and improvement of public roads, bridges, streets, and other public ways. Section 8-17-91, Code of Alabama 1975.
- Municipalities receive a share of the 10-cent gasoline tax created by the Rebuild Alabama Act. The funds must be kept in a separate account, and used for maintenance, improvement, replacement, and construction of roads and bridges; matching funds for federal road or bridge projects; debt repayment for road and bridge projects; and joint road and bridge projects. Section 40-17-371(b), Code of Alabama 1975.
- Municipalities in which table wine is sold at retail receive a share of the state table wine tax. Section 28-7-16, Code of Alabama 1975.
- Some municipalities also receive a share of the uniform beer tax (*See*, Section 28-3-190) and the state 2 percent tax on ABC stores (Section 28-3-280). These funds can be used for general fund purposes.
- Municipalities also received capital improvement funds derived from offshore oil and gas revenues received by the state. These funds are disbursed annually and can only be used for capital improvement projects that include the planning, designing, inspection, purchasing, construction, reconstruction, improvement, repair or renovation of permanent buildings, docks, structures and sites therefor for the executive, legislative or judicial branches of state government. These funds can also be used for construction or improvement of roads and bridges in the highway system; payment of debt service on the bonded indebtedness issued by the State of Alabama or

any public corporation or authority of the State of Alabama; funding economic development and industrial recruitment activities; and the procurement of technical equipment, including computer and telecommunications equipment, required for the operation of any governmental entity. Section 219.04, Alabama Constitution, 1901; Section 11-66-1 *et seq.*, Code of Alabama 1975.

Clerks should be familiar with all of these revenues, the restrictions on spending these revenues, and the manner of accounting for these revenues. More information is available in the *Selected Readings for the Municipal Official*.

## Receiving Tax Collections from County Officers

Where a clerk is also municipal treasurer, the clerk has the duty to receipt funds received from the county tax collector for municipal ad valorem taxes collected under the optional method of collecting municipal ad valorem taxes. Section 11-51-53, Code of Alabama 1975. Municipalities receive a share of motor vehicle license tax receipts from motor vehicles belonging to residents of the municipality. These funds are collected by the probate judge of the county in which the municipality is located. If the clerk acts as treasurer, he or she must receipt these funds and keep the council informed of the amounts received from these sources. Motor vehicles and trailers are susceptible to escape from municipal ad valorem (property) taxes unless steps are taken to see that residents in the municipality declare their proper residence when these vehicles are assessed for taxes by the county tax assessor.

Some municipalities collect their own ad valorem taxes. However, since the vast majority use the optional method of county collection for the municipality, these references assume that method.

## Confidentiality of Tax and License Information

**Sales and Use Tax:** Without the permission of the taxpayer, other than for a few very narrow exceptions, Section 40-2A-10, Code of Alabama 1975, prohibits municipal officials or employees releasing sales and use tax data, or anything used to determine the amount of sales or use tax owed to the municipality, to the public.

This type of information may only be released and used for the following purposes:

- For tax administration, collection or enforcement purposes; to this end, municipalities should take steps to ensure that access to these records is only to employees and officials who are part of these functions.
- For statistical information, which is defined as: “Any aggregate tax information which is compiled and/or assembled in a form that cannot be reasonably associated with, or otherwise identify, directly or indirectly, a particular taxpayer.”
- For exchange with other agencies, provided that any information provided is subject to the same confidentiality requirements. In this case, sales and use tax information can be exchanged only for the following purposes:
  - a. Collecting taxes due.
  - b. Ascertaining the amount of taxes due from any person.
  - c. Determining whether a person is liable for, or whether there is probable cause for believing a person might be liable for, the payment of any tax to a federal, state, county, municipal, or foreign government agency.

**Violation of Section 40-2A-10 is a Class A misdemeanor, which is punishable by a sentence of up to one-year imprisonment in the county jail or hard labor for the county. Section 13A-5-7, Code of Alabama 1975.**

Although Section 40-2A-10 is part of the Taxpayer’s Bill of Rights, it is the League’s opinion that this law applies to municipalities as well as the state where sales and use taxes are concerned. Pursuant to Section 11-51-201 of the Code, municipal sales and use taxes must parallel state sales and use tax regulations and laws. Thus, municipal officials and employees may be found guilty of violating Section 40-2A-10 if they release any information contained in a taxpayer’s sales and use tax return, unless this release falls within one of the exceptions specifically listed in Section 40-2A-10.

**Business Licenses:** The Municipal Business License Reform Act of 2006 establishes a taxpayer bill of rights for licenses.

These are assessed and collected in the same manner as sales and use taxes. Nothing in the Municipal Business License Reform Act 2006 prohibits the disclosure, upon request, of the fact that a taxpayer has or has not purchased a business license or of the name and address of a taxpayer purchasing or renewing a business license from the municipality. Statistical information pertaining to taxes may be disclosed to the municipal governing body upon their request. **Any person willfully violating the provisions of this section shall, for each act of disclosure, have committed a Class A misdemeanor. Section 11-51-196, Code of Alabama 1975.**

The governing body of a municipality may adopt from time to time an ordinance consistent with Section 40-2A-10 to permit the exchange of business license information between and among the municipality and other municipalities adopting similar ordinances or between county and state governments, subject to the confidentiality restrictions imposed by this section.

## **Administration of Oaths, Issuance of Warrants, Approval of Bonds**

In many municipalities, the governing bodies have adopted ordinances authorizing clerks to administer oaths, take affidavits and issue warrants of arrest for violations of municipal ordinances. *See*, Section 11-43-5, Code of Alabama 1975. Clerks who have and exercise this power should always, under signature, refer to the ordinance that grants this authority. The issuance of warrants of arrest is a very responsible duty. The clerk who has this authority should discuss this with the municipal judge or municipal attorney and otherwise comply with the Alabama Code and Rules of Judicial Administration pertaining to magistrates.

## **Attesting Acts of the Mayor**

A municipal clerk is required to attest the mayor's signature to evidences of indebtedness created in the name of the municipality. Section 11-47-1, Code of Alabama 1975. The clerk's attestation to the mayor's signature is required on all contracts entered into in the name of the municipality. *See*, Section 11-47-5, Code of Alabama 1975. Other special provisions relate to clerks' attestations. For example, Section 11-47-91, Code of Alabama 1975, discusses attestations to census enumerations. This manual will not cover all such provisions since a special study of the required procedures should be made by the clerk in these cases.

## **Secretary to Municipal Boards**

With the growing complexity of urban life, cities and towns rely on special boards to administer technical urban regulations. Among the special boards are municipal zoning commissions (Section 11-52-79, Code of Alabama 1975), municipal planning commissions (Section 11-52-2, Code of Alabama 1975), municipal zoning boards of adjustment (Section 11-52-80, Code of Alabama 1975), municipal hospital boards (Section 22-21-1, Code of Alabama 1975), municipal recreation boards (Section 11-86-1, Code of Alabama 1975), municipal library boards (Section 11-90-2, Code of Alabama 1975), and municipal airport boards (Section 4-4-7, Code of Alabama 1975).

While the laws authorizing the establishment of such boards do not require the municipal clerk to be the secretary for these boards, the municipal governing body often stipulates, when forming the boards, that the clerk shall perform such duties. These duties emphasize the importance of the clerk's office as a liaison unit for the coordination of municipal activities. Legally appointed boards act on behalf of the municipality, and their records must be preserved as are other municipal records. For instance, actions of a zoning commission or a zoning board of adjustment affect the whole administration of municipal zoning laws. Minutes from these meetings are essential. The general principles set out for taking council minutes should be followed when preparing minutes for these boards.

## **Custodian of Municipal Records**

As discussed under the heading of Ordinances and Resolutions, the clerk is custodian of rules, regulations, ordinances and resolutions of the municipality. These records are permanent records of the municipality. Additionally, clerks must preserve all other records which are handled through that office—invoices, receipts, cancelled checks, bank statements, cancelled bonds and coupons, cancelled notes, insurance premiums, official bonds, correspondence, court records, election lists, contracts, notices required by law, audit reports, permit records, claims filed against the municipality, and all other records ordered to be filed by the governing body.

Keeping such a host of records over the years can require sizeable storage space. This raises questions about how long records must be kept and the steps to follow to dispose of records which are disposable. Public records which are obsolete and no longer needed for public purposes must be disposed of pursuant to the records schedules created by the Records Disposition Authorities. More information on this subject can be found in the article entitled “Public Records” in the *Selected Readings for the Municipal Official*.

## **Use of Certified Mail**

Certain statutory procedures stipulate that notice shall be served by registered mail upon the persons affected by the municipal activity. In some instances, return receipt is specified. This requirement can become quite expensive when large numbers of notices must be mailed. To save expenses, the legislature, at the suggestion of the League, adopted an act in the Second Special Session of 1956 which allows these notices to be mailed by certified mail which is less expensive than registered mail. Section 1-3-7, Code of Alabama 1975, is the authorizing section.

## **Election Duties of the Clerk**

Many duties associated with municipal elections in Alabama must be performed by municipal clerks. Because of the technical nature of these duties and because the League distributes special manuals each election year, these responsibilities will not be discussed in this manual.

## **Other Duties of the Clerk**

“The clerk, in addition to these enumerated duties, shall perform any and all duties that may be required of him or her, by ordinance or resolution ...” Section 11-43-104, Code of Alabama 1975 (emphasis added).

It would be impossible to discuss all the duties assigned to clerks by local ordinances and resolutions or to list duties associated with special projects—such as public improvement assessments and the issuance of bonds and warrants—where procedures are prescribed by statute. In the case of special projects, clerks usually work closely with municipal attorneys and fiscal agents for the city or town.

## **Assistance from the Alabama League of Municipalities**

The Alabama League of Municipalities is always ready to assist municipal clerks with problems confronting that office. The League publishes *The Alabama Municipal Journal*, which features articles of interest to municipal officials, municipal news in Alabama and the latest legal developments affecting cities and towns. In addition, the League prepares special research reports and bulletins, maintains a website at [www.almonline.org](http://www.almonline.org), answers special inquiries, watches after the interests of Alabama cities and towns in both the state legislature and in Congress, sponsors in-service training programs, acts as a liaison between municipalities and agencies of the state and federal governments, and engages in many other activities involving municipal interests.

The effective operation of the League depends to a large extent upon the close cooperation of its members. Information supplied by municipal clerks in response to various questionnaires from the League is vitally necessary for the preparation of regular or periodic reports and bulletins. These materials have proven invaluable in assisting individual municipalities improve operations and by pointing out weaknesses in state laws which have been cured by amendatory legislation. Additionally, ordinances that clerks supply to the League are a valuable resource for all municipalities. The League and its staff appreciate the close working relationships which have always been enjoyed with municipal clerks during the 85+ years the League has functioned as a full-time service agency for municipal government in Alabama.



**T**he Alabama League of Municipalities was organized in 1935 and has served since that time as the recognized voice of the cities and towns in Alabama. Representing more than 450 member municipalities, the League works to secure enactment of legislation enabling all cities and towns to perform their functions more efficiently and effectively; offers specialized training for both municipal officials and employees; holds conferences and meetings at which views and experiences of officials may be exchanged; and conducts continuing studies of the legislative, administrative and operational needs, problems and functions of Alabama’s municipal governments.

**[www.almonline.org](http://www.almonline.org)**



This publication is available in PDF format.

For more information, contact:  
**The Alabama League of Municipalities**  
**P.O. Box 1270, Montgomery, AL 36102**

*Phone:* 334-262-2566

or visit

**[www.almonline.org](http://www.almonline.org)**