

AGENDA
SPECIAL MEETING OF TOWN COUNCIL OF EVA, ALABAMA
OCTOBER 26, 1993

1. CALL TO ORDER
2. ROLL CALL
3. ELECTION TO FILL VACANCY OF MAYOR
4. FINANCIAL TRANSACTION

(5) Notwithstanding the provisions of subdivisions (1), (2), (3) and (4) of this section, the governing body of any city having a population of 12,000 or more which does now elect council members from single-member districts or cities presently operating with five single-member districts as established under a federal court order may, by ordinance or resolution, if adopted by two-thirds vote of the governing body more than six months prior to any general municipal election, provide that the city council of said city shall consist of eight aldermen to be elected from single-member districts (wards) with the president of the city council to be elected by the qualified voters of the several wards voting separately in every ward.

(b) Unless provided otherwise in this section, the president of the council shall have the right to vote on all questions the same as any other member of the council. (Code 1907, § 1067; Acts 1909, No. 56, p. 100; Code 1923, § 1757; Acts 1927, No. 608, p. 706; Acts 1931, No. 371, p. 436; Code 1940, T. 37, § 426; Acts 1956, 2nd Ex. Sess., No. 21, p. 288; Acts 1961, No. 666, p. 910, § 2; Acts 1987, No. 87-474, § 1; Acts 1987, No. 87-652, p. 1157, § 1; Acts 1988, 1st Sp. Sess., No. 88-918, p. 512, § 1(1).)

* Cited in *Reese v. State ex rel. Carswell*, 184 Ala. 36, 62 So. 847 (1913); *Owens v. City Council*, 229 Ala. 439, 157 So. 865 (1934); *Haralson v. State ex rel. King*, 260 Ala. 473, 71 So. 2d 79 (1953); *Nevett v. Sides*, 533 F.2d 1361 (5th Cir. 1976); *Bolden v. City of Mobile*, 423 F. Supp. 384 (S.D. Ala. 1976); *United States v. Board of Comm'rs*, 430 F. Supp. 786 (N.D. Ala.

1976); *United States v. Board of Comm'rs*, 433 U.S. 906, 98 S. Ct. 965, 55 L. Ed. 2d 148 (1978); *Nevett v. Sides*, 571 F.2d 209 (5th Cir. 1978).

Collateral references. — 62 C.J.S., Municipal Corporations, § 390.

Jurisdiction of courts to determine election or qualifications of members of city council. 107 ALR 219.

§ 11-43-41. Filling of vacancies in office of aldermen.

Vacancies in the office of the aldermen in any city or town shall be filled by the council at the next regular meeting or any subsequent meeting of the council, the person so elected to hold for the unexpired term. (Acts 1931, No. 371, p. 436; Code 1940, T. 37, § 427.)

§ 11-43-42. Exercise of functions of mayor during absence or disability of mayor; filling of vacancies in offices of mayor, president and president pro tempore of council.

(a) In case of the absence of the mayor from a city of 12,000 or more inhabitants or his inability to serve on account of sickness or any other good reason, the president of the council or the president pro tempore of the council in case of absence or disability of the president of the council shall act as mayor pro tempore with the power and authority of the mayor during such time. In the event of a failure or refusal of the president of the council or the president pro tempore of the council to act, the council may appoint one of its members to act as mayor pro tempore with like effect, which appointment shall be entered in the minutes of the council.

In the event of a vacancy from any cause in the office of mayor, the president of the council shall succeed to the office of mayor for the unexpired

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(b) In cities of less than 12,000 inhabitants and in towns, in case of the absence or disability of the mayor, the functions of the office shall be exercised by the chairman pro tempore of the council and, during his absence or disability, by such person as the council may appoint from its membership, which appointment must be entered upon the minutes of the council.

In the event of a vacancy from any cause in the office of mayor, the council shall fill the vacancy either from its own membership or from without the membership of the council. The person elected by the council to fill the vacancy in the office of mayor shall be a qualified elector in the municipality and must meet all other legal qualifications required by law for the performance of the duties of the office to which elected.

(c) In cities having a population of 12,000 or more which have, by ordinance or resolution, adopted by two thirds vote of the city council more than six months prior to any general municipal election, provided that the city council shall consist of five aldermen to be elected from the city at large, there shall be elected by the council and from its members a president of the council and a president pro tempore of the council, which appointments must be entered upon the minutes of the council. In such cities, in case of the absence or disability of the mayor, the functions of the office shall be exercised by the president of the council and, during his absence or disability, by the president pro tempore of the council.

In the event of a vacancy for any cause in the office of mayor, the president of the council shall succeed to the office of mayor for the unexpired term. In the event of a vacancy for any cause in the office of president of the council, the president pro tempore shall, in like manner, be president of the council for the unexpired term.

(d) The provisions of this section shall not apply to cities operating under commission form of government. (Code 1907, § 1188; Acts 1923, No. 95, p. 81; Code 1923, § 1904; Code 1940, T. 37, § 428; Acts 1943, No. 451, p. 414; Acts 1951, No. 604, p. 1041; Acts 1961, No. 666, p. 910, § 3.)

Holdover by incumbent mayor pending election of successor in runoff election not authorized. — See Mann v. Key, 345 So. 2d 293 (Ala. 1977).

Vacancy in office of mayor, created by tie vote in election, must be filled by governing body. — A vacancy in the office of

mayor, created by a tie vote in an election, must be filled, whether "from its own membership or from without the membership of the council," by a vote of the majority of the total membership of the governing body. Mann v. Key, 345 So. 2d 293 (Ala. 1977).