CONDUCT OF

COUNCIL MEETINGS

July 2000
Price $10.00
(One copy free of charge
to member municipalities)

Published by
Missouri Municipal League
1727 Southridge Drive
Jefferson City, MO 65109

FOREWORD

Although a councilman's work is not solely confined to council meetings, he does spend a great number of hours in a council chamber pondering the affairs of his city. Certainly, any method that can be used to decrease the time spent in such meetings while making them more productive should be helpful to the members of municipal governing bodies. This publication outlines a few of the procedures that have worked successfully in cities, towns and villages and attempts to pinpoint the common causes of confusion and frustration encountered in meetings. Not all the suggestions will work in every municipality. Each governing body develops its own style of conducting meetings, and as long as a method works, it should be continued. However, it may be of benefit even for a successful board or council to periodically examine its method of conducting meetings to determine whether everyone is satisfied – councilmembers, administration and the public.

As always, the League staff welcomes comments, questions or suggestions concerning this or any other League publication.

MISSOURI MUNICIPAL LEAGUE

Gary S. Markenson
Executive Director

TABLE OF CONTENTS

INTRODUCTION

Bill Smith was a good friend of the mayor. He was in a hurry the night of the council meeting for he had promised to watch his son receive a Boy Scout award that night. "How about letting me talk about this zoning request I have at the start of the meeting," he said to the mayor. "It won't take but a minute or two. Everybody around me agrees it's a good idea." "Sure," said the mayor. "We'll run it right through for you." And immediately after approval of the minutes, the mayor called for a hearing on the zoning change. Several of Smith's neighbors, who didn't like the change, were a few minutes late for the meeting. They had assumed the hearing would come up at the normal place on the agenda. When they discovered it had been taken care of before they arrived, one person was heard to comment, "It's not what you know, but who you know in this town!"

* * *

Like a well-oiled machine, the council ticked off items on the agenda. There were no fights, there was no discussion. Each item was brought up, a motion made and the vote taken. One observer said, "That's the way a council meeting ought to be run." But another, who had some ideas about one item on the agenda, but was not allowed to be heard, said, "It's more like a railroad. Everything was decided earlier this afternoon. How are we citizens supposed to express our views?"

* * *

The board was embroiled in a controversy about a paving project. Several board members had pledged themselves to fight the idea on the grounds that the paving was unnecessary and too costly. That night at the meeting two trustees got into an argument and bitter words were exchanged. Five members of the audience entered the fight and loudly proclaimed their views. The meeting became a turmoil and lasted until 1 a.m. There was no other business acted upon.

* * *

If any of these fictional accounts sound familiar, as though it happened in your council meeting, then it may be time to re-examine the way your meetings are conducted. For, in each instance, there was a denial of the democratic process. In each instance, the community as a whole was the loser. In each instance, the elected representative was not doing his job as it should be done.

That is not to say that each of these occurrences can't happen in a well-run council meeting. There is a time and place for a shift in agenda items, for open controversy, for executive sessions. But carried to an extreme, these processes negate the very purpose of a council meeting – to decide, in open meeting and after hearing opposing views and learning the pertinent facts, how the city, town or village will perform its services.

In addition, each such incident causes the citizens to lose faith in the governing body of the municipality. They go away with a sour taste for city government and reaffirmation of the common belief, "You can't fight City Hall."

Nearly every alderman, councilman or trustee elected to office has a genuine desire to see his municipality efficiently and economically operated. Beyond this, he must feel a responsibility to the

people who elected him – a responsibility to see that the citizens are informed about city operations, that they can object to certain measures, and that they **can** have an impact on their local government. While there are many ways to carry out this responsibility, from publishing annual reports to appointing citizens committees on special projects, the continuing thread for this function is the council meeting. A citizen may obtain his whole view of local government from attendance at one council meeting. Granted, he may go to that one council meeting because of a special interest or gripe, but he also will be exposed to other aspects of government in the process. This is the time to favorably impress him, to show him the council is working for him and his neighbors, that municipal government is responsive to citizen interest.

Let us, then, take a look at procedures for a council meeting with an eye to making the meeting more rewarding for the councilmembers and more understandable for the citizen.

ADOPTION OF RULES OF PROCEDURE

Rules of procedure are designed to expedite the meetings of a city council, board of aldermen or trustees and commissions. Rules of procedure simply provide for a uniform, orderly procedure so the time of the members of such boards is conserved and, at the same time, they make certain that all business is properly handled.

Missouri laws do not require a city or town to adopt rules of procedure though they do provide that they may do so. However, it is common practice either to adopt such rules of their own as they may determine they need or to provide that Roberts Rules of Order, Revised, shall be their guide. Generally, the ordinances indicate the rules or indicate that Roberts Rules are adopted unless statutes indicate a definite procedure such as the number of votes to be cast in certain instances. Some cities adopt only a few special rules and provide that unless statutes indicate otherwise, Roberts Rules shall prevail.

The rules generally adopted by ordinance or resolution should make provision for the time and place of regular meetings, how and by whom special meetings shall be called, what constitutes a quorum, procedure for recognition of a speaker, voting procedure, how motions and resolutions shall be presented, appointment of committees, and provision for suspending rules. Generally, suspension of rules requires a two-thirds majority of the council membership. In many cities, the rules prescribe the amount of time a speaker appearing before the governing board shall be allowed for an oral presentation, and they provide that he may be allowed additional time by a two-thirds vote of the membership. The purpose of this rule is to bar any one speaker from infringing upon the rights of others who may wish to appear at the same meeting. This rule often is adopted after experiencing a few five- and six-hour council meetings.

The following sample order of business may be adjusted to fit the desire of any governing board. Many cities prepare a written agenda following this outline for each meeting but tailor it to each separate meeting by designating the subject matter before that meeting.

Many cities distribute copies of the agenda to each person attending the meeting. Printing the agenda in a local newspaper in advance of each meeting has been found to be of value as a public relations technique and as a stimulus to citizen interest and participation.

AGENDA FOR THE MEETING

Meetings should be conducted according to a written agenda that must be posted at least 24 hours in advance (see page 14). In many instances, this agenda will be formulated several days in advance of the meeting by the mayor, clerk or city manager and distributed to members of the council or board. This gives councilmembers an opportunity to familiarize themselves with the pending business, to investigate items of particular interest in advance, and to check viewpoints of their constituents before making a crucial vote.

A sample order of business for a meeting might be as follows:

1. Call to order by the mayor or mayor pro-tem
2. Calling the roll by the clerk and announcement of a quorum
3. Reading of the minutes by the clerk (if not made available to councilmembers prior to meeting time)
4. Correction and approval of minutes
5. Comments of visitors
6. Reports:
    a. From standing committees
    b. From special committees
    c. From treasurer and other officers
7. Introduction and consideration of ordinances
    a. First reading
    b. Second reading
    c. New bills
8. Presentation of bills and approval of payments
9. Receipt of notices and communications
10. Old or unfinished business
11. New business
12. Adjournment

While this is an outline for the order, a written agenda should give more detail under each heading. For instance, new ordinances might be listed by title with a simple explanation of their content (complete copies of the ordinances should be furnished in advance to councilmembers). Under new business might be listed topics suggested by councilmembers or presented in advance by citizens. An additional item might cover miscellaneous matters from the city administration and/or councilmember's choice, which is a time designated for councilmembers to comment on any matter of their choosing.

In most cities and towns the clerk will have the responsibility of preparing agenda materials. In such cases, the clerk should confer with the mayor in advance of preparing the agenda in regard to items to be included. In council-manager cities, the job of preparing meeting materials will be done by the administration. Most of these cities have provisions that require materials to be in the hands of councilmembers in advance of the meeting.

BASIC PARLIAMENTARY PROCEDURE

Parliamentary procedure is designed to ensure that the will of the majority prevails and the right of the minority to be heard is protected. In the hands of the presiding officer it should be a tool, not a bludgeon. Not only the mayor, but all members of the council or board should be familiar with the rudiments of parliamentary procedure so that decorum is preserved, business is expedited and citizen respect is maintained.

On most occasions in council meetings the need for motions other than the main motion or amending motions is small. There are times, however, when intense feelings can conquer the most relaxed councilmember, and then a strict adherence to parliamentary procedure can save the day.

But remember, the best parliamentary guide still is respect for one's fellow members and preservation of the majority rule.

Perhaps the most important and most overlooked procedure is that of restating the motion before the council and announcement of the vote. Very often in council meetings there is considerable discussion of a problem preceding the formulation of a motion. In some cases, a councilmember will state his viewpoint and then decide, "I'll make that a motion." In such instances, it is difficult, if not impossible, for other councilmembers to be sure of the motion, and it is up to the chairman to clear up any doubts. The chair must immediately state the motion for the benefit of the council. This often may be done even before the motion is seconded, so the person who seconds the motion is aware of the complete import of the motion. Often, if a second is not immediately forthcoming, the chair may say, "Is there a second to the motion?" The chair then asks for the question, which is a call for discussion. After the motion has been debated, the chair again should ask, "Are you ready for the question?" If no one further asks for recognition, he **again** states the complete motion and calls for the vote. At the conclusion of the vote the chair must state the results ("The ayes have it") and the effect the vote has on the motion ("The motion is carried"). The vote is not official until the chair announces it. The chair then should state the next item of business.

This sounds complicated, but in reality it is a way of avoiding time-consuming confusion over the pending question. Even in small town meetings where informality prevails, the chairman clearly must restate the motion before the vote. This avoids the situation when a councilmember later wails, "I didn't know that's what we were voting on."

A few other points of parliamentary law frequently arise during council meetings. Very briefly, here are some guidelines (consult a standard authority for full discussion):

In 3rd and 4th class cities, the mayor may not vote except in case of a tie vote. In those cities where the mayor is an elected member of the council (council-manager and some home rule charter cities), he has the same right to vote as any other member even in an appeal from a ruling of the chair. The same is true in a village where the chairman of the board of trustees is an elected member of the board.

Motions can be amended by striking out or inserting words, or by striking out or inserting paragraphs (called substituting). Motions can be amended only to a third degree, that is, one can amend an amendment, but can go no further. A substitute motion is considered an amendment.

For a member to ask for the reconsideration of an already voted-upon motion, he must have voted on the prevailing side.

The motion to table carries no time element. A tabled motion can be called from the table at any time. A motion to postpone definitely carries a time limit (it cannot extend beyond the next regular meeting of the group) and can be debated as to the merits of postponement. A motion to postpone indefinitely opens the main motion to debate.

Again, the object of all these rules is to preserve decorum at the meetings. They also assist members by confining the debate and discussion to one question at a time. When in doubt about strict parliamentary law, a chairman simply should strive to keep order and follow the wishes of the majority. The breaking of parliamentary rules of order does not invalidate an action of the council, but it can disrupt it.

CONDUCT OF MEETINGS

At first glance, all meetings of municipal governing bodies would appear to be similar. The basic purpose of the meeting is to transact the municipality's business, and the form to be followed is fairly standard ? the reading of minutes, receipt of communications, introduction and passage of ordinances and resolutions, payment of bills, new and old business. But the manner in which meetings are conducted can vary widely between the small town and large city. In the small town everyone knows everyone else, the atmosphere is informal, the participation of citizens attending the meetings is greater than in the large city. In the large city, councilmembers are more pressed with a volume of business, they are under closer scrutiny by the press and public, they don't know all the people in attendance, and they must maintain a greater degree of formality and adherence to rules.

It should be the objective of a presiding officer to avoid too much informality because it can result in confusion and leave the impression that the city's business is not being handled with efficiency and effectiveness. In fact, since the city or town government is about the only one with which many citizens ever come in direct contact, they may well develop a negative impression of government in general.

Appearance to the Public

A councilmember always must remember that he is on public display during the meeting. A first impression may be a lasting one in the mind of the visitor. Thus, the physical arrangement of the council or town board chambers or regular meeting room is important. The councilmembers should be set apart from the rest of the room, whether grouped on an elaborate raised dais with individual desks and microphones or simply seated at one end of a large table. The members all should be visible to the public. No councilmember should sit with his back to visitors, even in the smallest board room.

There should be chairs available to visitors and room for them to enter and leave the chamber without disrupting the meeting. Special provision for a table and chairs for the press also should be provided. If possible, copies of the meeting agenda should be available in an easy-to-reach location.

There should be a place where a person addressing the council can stand. In some places, visitors are allowed to stand in their place to address council and in others they must come forward before the council. In either event, a visitor should be able to see all the council members he is addressing.

Councilmembers should strive to be on time to meetings. Not only are late arrivals an imposition on those who arrived at the correct hour, but it also can mean that meetings will run late into the night. Very often formal ceremonies such as the signing of proclamations are conducted at the start of meetings, and it can be disconcerting to all concerned to have members of the council straggling in at odd moments. It also may indicate to visitors a lack of interest on the part of the tardy councilmember.

Addressing the Council

In conversations between councilmembers and from the public to the council, an air of formality should be maintained. It is wise to leave first names at the door for the duration of the meeting. Members should address one another as "Mr. …" and speak to the chair as "Mr. Mayor" or "Mr. President." At all times during discussion, a councilmember's remarks should be directed to the chair. Even when answering the statement of another councilmember, a member should begin by saying, "Mr. Mayor, if you will permit me…" and should wait for recognition from the chair before proceeding. This helps avoid the rather sorry spectacle of two councilmembers haggling between themselves over a matter in which the others have no interest or on which there is high feeling.

It is the duty of the chairman to keep order at all times. If a verbal battle between councilmembers seems to be developing, he immediately must restore calm. At times it will take a rather strong-willed person to do this, and often it must be with the admonishment of "Mr. …, you are out of order." In small towns it may earn the mayor a reputation for being a stuffed-shirt, but it will keep the meetings more calm and fast moving, which is a definite part of his duties.

If this form of address is maintained by the council, a citizen standing to speak will naturally follow suit. In most cases, visitors to the council who desire to speak are requested to give their name and address for the record. In fact, some cities require a visitor who wishes to speak to fill out a prescribed form before the council meeting, giving his name, address and the subject on which he wishes to comment. If a councilmember desires to ask a question of the citizen after he has spoken, the councilmember should wait until the chair asks for questions or make the request directly to the chair. In no case, should he rudely interrupt to ask a question. There also should never be any quarreling between councilmembers and citizens. Often, if a citizen is there to speak, it means he has a real gripe and is angry with the council. In such case, if the citizen cannot contain his anger, the councilmember must. And, if neither can stand the strain, then the chair must interrupt and take over.

General Discussion

During the course of a meeting there is ample opportunity for council to discuss every item on the agenda. Sometimes this discussion is **not** the prelude to a vote, but simply an expression of opinion or question. It is this type of discussion that can get out-of-hand and lead to lengthy meetings and frayed nerves. Some councils have written into the Rules of Procedure a limitation on debate that allows a councilmember to speak only once on a subject, until everyone else desiring to speak has had a turn, and sets a time limit (perhaps 10 to 15 minutes) on any councilmember's discussion.

Remarks of councilmembers should be limited to the matter at hand. Round table discussions of philosophy of government are very interesting and can be informative, but they do not belong in a council meeting. The exception of this rule might be in letting the public know why an action is being taken (see "Explaining a Vote").

Citizen Participation

The matter of citizen participation is distinguished from a public hearing. A public hearing is a formally designated time for discussion of a specific topic, from budgets to rezoning. The citizen participation period is a time set aside for visitors to express themselves to council on any subject.

Councils vary in the place on the agenda for citizen participation, and some councils do not list it as an agenda item, allowing the visitors to comment after pertinent discussions. Some councils make no effort at all to hear from visitors. The place on the agenda varies from the first item of business to the last. However, regardless of the time designated, the mayor should make a point of informing visitors when they may expect to speak. If the mayor knows that an exceptionally controversial item has drawn a large crowd, he would be wise to state the time such an item is expected to come up for discussion. Woe unto the mayor and council that let a large crowd wait through a four-hour meeting and then postpone the item that drew the crowd.

When a visitor is addressing the council, all members should be attentive and listen politely. If the speaker is taking too much time or is drifting from the subject or is personally abusing councilmembers, the mayor should be the person to cut off the speech. Even though one must be polite, it is not necessary to be intimidated by a rude speaker. He often irritates everyone else in the room as much as the council and should be cut off as quickly and painlessly as possible.

Public Hearings

At the start of any public hearing the chair should state the topic for consideration. If, for instance, it is a rezoning hearing, there should be a reading of the ordinance and an explanation of what is requested. On any subject that is controversial, the following procedure should be followed: proponents' presentation; opponents' presentation; proponents' rebuttal; opponents' rebuttal; questions from council. If it simply is a hearing for the purpose of obtaining public opinion, such as on the budget, citizens should be allowed to speak in the order they request recognition. It always is the chair's right to determine the order of speakers.

The chair should explain at the beginning of the hearing how much time will be allowed for each side. It usually is up to the speakers to divide this time among themselves, though the chair may take a count through a show of hands and suggest a time limit for each speaker. However, if it becomes obvious after the specified time has elapsed that more discussion should be allowed, the chair may extend the time limit. In no instance should a speaker using filibuster tactics be allowed to control a hearing.

One cardinal rule to remember is that **numbers don't always count**. There are some topics that naturally draw large, highly partisan crowds. Very vocal minorities may try to swamp a public hearing to show their side is right. Such items as little league ballparks, school crosswalks, street improvement districts, water rates or any tax matter will attract great numbers of visitors. **The size of the crowd does not indicate whether their cause is just**. The council is elected to serve all the citizens, and a councilmember must look at the overall picture, not just the picture presented by a partisan group.

The purpose of a public hearing is to present evidence on both sides of a question. The council is charged with the responsibility of weighing the evidence and, after due consideration, reaching a decision. Obviously, this cannot always be done at the same meeting as the public hearing. In fairness to those who have taken the time to attend, it might be wise if the chair could give an indication as to when such a decision will be reached. If it is obvious that council will be able to come to a conclusion with a minimum of discussion, the decision may be made immediately after the hearing and the result announced. Otherwise, the chair should state the reason no decision will be made at that time and give a probable time for the announcement of the result.

When a decision is announced on a question that involves a public hearing, it is wise for the chair, or individual councilmember, to give the reasons such a decision was reached. Even a brief explanation will help prevent observers feeling the decision was made long before the public hearing was held. To safeguard the actions taken as a result of public hearings, it is advisable to have a verbatim transcript of all hearings that might lead to a challenge in court (such as liquor licenses, zoning or election issues).

Methods of Voting

Taking a vote during a council meeting may mean a simple show of hands or it may involve a roll call vote, but two requirements should be satisfied. First, there must be an accurate account in the record of the result of the vote, and second, both council and visitors must be informed of the outcome.

There is a variety of methods of voting used by councils and town boards in Missouri. The most common method is having the chairman call for the vote by saying, "Those in favor of the motion signify by saying 'aye,'" and "Those opposed, by the same sign." This is a "voice vote" and often is used on relatively noncontroversial items. To make sure it is properly entered in the record, the chairman must announce the result of the vote by saying "the 'ayes' have it and the motion is carried," or "the 'noes' have it and the motion is defeated." The same result can be accomplished by asking for a show of hands, which has the added advantage of indicating to the audience how the various councilmembers are voting.

On roll call votes, each councilmember is polled individually for his vote. Many councils are polled in the same order on each roll call, whether this is by alphabetical order or by seating arrangement. However, this can place the first councilmember to vote each time in a difficult position and give the last councilmember an unfair advantage in always knowing what effect his vote will have on the motion.

To counteract this problem, some councils have worked out systems of alternating the voting order. In some cases the order is alternated with each meeting, with each roll call at one meeting being taken in the same order. Other councils will vary the roll call with each vote, moving the top man to the bottom and all other names up one space. Occasionally, the person taking the roll is instructed to call names in random order with each vote.

Explaining a Vote

Most councilmembers are anxious to have the public know why they voted a certain way

on crucial issues. Conversely, most citizens are interested in learning why particular councilmembers voted as they did. It is perfectly proper for a councilmember to take a **few** minutes prior to a vote to explain his stand. This should be done briefly and concisely. It especially is appropriate if the issue at hand has been discussed at length by council in a study session or a meeting other than the regular council meeting.

If a member has a direct personal or financial interest in the matter to be voted upon, he should ask to be excused from voting. This must be done before the vote is taken by stating briefly the reason he desires to be excused. The remaining members of the council then vote upon the question of excusing him. Without such excuse, a councilmember should vote on every issue. The request to be excused should not be used as a means of getting a councilmember out of a controversial vote.

The Chair's Responsibility

In addition to his duties as chairman, the mayor or president of the council should familiarize himself with the legal procedure of his municipality. This involves knowing what action must be taken on ordinances, when emergency clauses may and should be included, when an extraordinary vote of the council is required, and when a time element (such as notice of an election) is important. The city attorney may be of assistance on such problems, but the chairman should know the basics. This saves time and also helps to prevent an illegal or incomplete action from being taken.

MINUTES

In cities and in towns the clerk is required by state statute to keep a record of the proceedings of the governing body.

> **MINUTES – REQUIREMENTS.** That the recorder shall include in the minutes of each meeting the following: a) Name - Meeting of the City Council of _____, Missouri; b) Kind of meeting (regular, adjourned or "called" meeting. If a "called" meeting, the "call" should be included); c) Place and date of meeting; d) Officer presiding; e) Subordinate officers . or guests appearing; f) Statement of whether previous minutes were read and approved; g) All motions made and reports given and the disposition of same; h) A record of the results of each vote taken, and on the passage or adoption of every ordinance the "yeas" and "nays" shall be called for and recorded; i) The decision in each point of order arising; j) A complete record of what is done, though **not what is said**, except that the remarks of any speaker at his request, or at the request of any member of the City Council shall be recorded; k) The time and place of reassembling unless it be the regular meeting time and place; l) The signature of the Recorder and the Chairman at the time the minutes are approved.

In addition to having a clerk take notes at each meeting, some cities and towns record the proceedings of the council meetings. The tapes may later be used for transcribing, or they may be saved for a specified period of time in order to have a complete record of the proceedings. In some instances, a council may use a court reporter for making a record of the meeting.

If possible, copies of minutes of each meeting should be distributed to individual members of the council. These copies may be a summary of the official minutes, and could, for instance, include only the title of ordinances or resolutions adopted. Such ordinances, however, should be included in full in the official copy of the minutes. Records such as this must be available to the public at all times.

Some cities have adopted the procedure of allowing the council meetings to be broadcast over a local access television channel. Experience seems to show that what should be a council business meeting may become simply a "program." However, a very valuable public information technique is a short, well prepared radio or TV report on city business. A regular series of weekly reports has been developed in some instances by having various officials, including department heads, as well as mayor, administrator and councilmembers, participate.

OPEN MEETINGS LAW

The Missouri General Assembly has modified the open meetings/records law to provide an equitable balance between the right of the public to know how government is conducting public business and the right of government officials to be protected from frivolous or vindictive prosecution.

Scope of the Law

The open meetings law defines "public governmental body" as any legislative or administrative governmental entity created by state statute or local ordinance or executive order, including any agency, board, bureau, council, commission, committee, department or division.

The law defines "public meeting" as "any meeting of a public governmental body at which any public business is discussed, decided or public policy formulated, but does not include an informal gathering of members of a governmental body for ministerial or social purposes when there is no intent to avoid the purposes of the law." This definition would allow the inevitable discussion of city business when members of the city council attend social events. It also would allow department meetings for ministerial purposes; since city departments seldom formulate public policy, it would seem that all such meetings are ministerial and may be exempt from the law.

The law defines "public record" as "any record of any public governmental body including any report or document prepared and presented to the public governmental body by a consultant paid by public funds." Apparently, a consultant report may be a closed record until it is presented to the city council at which time it becomes a public record.

Exemptions from Open Meetings/Records

The law provides specific exemptions from the open meetings and records requirements. Specifically exempted are records and meetings pertaining to the following: l) legal actions, causes of action or litigation involving a public governmental body; 2) lease, purchase or sale of real estate (except the vote on condemnation decisions); 3) hiring, firing, disciplining or promotion of personnel (except the vote in these decisions must be made available to the public within 72 hours); 4) an exemption for discussions between a governmental body and its representatives in preparation for negotiations with employee groups and all work products developed in preparation for negotiations with employee groups; 5) specifications for competitive bidding until the specifications are approved by the governing body or published for bids; and 6) individually identifiable personnel records, except the names, positions, salaries and length of service of employees. Other meetings and records must be open to the public unless otherwise provided by law.

Notice of Public Meetings

The law requires each public governmental body to give notice of the time, date, place and tentative agenda of each meeting in a manner reasonably calculated to inform the public of the information. Reasonable notice includes making available copies of the notice to any representative of the news media who requests notice of a particular meeting and posting the notice at a prominent place that is easily accessible to the public and clearly designated for that purpose at the principal office of the governing body, or, if no such office exists, at the meeting place. Notice must be given at least 24 hours prior to any meeting of a governmental body, exclusive of weekends or holidays when the facility is closed, unless for good cause such notice is impossible or impractical. In such cases, officials must give as much notice as is reasonably possible.

Public meetings must be held at a place reasonably accessible to the public and at a reasonably convenient time, unless for good cause such a place or time is impossible or impractical. Officials must make a reasonable effort to grant special access to the meeting to handicapped or disabled individuals.

Whenever city officials depart from any of the above requirements, the nature of the good cause justifying the departure must be stated in the official minutes.

Procedures to Close a Meeting

If a public governmental body decides to hold a closed meeting, record or vote, they must give notice of the time, date and place of the meeting and the reason for holding the closed session by references to the specific exemptions allowed in the law. Before closing a meeting, record or vote, the governmental body must publicly vote on the question of closing the meeting, and the question must receive an affirmative vote of a majority of the quorum of the body. The vote of each member of the body and the reason for closing the session by reference to the specific exemption must be announced at an open session and entered into the minutes. The closed meeting shall be held only for the specific, announced reason and other business, which does not directly relate to the reason announced as justification for the closed meeting, may not be discussed.

Custodian of Records

Each governmental body must appoint a custodian of records who is to be responsible for the maintenance of records and to receive and process requests for copies of records. Each request must be acted upon within three business days, or the custodian must explain in writing the reason for the delay. If access is denied, the custodian must provide, upon request, a written statement of the grounds for denial, citing the specific provision of the law that provides for closing the record.

Each governmental body may set reasonable fees for providing copies of public records, not to exceed the actual cost of record search and duplication. Payment of these fees may be requested prior to the making of copies. These fees may be increased without submitting the increase to a vote of the people.

Written Policy Required

Each governmental body must adopt a written policy in compliance with the open meetings/records law regarding the release of information on any meeting, record or vote. Any public employee who complies with this written policy cannot be found in violation of the law. Sample policies are available from League headquarters.

Penalty Provisions

The law permits any person to seek judicial enforcement of the open meetings/records law by bringing suit in the circuit courts. Once the party bringing suit demonstrates that the governmental body held a closed meeting or vote, the body must demonstrate that they complied with the requirements of the open meetings/records law. In this regard the official minutes will be extremely important. City clerks should be well informed of the requirements of this law and maintain the official council minutes accordingly.

If the court determines that the evidence demonstrates a violation of the law, each member of the governing body who has been found to have purposely violated the law may be subject to a civil fine up to $500. Also, the court may order such members to pay court costs and attorney fees. Finally, the court may void any action taken in an illegally closed meeting. Lawsuits for enforcement of the law must be brought within one year of the violation.

Importance of City Attorney

The law permits a public governmental body, which is in doubt about the legality of closing a particular meeting, record or vote, to seek a formal opinion of the attorney general or the city attorney or to bring suit in circuit court at the city's expense to ascertain the propriety of such action.

The law also authorizes any governmental body to provide for the legal defense of any member charged with a violation of the open meetings/records law. This provision will ensure that a member of the governmental body does not have to bear the financial hardship of retaining legal counsel when charged with a violation of the law. Obviously, most municipal officials will rely on the advice of the city attorney. Therefore, it is extremely important that city attorneys be knowledgeable of the provisions of the open meetings/records law.

LENGTHY MEETINGS

Even councils and boards with the best advance planning and organization (and often these more than others) can run into a frustrating, headache-causing problem – lengthy council meetings. These are not the exceptional meetings with long public hearings or a fight over controversial ordinances; these are the regularly scheduled meetings that stretch on and on, hour after hour, creeping along until everyone is thoroughly tired and upset.

Should such lengthy meetings be permitted to continue at such a pace, and what are the causes of these long hours?

First, the meetings should be examined to note whether it is a usual set of circumstances that is unduly prolonging them. At budget time, most councils will find they are holding an exceptional number of extra meetings that are longer than usual. This is to be expected. It also is not unusual for meetings to be lengthy if the council is discussing a major policy decision, perhaps on water problems or a comprehensive planning and zoning ordinance. A series of public hearings on a variety of topics may fall one after another and extend meetings beyond the normal time. But these situations are only temporary – and the council eventually will be able to return to a normal schedule.

If, however, there are no special circumstances connected with the meetings and still they last and last, perhaps it is time to take steps to correct the situation. Lengthy meetings unduly strain councilmembers, and it might be expected that some items on the agenda will not receive sufficient attention and discussion because the council is exhausted by the time they reach these items. Interested citizens become weary of sitting through hours of discussion awaiting action on the proposal in which they have a concern. The council becomes bogged down in trivia and cannot devote sufficient time to the really important matter at hand.

One of the most common causes of lengthy meetings is too much talking. The talk can be in a variety of forms – bickering among council members over matters of personal opinion; exchanges of opinion (not fact) between councilmembers and a person from the audience; unnecessary reporting on minor details by the administration or department heads and elaborate explanations of their various positions on an item from councilmembers.

Nearly all these problems can be solved through strong action from the chairman (mayor). Though it must be done with tact and grace, the chair must be the one who cuts discussion short. This can be done by reminding the speakers of the question at hand. When this involves a member of the audience, it sometimes is necessary to interrupt. The chair might say, “Mr. Brown, you’re getting off the subject. Will you please confine your remarks to the agenda item?” Partisans of any cause must not be allowed to use the council meeting as a soapbox for their views.

When the inveterate talker is a member of the city administration or the council, the chair must be more delicate. Sometimes a gentle reminder between items on the agenda that “it’s getting late and we must move along” is sufficient. However, in the interest of harmony, if this does not work, it would be far better to discuss the matter with the council in private, rather than cut short a fellow public official in an open meeting. Some Rules of Procedure contain a provision on limiting debate, and this could be more strictly observed. Perhaps an occasional informal meeting during which

councilmembers and department heads or administrators can talk freely will help to shorten the regular meetings. However, such meetings must not become substitutes for regular sessions and no business should be transacted.

Another cause of lengthy meetings may be the inclusion of too many items on the agenda. This is not an easy problem to solve. It may take several sessions of evaluating the importance of items on the agenda to correct the situation. Perhaps some of the details presented to council could be handled by department heads or the administration. Perhaps a requirement that special problems be presented in writing in advance of the meeting would help.

It may be, however, that the city has been growing over the years and more and more items need attention. In this case, it may take a change in the ordinance or resolution setting council meetings to allow more frequent meetings.

Some council-manager cities have set an item on the agenda for report from the manager. At this time the manager simply reports on action taken on various items and the department heads involved do not make separate reports. In some cases, the manager may not even need to report unless there is a specific question from the council. This can help speed up meetings.

CONCLUSION

Being a municipal official is one of the most demanding and often one of the most thankless tasks a citizen can perform. Whatever a councilmember does is wrong in the eyes of someone. He is on call day and night. He is subject to criticism and attack. He spends his own money to campaign for election and receives very little, if any, pay for the job. He is fair game for any irate citizen who wants to take a potshot at him.

He also has a job that can be rewarding and productive. He usually wants to do the best job possible. But he finds that simply being a "good guy" is not enough to make him a "good councilmember."

A councilmember once remarked that prior to his election he determined that there could only be one of two answers to every question that might arise – "yes" or "no." Within three months he decided that very few questions could be so answered. In fact, he soon discovered that practically every question, no matter how finally resolved, usually had an adverse effect on some individual or group so he was always a "bad guy" to someone. A "good councilmember" simply cannot always be a "good guy."

This booklet hopefully offers a few suggestions to make one part of his job easier. Yet even here, much is demanded of him. A good councilmember will early realize that he must do a lot of homework in preparation for council meetings. Agenda material must be read and studied. Opinions from constituents must be weighed in order to take a reasonable stand on certain subjects. He must be prepared to dig out facts of his own. And he must remember that he is one part of a team effort. The council meeting brings into focus all the activities of his city, and he must be ready to perform his proper function of directing these activities.

Appendix A

COUNCIL PROCEDURES AND POWERS

Local governments in Missouri, as in all other states, are "creatures of the state." They are created by the Constitution of the State of Missouri. In form, they generally are referred to as statutory cities (3rd and 4th class cities, towns and villages); special charter cities, (cities whose charters were issued by the legislature) and constitutional charter cities, which are sometimes referred to as "home rule" cities.

The powers that statutory cities as local governments exercise are those expressly granted by the Constitution or by statute. Special charter cities have those powers expressly granted in their charters, as well as those granted by the Constitution and by statute, but also may be subject to limitations contained in their charters.

Constitutional charter cities, however, have all the powers the legislature could give to such cities, and those powers only may be restricted by such limitations as are imposed by the Constitution, by the legislature or by the charter itself.

Local governments also may exercise those powers necessary to carry into effect those powers expressly granted, i.e., implied powers, and no power can be implied except that it be essential to carry out the objects and purposes of local government. The exercise of the expressed and implied powers of the local government and the authority of municipal officials are found in their legislative enactments in the form of local ordinances.

In the exercise of corporate powers, municipal officers are considered to be "special" and not "general" agents of the municipal government. Anyone dealing with a municipal officer in his official capacity as such is charged with "notice" of such official's corporate powers and authority, and in dealing with municipal officers must govern themselves accordingly. Thus, a person dealing with a municipal officer cannot claim lack of knowledge that a municipal officer with whom he may have had dealings did not have power or authority to act in a certain way, because the law presumes that such person has the knowledge of the officer's power and authority.

In a representative form of government such as ours, all public or corporate affairs must be transacted in substantially the manner provided by law, i.e., they must be conducted at a legal meeting of the legislative body. To bind a municipal government, the legislative body must be duly, lawfully and properly assembled, it must act in the manner prescribed by law, and its legislative actions must be evidenced by an order, which usually is in the form of an ordinance, but for some temporary matters such order may be in the form of a resolution.

Meetings of the legislative body of a municipal corporation generally are considered to be of three kinds:

a) A regular or stated meeting that usually is set by ordinance or resolution or is contained in the rules of procedure adopted by the legislative body.
b) A special meeting that usually is called by the mayor or other head of the legislative body, or it may be called in some other designated way as may be prescribed by the

legislative body, or as prescribed by law. The special meeting may be called upon due notice having been given to all members of the legislative body.

c) Adjourned meeting is the continuation of a previously duly convened meeting that was properly adjourned to a subsequently determined time as specified in the motion to adjourn the meeting.

The term "quorum" is important to the lawful conduct of the business of a legislative body. Quorum may be defined as "that number of members of the body that when legally assembled in their proper place will enable the body to transact its proper business."

Generally, the quorum required to hold a lawful meeting of a municipal legislative body is a majority of the entire body, although less than a quorum at a meeting duly called generally may adjourn such meeting to another date and time.

A municipal legislative body is considered to be a continuous body although its members may and do change from time to time. Thus, matters of a legislative nature that have been lawfully begun by a preceding council can be carried through to their completion by the succeeding council and be made effective.

In all matters having legislative significance, before the legislative body can enact an ordinance with respect thereto, a majority of the entire legislative body must approve. In some special cases, more than a majority of the entire council may be required, such as a proposed change in zoning where a proper and valid protest has been filed against such change, three-fourths of the entire legislative body is required to pass such an ordinance. Some constitutional charter cities have charter provisions that may require more than a majority of the entire legislative body to pass and approve certain types of ordinances such as a tax levy or special assessment. In matters involving administrative or ministerial decisions of a temporary nature a majority of a quorum of the legislative body usually is sufficient for approval.

Except in cases where vested rights may be violated, or the rights of other parties may have intervened, the legislative body generally has the right to rescind or repeal any of its acts or the acts of any prior body.

A legislative body lawfully may reconsider a vote previously taken at the same meeting, or at a prior meeting, or when a meeting is regularly adjourned, a reconsideration may occur at the adjourned meeting. Reconsideration may be sought only by a member of the legislative body that was successful in supporting or defeating an issue before that body, and this would include a tie vote to defeat an issue. If reconsideration is taken at a subsequent meeting, it must be within a reasonable time after the vote is taken – preferably at the next regular meeting, and before the ordinance becomes effective. Once accepted or confirmed by the legislative body, resignations of officers and appointments of officers cannot be reconsidered by the legislative body alone. Reconsideration by the legislative body after acceptance or confirmation only can be taken with the consent of the resignee or appointee.
It generally is held that a legislative body cannot delegate any of its powers, except certain powers that are administrative or ministerial in nature, to a person or a committee to act in its stead; but if it does, the acts of such person or committee may be void and invalid unless such acts are confirmed

and ratified by the entire legislative body, in which case the act of the person or committee becomes the act of the legislative body. However, there can be no ratification of an ultra vires act or of an act under a void law. Mere approval of the minutes of a meeting of the legislative body where an irregular or a void act took place is not a complete ratification of the acts of the meeting, but only is the approval of the correctness of the meeting. Acts that may be irregular, and therefore void only for the lack of a proper majority vote, may be ratified and confirmed at a subsequent meeting provided the subsequent meeting is validly held.

Each municipality, regardless of its size, should adopt rules of procedure (preferably by ordinance) under which the meetings of the legislative body are to be held, and the business of the meeting shall be conducted.

Rules of procedure may contain but are not limited to the following:

1. Where and when regular meetings shall be held – and how variances in the schedule may be accomplished.

2. How and when special meetings shall be called and notice given.

3. Compelling attendance of members.

4. Appointment of temporary chairman if mayor and mayor pro-tem are not present at start of the meeting.

5. Adoption of parliamentary rules of procedure.

6. Duties of the presiding officer.

7. Method of voting on issues and ordinances.

8. Members leaving council chamber during meeting.

9. Order of business to be taken up at meeting.

10. Dissent by member – entry upon journal.

11. Meetings shall be open to the public.

12. Procedure for introduction of ordinances and resolutions.

13. How bills requested by administrative staff or department heads shall be introduced.

14. Procedure before second reading of a bill if there is an objection to a second reading.

15. Amendment of bills.

16. Roll call votes and recording of ayes and nays.

17. Time limitation for presentation of matters.

18. Appointment of special advisory committees.

19. Preparation of agenda for meetings.

20. Attendance of certain city officials at meetings and their reports.

21. How and when rules of procedure may be suspended.

The adoption of all rules of procedure in one ordinance will simplify and facilitate the business of preparation and conduct of the meetings. Many of the more technical procedural problems can be solved by their inclusion in the rules of procedure, rather than by lengthy debate as to proper procedure to follow in a particular instance. Once adopted, it helps if the rules of procedure are distributed to each member of the legislative body for study and reference. This especially is true for the newly elected members.

Appendix B

ORDINANCES AND RESOLUTIONS

By Al E. Nick

One of the few things all municipalities have in common and use is the power to pass ordinances regulating subjects, matter and things upon which there is a general law of the state. Generally, municipalities, in the passage of ordinances, must confine and restrict their jurisdiction to and in conformity with state law on the subject matter of the ordinance. A municipal ordinance that conflicts with state law is void.

Ordinances in their true concept are not public laws, but are local laws and regulations that operate and are effective only in a given locality such as a city, town or village.

Ordinances emanate from the legislative authority of the municipality and are operative only within its given sphere in the same manner as general laws (statutes) of the state.

Legislative formality is indispensable to the validity of an ordinance. The power to enact ordinances must be exercised reasonably and with due regard to certainty and uniformity, i.e., an ordinance should not be vague or indefinite, but certain, or it may be held to be invalid if tested in court. An ordinance must apply uniformly to all in a class to whom it applies. Thus, special legislation that will benefit or injure any person or segment of the population will be held to be invalid if tested in court.

Ordinances usually fall into four general classes:

a) Ordinances that are enacted by virtue of the police power of the municipality. These ordinances provide penalties for specified omissions or commissions of an act. They include the exercise of power over such subjects and things as traffic regulations, health regulations, licensing of businesses, building permits, building regulations, fire regulations, subdivision regulations, zoning regulations and many other similar subjects and things. Such ordinances generally contain a penalty clause for failure to comply – and therefore are considered to be penal in nature.

b) Ordinances granting franchises or special privileges, such as utility company franchises. They are designated as franchise or contract ordinances.

c) Public improvement ordinances are those ordinances that provide for a public improvement by special assessment against abutting or benefited property owners. They also include public works and improvements paid entirely out of general funds of the city, or partially out of general funds of the city and partially by special assessment. Abatement of certain specified nuisances at the expense of property owners also would be included in this class of ordinance.

d) Ordinances of a permanent nature that are made for the guidance and regulation of the officers and the business of the municipality generally are referred to as administrative ordinances. They include ordinances concerning certain election procedures, the duties

and responsibilities of various officers and department heads, rules of procedure, personnel regulations and other similar administrative matters. Certain types of permanent ordinances, such as building codes, fire codes and similar regulations may be partly administrative in nature and partly the exercise of the police power.

Other types of ordinances that also are administrative ordinances are those of a temporary nature that are enacted for a specific purpose, which may authorize and direct particular officers to do certain things or perform acts where the execution of the said power otherwise is not vested.

Ordinances can be originated only in the form of a bill. From the time a bill is introduced for its first reading a full and complete journal of the records and proceedings of the legislative body with respect thereto must be kept. The journal of the legislative body's records is the best evidence as to the validity of the proper passage of an ordinance and clearly should reflect all the legislative action taken with respect to all bills coming before the legislative body. An ordinance validly passed and approved by the legislative body, whether emanating from an express or implied power, has within the boundaries of said municipality, the same force and effect as a statute.

Legislative formality for the proper adoption and passage of an ordinance requires that:

a) No bill, except general appropriation bills shall contain more than one subject, which should be set forth in the title of the ordinance.

b) No bill shall become an ordinance unless on its second and final reading a majority of the entire elected legislative body shall vote in favor. A roll call or individual voice vote shall be taken by ayes and nays, and the names of the members of the legislative body voting for and against the bill shall be entered upon the journal of the body's records, and failure to take a roll call vote following the second reading of a bill will invalidate an ordinance. Failure to record the ayes and nays taken may invalidate an ordinance if the journal of the body's records are not subsequently corrected to reflect the roll call and recording of ayes and nays.

There is good reasoning behind the requirement for the recording of ayes and nays. First, it provides a definite and accurate record of the municipality's action in order to determine whether all the mandatory requirements for the adoption of an ordinance have been observed, and secondly, it will make the members of the legislative body feel the responsibility of their action and will tend to compel each member to bear his share of the responsibility by making a permanent written record of his action that will not be open to dispute.

Certain types of ordinances may require more than a majority of the entire legislative body in favor in order to be passed. One such ordinance is the amendment of the zoning ordinance in order to change the district map, when a valid protest against such change of zone has been filed – in which case three-fourths of the entire legislative body is required in order to approve a change in zoning. Charter provisions of a municipality may, in certain instances, require more than a majority in order to levy taxes, or under certain circumstances, to levy special assessments for public improvements.

Ordinances speak only from the time they go into effect. They operate prospectively and not retrospectively. If an ordinance is to take effect immediately on its passage and approval, the

ordinance should contain a provision to this effect. Statutes, charters or rules of procedure may provide that, upon passage, an ordinance will not become effective for a certain number of days after passage and approval unless otherwise specified in the ordinance. Unless the provision for immediate effectiveness is included in the ordinance, the ordinance will not become effective until the lapse of the required period of time provided by statute or charter, or rules of procedure.

Ordinances, as well as other books, records and documents that are public records, except those that state law allows to be closed, are open to inspection of citizens and interested taxpayers, subject to reasonable rules and regulations as to time and manner of inspection.

Once an ordinance has been passed and approved, it is presented to the mayor for signature. If your class of city or your charter gives the mayor the right to veto a bill, the mayor, after being presented with the bill as passed by the legislative body, may return the bill to the legislative body with his objections attached thereto. In such case the bill stands reconsidered. The legislative body causes the mayor's objections to be entered in full upon the journal and then proceeds at the convenience of the body to consider the question, usually in the following form: "Shall the bill pass, the objections of the mayor notwithstanding?" The vote on the question again is by ayes and nays and entered in the journal. Usually, two-thirds majority of the entire legislative body is required to override a veto. If overridden, the clerk certifies this fact on the roll, and as certified and properly deposited, the bill becomes an ordinance in the same manner as if it had been signed by the mayor. If not properly passed over the mayor's veto, the bill is defeated.

If, however, the mayor neglects or refuses to sign a bill and returns it without his objections to the legislative body at the next meeting, the ordinance becomes effective without the mayor's signature.

The provisions applicable to veto power may vary in some respects as to detail, but essentially the above provisions relating to veto and passage over a veto apply.

In order for a municipal ordinance to be valid in all respects, it must meet the following requisites:

1. It must be promulgated by a public or municipal corporation, duly created and legally existing.

2. It must emanate by virtue of the power in the corporation.

3. It must relate to a subject within the scope of the corporation.

4. It must be in harmony with the Constitution of the United States and laws and treaties of the United States, the Constitution and statutes of the state, and the municipal charter and the general principles of common law and equity that may be in force in the state, as they may apply in any given situation.

5. It must be reasonable in its terms.

6. It must be adopted by the legislative body, duly and legally convened.

7. It must be in form as provided.

8. It must be precise, definite and certain in expression and terms.

9. It must be passed in the manner prescribed.

10. It must be enacted in good faith, in public interest alone and designed to enable the municipality to carry out its function as a local government.

The formal parts of an ordinance are:

1. Title or caption,

2. Preamble or reason for passage,

3. Ordaining or enacting clause,

4. Command to do or not to do – and designation of subjects and objects of operation,

5. Penalty – if a penal ordinance, and

6. Effective date.

Resolutions play a relatively small part in the function of a municipal government. A resolution generally is used where its subject matter usually is temporary or ministerial in character and relates to the administrative business of the municipality, such as a resolution calling for an election or a resolution to transfer funds. Resolutions dealing with matters of a temporary or ministerial nature, or motions concerning similar matters usually may be passed by a majority of a legal quorum, rather than a majority of the entire legislative body.

One last thing that must be considered is the fact that the circuit courts of this state have the jurisdiction to inquire into the reasonableness and validity of all ordinances.