

**TOWN OF PERDIDO BEACH
9212 County Rd 97
Council Meeting Minutes
January 11, 2016-6:00 pm**

The Town Council of the Town of Perdido Beach met in Regular Session on Monday, January 11, 2016 at 6:00 pm at the Town Hall with Mayor Patsy Parker presiding. Mayor Parker called the Meeting to order at 6:05 pm.

Members Present: Council Members: Andy Holk, Gary Fishbein, Sean Hickey, Priscilla Condon, Ellen Leslie and Mayor Patsy Parker.

Members Absent: None

Others Present: Marcus McDowell-Town Attorney, Mrs. Lynn Thompson- Town Clerk and Members of the Town.

Pledge of Allegiance: Council Member Condon led the pledge of allegiance

Public Comments:

- Mr. Ralph Hargrove made several comments about the Escambia Avenue Ad hoc Committee-Escambia Avenue Water Access.

ITEM: Approve Council Workshop and Council Meeting Minutes December 14, 2015

Motion by Council Member Condon, seconded by Council Member Holk to approve the December 14, 2015 Workshop and Council Meeting minutes.

No Discussion:

All in favor-the motion carried to approve the minutes as presented.

ITEM: Approve December 2015 Financial Report:

Motion by Council Member Condon, seconded by Council Member Hickey to approve the December Financial Report. **(Discussion)**

Council Member Condon had questions on invoice paid to a contractor and Mrs. Thompson-Town Clerk Treasurer answered questions to Council satisfaction.

Roll Call Vote:

"YES"

"ABSTAIN"

"NO"

Council Member Holk
Council Member Fishbein
Council Member Hickey
Council Member Condon
Council member Leslie
Mayor Patsy Parker

All in favor – Financial Report approved as presented.

Presentations: None

ITEM: Resolution 2016-01 Adopting 2015-2016 Annual Town Budget
(First Reading)

Motion by Council Member Condon, seconded by Council Member Leslie
for immediate consideration.

<u>“YES”</u>	<u>Roll Call Vote:</u> <u>“ABSTAIN”</u>	<u>“NO”</u>
Council Member Holk		
Council Member Fishbein		
Council Member Hickey		
Council Member Condon		
Council member Leslie		
Mayor Patsy Parker		

All in favor, Motion carried unanimously for immediate consideration

Motion by Council Member Condon, seconded by Council Member Hickey to
waive the reading.

All in favor, motion carried unanimously to waive the reading,

Motion by Council Member Condon, seconded by Council Member Leslie to
adopt Resolution 2016-01 Adopting the 2015-2016 Annual Town Budget

No Discussion:

<u>“YES”</u>	<u>Roll Call Vote:</u> <u>“ABSTAIN”</u>	<u>“NO”</u>
Council Member Holk		
Council Member Fishbein		
Council Member Hickey		
Council Member Condon		
Council member Leslie		
Mayor Patsy Parker		

All in favor, Motion carried unanimously. (Copy of Budget Attached)

ITEM: Resolution 2016-02 ADOPTING PUBLIC WORKS WORK ORDER POLICY

Motion by Council Member Condon, seconded by Council Member Hickey to
adopt Resolution 2016-02.

No Discussion:

<u>“YES”</u>	<u>Roll Call Vote:</u> <u>“ABSTAIN”</u>	<u>“NO”</u>
Council Member Holk		

Council Member Fishbein
Council Member Hickey
Council Member Condon
Council Member Leslie
Mayor Patsy Parker

Motion carried unanimously to adopt Resolution 2016-02

Motions/Request from Council: None

Committee Reports/Recommendations:

(Reports are given in Workshop – any recommendations for the Town Council will be added to the Council Meeting Agenda for consideration by the Council)

- Ad Hoc Committee Property Search Committee:
Recommendation to the Council to seek an appraisal on a 50' wide lot north of Resmondo Boat Works, bordered on the east side by Co. Rd 97 and on the west side by Palmetto Creek for the purpose of constructing a pier for use by the Volunteer Fire Department and possibly a boat launch for community use, contingent on obtaining a site visit by the regulatory agencies.

Discussion:

Council asked that the Committee bring back a detailed plan that included:

- Parking
- Dimensions of the pier
- Boat Launch
- Maintenance and Repairs

No Action was taken.

Council/Legal/Staff Comments

Other Business:

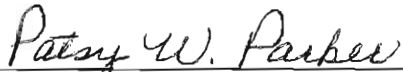
- Mayor Parker gave the Council a copy of the letter to Attorney Franklin Johnson, in the Governor's Office in Montgomery, requesting re allocation of BP funds for the repurposing of the Storage Building to be used as a Community/Town Meeting Facility.
(Copy of Letter Attached)
- Appointment to the Zoning Board of Adjustment
Mayor Parker gave Council Members pages from the Alabama League of Municipalities "Selected Readings" as it pertains to the Zoning Board of Adjustment. **(Attached)**
- Ad Hoc Committee-Escambia Avenue

- Change member status-appoint a member to Ad hoc Committee Escambia Avenue Water Access

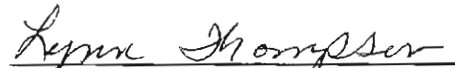
No change in member status. Mayor Parker appointed Mr. Ronnie Resmondo.

Being no further business there was a motion by Council Member Condon, seconded by Council Member Hickey to adjourn. The meeting ended at 6:50 pm.

ATTEST:



Patsy W. Parker, Mayor



Lynn Thompson, Town Clerk



Town of Perdido Beach

RESOLUTION 2016-02 ADOPTING PUBLIC WORKS WORK ORDER POLICY

WHEREAS, the Town Council of the Town of Perdido Beach has authority to establish policies.

THEREFORE, Public Works Work Order Policy is established as follows:

Town of Perdido Beach

Public Works Committee

Work Order Process

The work order system has been established to provide a framework for management of public works maintenance and capital projects. A coding system has been developed to allow for tracking of costs for the various areas of responsibility under the purview of the committee. Additionally, a work order form template has been produced to provide specific instructions for contractors, capture pertinent information, and document work performed for use in budgeting and invoice clearance.

Public works projects are categorized as one of three types:

1. Maintenance
2. Repairs
3. Upgrades (Capital expenditure)

Maintenance activities such as grass cutting, road grading, and tree trimming performed by contracted vendors and are performed on an as needed basis. With the exception of emergency repairs, where there is imminent danger to public safety or where delayed action will cause further deterioration, all repairs costing in excess of \$500 must be submitted to the town council for approval. All upgrade or capital expenditure projects must be submitted to the town council for approval.

When public works capital expenditure projects are identified, a request for budgeted expenditure must be submitted to the town council. Upon approval of a budget a vendor must be identified. In the event that no contract exists with a vendor, the Mayor is responsible for establishing a contract.

All public works projects are subject to the Code of Alabama. Projects are tracked by the work order process. No Public works projects may begin without a work order. The work order process is as follows:

1. The Mayor, a Councilperson, or a member of the Public Works Committee initiates the work order filling in the pertinent fields on the form and signing it in the "Initiated by" field.
2. The filled in work order is then submitted to the Town Clerk who initials it, logs it in and submits it for approval by the Mayor.
3. Once the work order has been approved and signed by the Mayor, the Town Clerk makes a copy for the vendor.
4. The Town Clerk then ensures that the vendor is notified to pick up his copy and commence work.
5. Upon completion of the work the vendor must return a copy of the work order to the Town Clerk with the "Started", "Completed", "Man Hours Worked", and "Material Cost" fields filled in.
6. A member of the Public Works Committee or a designee will perform an inspection of the work, certify that the work has been completed satisfactorily and signoff on the work order.

Completed work orders are held by the Town Clerk to be reconciled with vendor invoices.

Town of Perdido Beach

PUBLIC WORKS COMMITTEE

Project Codes

1. Roadways
 - 1.1. Maintenance
 - 1.2. Repair
 - 1.3. Upgrades (Capex)
2. Parkways
 - 2.1. Maintenance
 - 2.2. Repair
 - 2.3. Upgrades (Capex)
3. Drainage
 - 3.1. Maintenance
 - 3.2. Repair
 - 3.3. Upgrades (Capex)
4. Signage
 - 4.1. Maintenance

4.2. Repair

4.3. Upgrades (Capex)

5. Erosion Control

5.1. Maintenance

5.2. Repair

5.3. Upgrades (Capex)

6. Waterfront Access

6.1. Maintenance

6.2. Repair

6.3. Upgrades (Capex)

7. Debris Control

7.1. Oversight

8. Utilities

8.1. Oversight

Definitions:

Maintenance –Projects that are routine infrastructure maintenance done normally done under contract with established vendors. When no established vendor relationship exists or a contracted vendor is unavailable, maintenance projects may be performed by qualified vendors subject to the bidding regulations.

Examples:

- Parkway cutting and maintenance.
- Grading of existing roadways.
- Tree and brush trimming.
- Digging out clogged drainage pipes.

Repair – Repair of damaged infrastructure that does not modify existing infrastructure.

Examples:

- Signage replacement.
- Road edge repairs.
- Filling potholes.
- Adding rock to eroded roadways.

Upgrades – Capital expenditure projects that significantly alter existing infrastructure.

Examples:

- Any project that requires professional engineering.
- Roadway paving.
- Opening new rights of way.
- Drainage upgrades.

ADOPTED AND APPROVED this **11th day of January, 2016** by the Town Council in regular session assembled and under the Seal of the Town of Perdido Beach, Alabama.

Patsy W. Parker
Patsy W. Parker, Mayor

ATTEST:

Lynn Thompson
Lynn Thompson, Town Clerk



Town of Perdido Beach

RESOLUTION 2016-01 Adopting 2015/2016 Annual Budget

WHEREAS, Section 11-43-57, Code of Alabama, 1975, states that in all cities under the mayor-council form of government, the council shall appropriate the sums necessary for the expenditures of the several municipal departments; and

WHEREAS, Section 11-43-81, Code of Alabama, 1975, makes the mayor the chief executive in charge of municipal administration; and

WHEREAS, the Town of Perdido Beach, having no formal departments and no staff apart from the Town Clerk/Treasurer, performs day to day operations and emergencies by Council approved contracts, executed and administered by the Mayor; and

WHEREAS, Mayor Parker does hereby submit to the Council of the Town of Perdido Beach, Alabama, the 2015/2016 Annual Budget for Council approval, hereto attached.

NOW THEREFORE, BE IT RESOLVED by the Council of the Town of Perdido Beach, Alabama, that the 2015/2016 Annual Budget attached hereto is hereby approved and adopted by the Council of the Town of Perdido Beach, Alabama and the resulting execution of this budget shall comply with the following:

1. Items that are outlined for the ongoing operation and administration of town business and emergencies shall be spent without further Council notification or requirements.
2. Items that require additional resolutions and result in a signed contract with outside entities will be approved through normal Council meetings and operations.
3. The remaining items outlined in the 2015/2016 Budget, namely those outlined under the various committees, shall require additional information to be submitted to Council to obtain approval for the expenditure.
4. Any uncommitted funds remaining in budget line items at the end of the fiscal year will be returned to the General Fund.

Adopted this 11th day of January, 2016 by the Town Council in regular session assembled and under the Seal of the Town of Perdido Beach, Alabama.

ATTEST:

Patsy W. Parker
Patsy W. Parker, Mayor

Lynn Thompson
Lynn Thompson, Town Clerk

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Accrual Basis

Town of Perdido Beach

Checking and Deposit Detail

As of December 31, 2015

Type	Date	Num	Name	Memo	Clr	Split	Amount	Balance
ASSETS								256,467.87
Current Assets								223,467.87
Checking/Savings								223,467.87
1000 · Capital Improvement Fund								0.00
Total 1000 · Capital Improvement Fund								0.00
1200 · General Fund - Centennial								223,467.87
Check	12/01/2015	2387	Riviera Utilities	Town Hall Bui...	X	5045 · Electric ...	-119.37	223,348.50
Check	12/01/2015	2388	Riviera Utilities	Storage Bldg	X	5045 · Electric ...	-20.74	223,327.76
Check	12/01/2015	2389	REVENUE COMM...	VOID: Voided...	X	5095 · Misc.	0.00	223,327.76
Deposit	12/03/2015			Deposit	X	4520 · Sales T...	113.94	223,441.70
Paycheck	12/04/2015	2390	Lynn Thompson		X	-SPLIT-	-426.35	223,015.35
Check	12/08/2015	2391	Centurylink		X	5060 · Telepho...	-264.22	222,751.13
Check	12/08/2015	2392	Enveloc, Inc.	November Ba...	X	5040 · Comput...	-16.40	222,734.73
Deposit	12/10/2015			Deposit	X	-SPLIT-	45.40	222,780.13
Paycheck	12/11/2015	2393	Lynn Thompson		X	-SPLIT-	-426.35	222,353.78
Check	12/14/2015	2394	Gene's Dozer Service	WO #51 prop...		5600 · Grant (...)	-4,020.00	218,333.78
Check	12/14/2015	2395	Gene's Dozer Service	proposal # 13...		5600 · Grant (...)	-7,362.98	210,970.80
Check	12/14/2015	2396	Gene's Dozer Service	FEMA AL 417...		5600 · Grant (...)	-3,546.50	207,424.30
Check	12/14/2015	2397	Gene's Dozer Service	WO # 62 Gra...		5360 · PUBLIC...	-595.00	206,829.30
Check	12/14/2015	2398	Gene's Dozer Service	WO # 69 Invo...		5360 · PUBLIC...	-1,010.00	205,819.30
Check	12/14/2015	2399	Gene's Dozer Service	Howe's Lane ...		5600 · Grant (...)	-1,178.03	204,641.27
Check	12/14/2015	2400	Gene's Dozer Service	Pensacola & ...		5360 · PUBLIC...	-5,851.00	198,790.27
Check	12/14/2015	2401	Gene's Dozer Service	m294 propos...		5600 · Grant (...)	-3,126.50	195,663.77
Check	12/14/2015	2402	Gene's Dozer Service	WO's 52 and ...		5600 · Grant (...)	-9,011.89	186,651.88
Check	12/14/2015	2403	Gene's Dozer Service	WO 65 FEMA...		5600 · Grant (...)	-2,349.25	184,302.63
Check	12/14/2015	2404	Gene's Dozer Service	m302 WO 65		5360 · PUBLIC...	-336.00	183,966.63
Check	12/14/2015	2405	Marcus McDowell-T...	December ret...	X	5005 · Attorne...	-1,000.00	182,966.63
Deposit	12/15/2015			Deposit	X	4800 · Miscella...	389.50	183,356.13
Deposit	12/15/2015			Deposit	X	4850 · Permit ...	50.00	183,406.13
Deposit	12/16/2015			Deposit	X	4520 · Sales T...	3.58	183,409.71
Paycheck	12/18/2015	2407	Lynn Thompson		X	-SPLIT-	-437.74	182,971.97
Check	12/22/2015	2406	Park National Bank		X	5030 · Web Sit...	-297.20	182,674.77
Deposit	12/22/2015			Deposit	X	-SPLIT-	8,522.09	191,196.86
Deposit	12/23/2015			Deposit	X	4520 · Sales T...	122.15	191,319.01
Paycheck	12/25/2015	2409	Lynn Thompson		X	-SPLIT-	-437.74	190,881.27
Check	12/28/2015	2408	1 Man & A Tractor	DECEMBER ...	X	5340 · BUILDI...	-115.00	190,766.27
Deposit	12/29/2015			Deposit	X	4520 · Sales T...	240.40	191,006.67
Deposit	12/29/2015			Deposit	X	4300 · Motor v...	251.14	191,257.81
Check	12/29/2015	2410	Riviera Utilities	Storage Bldg		5045 · Electric ...	-19.03	191,238.78
Check	12/29/2015	2411	Riviera Utilities	Town Hall Bldg		5045 · Electric ...	-89.04	191,149.74
Check	12/29/2015	2412	US Postal Service			5025 · US Post...	0.00	191,149.74
Deposit	12/31/2015			Interest	X	4200 · Interest ...	19.08	191,168.82
Total 1200 · General Fund - Centennial							-32,299.05	191,168.82
Total Checking/Savings							-32,299.05	191,168.82
Accounts Receivable								0.00

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Special Revenue
Reconciliation Summary
1200 - 4 & 5 Cent Gas Tax, Period Ending 12/31/2015

	<u>Dec 31, 15</u>
Beginning Balance	9,008.20
Cleared Transactions	
Deposits and Credits - 2 items	<u>129.24</u>
Total Cleared Transactions	<u>129.24</u>
Cleared Balance	<u><u>9,137.44</u></u>
Register Balance as of 12/31/2015	9,137.44
Ending Balance	9,137.44

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Special Revenue
Reconciliation Detail
1300 - 7 Cent Gas Tax, Period Ending 12/31/2015

Type	Date	Num	Name	Cir	Amount	Balance
Beginning Balance						9,673.73
Cleared Transactions						
Deposits and Credits - 2 items						
Deposit	11/30/2015			X	148.34	148.34
Deposit	12/31/2015			X	0.83	149.17
Total Deposits and Credits					149.17	149.17
Total Cleared Transactions					149.17	149.17
Cleared Balance					149.17	9,822.90
Uncleared Transactions						
Deposits and Credits - 1 item						
Deposit	12/10/2015				128.47	128.47
Total Deposits and Credits					128.47	128.47
Total Uncleared Transactions					128.47	128.47
Register Balance as of 12/31/2015					277.64	9,951.37
Ending Balance					277.64	9,951.37

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Town of Perdido Beach-Capital Improvement Fund**Reconciliation Detail****Capital Improvement -Centennial, Period Ending 12/31/2015**

Type	Date	Num	Name	Clr	Amount	Balance
Beginning Balance						36,306.39
Cleared Transactions						
Deposits and Credits - 1 item						
Deposit	12/31/2015			X	3.08	3.08
Total Deposits and Credits					3.08	3.08
Total Cleared Transactions					3.08	3.08
Cleared Balance					3.08	36,309.47
Register Balance as of 12/31/2015					3.08	36,309.47
Ending Balance					3.08	36,309.47

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Town of Perdido Beach Oil Acct
Reconciliation Detail
Centennial Bank-SPECIAL ACCOUNT, Period Ending 12/31/2015

Type	Date	Num	Name	Clr	Amount	Balance
Beginning Balance						102,420.73
Cleared Transactions						
Deposits and Credits - 1 item						
Deposit	12/31/2015			X	13.05	13.05
Total Deposits and Credits					13.05	13.05
Total Cleared Transactions					13.05	13.05
Cleared Balance					13.05	102,433.78
Register Balance as of 12/31/2015					13.05	102,433.78
Ending Balance					13.05	102,433.78

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01/11/16

Town of Perdido Beach Money Market

Reconciliation Detail

Centennial Bank, Period Ending 12/31/2015

Type	Date	Num	Name	Cir	Amount	Balance
Beginning Balance						813,621.28
Cleared Transactions						
Deposits and Credits - 1 item						
Deposit	12/31/2015			X	103.64	103.64
Total Deposits and Credits					103.64	103.64
Total Cleared Transactions					103.64	103.64
Cleared Balance					103.64	813,724.92
Register Balance as of 12/31/2015					103.64	813,724.92
Ending Balance					103.64	813,724.92



Town of Perdido Beach
9212 County Road 97
Perdido Beach, AL 36530
251.962.2201 www.townofperdidobeach.org

Attorney Franklin Johnson
State Capital
600 Dexter Avenue, Suite NB-05
Montgomery, AL 36130

December 8, 2015

Dear Attorney Johnson:

Thank you for receiving our request for reallocation of funds remaining from the Deep Water Horizon Mitigation.

The Town of Perdido Beach is a waterfront town of 581 residents (2010 census), is located in south Baldwin County on Perdido Bay and was impacted by the Deep Water Horizon Incident. In 2010, when the Deep Water Horizon Incident occurred, the Town had been incorporated less than one year and town officials had been in office for eight months. The Town received no revenue the first year of incorporation and was operating on a \$50,000 line of credit at the time of the Deep Water Horizon Incident. The Town was excluded from the Area Contingency Plan so no assistance was forthcoming from any source until BP gave the State of Alabama \$25,000,000 to be distributed to the various governmental agencies, as needed.

Fortunately, the Town of Perdido Beach was granted sufficient funds by the State of Alabama for mitigation of the oil spill. The Town Council was very wise with the spending of the funds and when the oil well was capped in late July, 2010, there remained funds in the Town's bank account. As of November 30, 2015 the total remaining funds are \$916,629.36. Of that amount \$679,540.00 is reallocated for projects not yet completed. There remains uncommitted \$237,089.36.

A reallocation project already completed is a 40' by 60' storage building, built to house oil spill equipment (anchors, solar buoys, absorbent boom and containment boom). In order to expedite turnover of the equipment during its shelf life, the Town Council has declared the equipment surplus and approved it for sale on govdeals.com. Upon sale of the equipment the storage building will be available for repurpose.

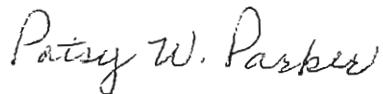
The present Town Hall is a remodeled house, approximately 1500 square feet. The council meeting room is approximately 500 square feet. The Town's citizens are actively involved in town proceedings so meetings are well attended. Needless to say, the meeting room often is very crowded. It would be a tremendous asset to the Town

and its citizens if the storage building were repurposed to be used as a community/town meeting facility. We propose adding a loft floor for storage with the lower level reserved for a meeting area, bathrooms and kitchen. Because the building presently is unfinished on the inside, the project will include finishing the inside and adding air conditioning and heating, a parking area adjacent to the building and an appropriate entrance. The uncommitted funds remaining from the Deep Water Horizon Mitigation are sufficient to finance the facility as described.

If this project is determined to be eligible for reallocation we will solicit proposals for design and cost and will submit a full application with explanation and budget to convert the storage building to a community/town meeting facility.

Please feel free to contact me if you have questions.

Very Sincerely,

A handwritten signature in cursive script that reads "Patsy W. Parker".

Patsy W. Parker, Mayor

11. DUTIES OF THE MAYOR AND COUNCIL

One of the most misunderstood aspects of municipal government is the separation of powers between the mayor and the council. Like government on the state and federal levels, municipal government is divided into three separate but equal branches: executive, legislative and judicial. Each of these branches has distinct duties and powers and restrictions on how far it can intrude into the affairs of the other branches.

At the municipal level, the mayor serves as the head of the executive branch. As such, the mayor is responsible for overseeing the day-to-day operations of the municipality. He or she oversees municipal employees, makes sure that bills are paid on time, executes municipal contracts and, in general, performs many of the same functions as a CEO of a private corporation. Section 11-43-81, Code of Alabama 1975.

In municipalities of less than 12,000 inhabitants, the mayor also presides over council meetings and serves as a member of the council. In these cities and towns, the mayor may vote on any issue before the council, introduce measures and participate in debates to the same extent as members of the council. Section 11-43-42, Code of Alabama 1975.

In cities with populations of more than 12,000, the mayor is not a member of the council. However, he or she has a veto over any permanent action taken by the council. The council can override the veto by a two-thirds vote. Section 11-43-42, Code of Alabama 1975.

The council is the legislative branch. The council has authority over the finances and property of the municipality. The council establishes policies, passes ordinances, sets tax levels, determines what sorts of services the municipality will offer and has authority over all other legislative aspects of municipal government. Section 11-43-56, Code of Alabama 1975.

Citizens and councilmembers must understand that individual councilmembers, acting alone, have no greater power or authority than any other citizen of the municipality. The council can only act as a body at a legally convened meeting. No official action may be taken by any individual council member. All official action must be taken by the council acting as the governing body. The mayor is the chief executive officer of the city and is charged with the duty of supervision of the affairs of the city under policies fixed by the council. AGO to Hon. A.J. Cooper, August 15, 1973.

For instance, the Attorney General has ruled that individual councilmembers cannot direct the activities of a municipal fire department, even pursuant to a properly enacted ordinance. AGO 1988-262. Other similar rulings

include:

- Individual city councilmembers may not supervise and control municipal departments. The city council must approve expenditures of municipal funds. AGO 1991-147.
- A town council may not delegate its authority to appoint recreational board members to individual councilmembers. AGO 1991-402.

It is clear, then, that the primary factor in the success of a municipal government lies in the working relationship between the mayor and the city council. Elected city officials must recognize that they have dedicated themselves for the next four years to accomplishing a common goal – providing the city or town with the best municipal government possible. To achieve this goal, the mayor and the council must maintain a harmonious working relationship.

At times the mayor and the council will disagree over the best solution to a problem. Disagreement is not only inevitable, it can be healthy. Negotiating opposing viewpoints can often lead to unexpected solutions. City officials must learn that when an opposing view is taken by someone else in government, it is merely a different opinion on the best way to represent the citizens of the municipality.

The success of municipal government also depends upon the willingness of each individual councilmember to cooperate with other councilmembers in granting time, knowledge and experience toward representing the citizens of the municipality. Under the mayor-council form of government, the council is granted legislative powers to determine the policies that will be followed in the administration of the municipal government. In exercising these powers, the council determines the extent of the governmental and corporate functions of the municipal government.

Equally vital is the willingness of the mayor to properly administer the ordinances passed by the council. The mayor is charged with the general supervision and control of municipal departments, programs, and facilities. The advice, recommendations and viewpoints of the mayor generally reflect the thoughts of the voters who elected him or her and are worthy of careful consideration by the council.

The laws of Alabama necessitate a close working relationship between the council and the mayor. Without that spirit of cooperation, a municipal government will not function properly. Open communications between the mayor and the council should be maintained at all times. Before acting on any proposal, the council should carefully

of the duties of such office. The power thus delegated and possessed may be a portion belonging sometimes to one of the three great departments, and sometimes to another; still, it is a legal power, which may be rightfully exercised, and, in its effects, will bind the rights of others, and be subject to revision and correction only according to the standing laws of the state. An employment, merely, has none of these distinguishing features. "State v. Stone, 240 Ala. 677, 680, 200 So. 756, 758 (1941). An employee, instead, is someone who "works within the service of another person (the employer) under an express or implied contract for hire (A)n officer must have responsibilities and hold a position that is superior to that of an employee .. Accordingly, an officer is limited to a person that exercises some level of authority, presumably over employees, and performs some discretionary, policy-making functions."

In summary, according to *Coachman*, the mayor has the power to appoint anyone whose appointment "is not otherwise provided for by (state) law." State law clearly provides that the council shall appoint certain positions, such as clerk and treasurer. State law also allows the council to create "offices" by ordinance and, therefore, fill those positions. However, not every position within the municipality can be designated as an office. In order to hold an office, a person must exercise some "level of authority, presumably over employees" and perform discretionary, policy-making functions. If so, the council may pass an ordinance making these positions officers of the municipality.

Powers of Dismissal

Section 11-43-160, Code of Alabama 1975, states that any person appointed to an office in any city or town may, for cause, after a hearing, be removed by the officer making the appointment. Section 11-43-81 states that the mayor may remove, for good cause, any non-elected officer appointed by him or her and permanently fill the vacancy. However, in *State v. Thompson*, 100 So. 756 (1924), the Alabama Supreme Court ruled that where the mayor has been given the power to make appointments solely on his or her own discretion and without the approval of the council, the mayor must grant a hearing to the appointee before the dismissal. Of course, the appointee may waive this right to a hearing.

The mayor may remove any officer for good cause, except those elected by the people, and permanently fill the vacancy if the officer was elected by the council or appointed with its consent. In either of these cases, the mayor must report the dismissal to the council and state the reasons for the action to the council at its next regular meeting. If the council sustains the mayor's act by a majority vote of those elected to the council, the vacancy must be filled as provided

in Title 11 of the Code of Alabama. Again, Section 11-43-81 of the Code states that the appointee must be granted a hearing, which can be waived by the employee, before the dismissal becomes permanent.

In municipalities having a population of less than 12,000 inhabitants, according to the last or any subsequent federal census, the mayor may vote on the removal of any person appointed to office in the municipality pursuant to this section and the mayor shall be considered as a member of the council in determining whether there is a two-thirds vote of the council for the removal of the officer. Section 11-43-81, Code of Alabama. The mayor may not permanently remove the police chief or any other officials who were not appointed by him or her but the mayor may temporarily remove such officials pending a hearing on the question by the council. The mayor may fill the vacancy temporarily by the appointment of an acting successor who is entitled to pay for services rendered. AGO to Hon. Robert S. Glasgow, July 19, 1956. The AG has determined that Section 11-43-160 gives the city council the authority to remove any officer in the several departments, but not employees. The term "officer" includes all those positions specifically set forth in the Code of Alabama as "officers," as well as any position created by the city council pursuant to ordinance. An officer is limited to a person that exercises some level of authority, presumably over employees, and performs some discretionary, policy-making functions. A city council is not authorized to fire an "employee" pursuant to section 11-43-160 of the Code. AGO 2012-039

The mayor of a city of 12,000 or more in population does not sit as a member of the council and, therefore, has no vote on questions of appointment or dismissal of officers or employees who come before the council. The mayor of a city of 12,000 or more in population does not have the power of veto over appointments made by the council.

The fact that the mayor, who voted and participated in a personnel hearing before the council concerning an officer's dismissal, may have had prior and independent knowledge of the dispute would not, standing alone, be sufficient to support a finding that the officer was deprived of an opportunity for an impartial hearing. However, the Alabama Supreme Court has held if before the hearing, a mayor and a councilmember had decided to uphold the discharge of the officer before evidence was presented, participation of the mayor and councilmember in the council hearing denied the officer due process. See, *Chandler v. Lanett*, 424 So.2d 1307 (Ala. 1982); see also, *Guinn v. Eufaula*, 437 So.2d 516 (Ala. 1983); *Stallworth v. Evergreen*, 680 So.2d 229 (Ala. 1996).

Municipal Finances

Section 11-43-84, Code of Alabama 1975, requires

mayor is authorized to enter into and to execute contracts, it determined that the authority cannot be exercised without the direction and authorization of the council. *Town of Boligee v. Greene County Water & Sewer Auth.*, 77 So.3d 1166 (Ala. 2011). Accordingly, the general rule is that the only method by which an employee or official may expend funds or be given authority to bind the municipality to a contract is by an affirmative vote of the council reflected in the minutes. An exception is the mayor's authority to contract for an annual municipal audit pursuant to Section 11-43-85, Code of Alabama 1975.

Section 11-47-20 of the Code authorizes a municipality, by ordinance entered on the minutes of the council, to dispose of any real property not needed for public or municipal purposes. The council directs the mayor to make title thereto. The council may file a writ of mandamus against the mayor if the mayor refuses to execute a deed as required. AGO 1995-113. A conveyance made by the mayor in accordance with this ordinance invests the grantee with the title of the municipality. Section 11-47-21 requires a municipality to follow the same procedure when it wishes to lease any of its real property. No similar requirement is made for personal property. *See*, Section 11-43-56, Code of Alabama 1975. For further discussion on this topic, please see the article entitled "Sale of Lease of Unneeded Municipal Property" located in the *Selected Readings for the Municipal Official*.

If a public official, public employee, member of the household of the public official or employee, or business with which that person is associated, enters into a contract to provide goods or services and payment, in whole or part, for the contract will come out of state, county or municipal funds, must be filed within the Ethics Commission within ten days after the contract has been entered into, regardless of the amount of the contract or whether or not the contract has obtained through competitive bid. AGO 2001-029.

Legislative and Judicial Powers of the Mayor

Section 11-45-1, Code of Alabama 1975, gives municipalities the power to adopt ordinances and resolutions to carry into effect the powers and duties conferred on it by statute and to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort and convenience of the citizens of the municipality. The council, as the legislative body of the municipality, is responsible for enacting these ordinances.

In municipalities of less than 12,000 in population, the mayor sits with, presides over and is considered a member of the municipal council. This provision entitles the mayor to vote for or against the adoption of ordinances that the council considers. It is unnecessary that an ordinance be approved by the mayor or authenticated by his or her

signature. Section 11-43-42, Code of Alabama 1975.

In cities with populations of 12,000 or more, the mayor does not sit as a member of the council. Therefore, the clerk must transmit all ordinances and resolutions intended to be of a permanent nature to the mayor within 48 hours after passage by the council. If the mayor disapproves of an ordinance or resolution transmitted by the clerk, he or she must, within 10 days of its passage by the council, return it to the clerk with the written objections. The clerk is to report these objections to the council at its next regular meeting. If the mayor fails to return the ordinance within 10 days, the clerk shall publish the ordinance as though the mayor had signed his or her approval. *See*, Sections 11-45-4 and 11-45-5, Code of Alabama 1975. The mayor has no authority to veto an ordinance which merely disposes of an administrative matter. AGO to Hon. Carl H. Kilgore, July 8, 1975. Therefore, nonpermanent ordinances are not subject to the mayor's veto. AGO 1991-072.

The council has the power to pass an ordinance over the mayor's veto by two-thirds vote of the members elected to the council. The vote must be recorded on the minutes. Section 11-45-5, Code of Alabama 1975.

Under general law, in municipalities over 12,000 in population, Section 11-45-5 gives the mayor power to approve or veto in whole or in part all ordinances or resolutions fixing the salaries of officers and employees. At its next regular meeting, the council votes on whether it will override the mayor's veto. If it fails to override the veto, then it votes upon the approval of the ordinances as approved by the mayor.

Section 12-14-15, Code of Alabama 1975, states that the mayor, under authority as chief executive officer, has the power to remit fines and costs imposed by the municipal judge or the court to which an appeal was taken for violation of a municipal ordinance. In addition, the mayor has the power to pardon those convicted and sentenced by the municipal judge for violations of municipal ordinances. However in an opinion to the city council of East Brewton, August 8, 1974, the Attorney General ruled that a mayor has no authority to remit forfeitures levied against sureties on appearance bonds by the municipal judge. AGO to Hon. Richmond McClintock, July 17, 1957. Likewise, the mayor has no authority to approve or order the approval of any appearance bonds. AGO 1991-374. Similarly, councilmembers may not sign as surety on bail bonds for persons arrested by municipal police officers. AGO 1990-282.

Section 12-14-15 also requires the mayor to make a written report to the council at its first regular meeting each month, listing the fines and costs remitted, sentences commuted and pardons and paroles granted by the mayor during the preceding months and stating the reasons

either procedure.

Procedure 1 – If this procedure is selected, the municipal governing body must publish the proposed ordinance in full, for one insertion, in a newspaper of general circulation published within the municipality together with a notice stating the time and place that the ordinance is to be considered by the municipal governing body and stating further that at such time and place all persons who desire shall have an opportunity to be heard in opposition to or in favor of the ordinance. A newspaper is published where it is placed in the post office and first entered into circulation. AGO 1989-045.

Following this procedure, one week after the first insertion, the municipal governing body must publish a synopsis of the proposed ordinance. The synopsis must refer to the date and name of the newspaper in which the proposed ordinance was first published. Both insertions must be published at least 15 days in advance of the passage of the ordinance. If there is no newspaper, then the governing body must cause the ordinance and the notice to be posted in four conspicuous places within the municipality. Using this procedure, major changes in zoning ordinances must be published in their entirety. AGO to Hon. J. C. Davis, Jr., March 7, 1973.

Procedure 2 – If the second procedure is selected, the governing body shall publish the notice for three consecutive weeks in a newspaper in general circulation in the county. This provision requires publishing the notice at least once a week for three consecutive weeks. Section 11-52-77, Code of Alabama 1975. The notice must include the following information:

- A provision that the council will consider a zoning ordinance or an amendment to its existing zoning ordinance and that a copy of the proposal is available for public inspection at the city or town hall;
- The location of the city or town hall;
- A map showing the location of the property proposed to be zoned or rezoned;
- A general description of the property proposed to be zoned or rezoned, including the common name by which the property is known; and
- The time and place where persons opposing or favoring the zoning or rezoning may present their views to the council.

The notice must be published in a standard format in the legal section of the newspaper. In addition, the same notice must be published one time in the regular section of the newspaper in the form of a one-quarter page advertisement.

Until one of these methods of notifying the public is followed, no adoption of a zoning ordinance or an amendment thereto will be valid. AGO to Hon. Terry G.

Snow, May 19, 1976.

A municipality may provide more notice of a zoning change than is required by the Code. AGO 1988-207. In *Holland v. Alabaster*, 595 So.2d 483 (1991), the Alabama Court of Civil Appeals held that the fact that a particular newspaper published within the county was circulated in the city does not satisfy the publication requirements for zoning ordinances.

After a hearing, the governing body may adopt the ordinance as reported by the planning commission or in such amended form as it deems best. However, if the governing body makes substantial changes in the ordinance as first advertised, the governing body should hold another public hearing after giving notice as described above. For instance, in *Mobile v. Cardinal Woods Apartment, Ltd.*, 727 So.2d 48 (1999), the Alabama Supreme Court invalidated the zoning notice. In this case, the published notice for the consideration of a zoning ordinance amendment indicated that the property in question would be used only for “small specialty shops and professional offices.” What invalidated the notice was that at a council meeting the council made a change in the ordinance that allowed the property to be used for a restaurant. The court held that the notice must be sufficient to place the public on notice of the proposed use of the property and that this requirement was not satisfied in this instance.

After the ordinance is adopted by the governing body, it must again be published in the same manner as all municipal ordinances subject to the provisions of Section 11-45-8, Code of Alabama 1975. A zoning ordinance that is amended after a public hearing is invalid when a municipality fails to post or publish the final amended ordinance even when the proposed ordinance was published in full prior to the public hearing. *Stevenson v. Selby*, 839 So.2d 647 (Ala. Civ. App. 2001). **Note:** The League recommends reading this opinion in its entirety.

Amendments to a zoning ordinance must also be adopted by following the procedures outlined above.

Zoning Board of Adjustment

The third agency of municipal government which deals with the zoning process is the zoning board of adjustment. While the creation of such a board is not mandatory, no municipal officer or agency may perform the functions of the zoning board of adjustment where no such board has been established. AGO to Hon. G. C. Donaldson, October 4, 1974. Thus, a zoning board of adjustment is necessary to properly administer the zoning ordinance.

A zoning ordinance cannot cover all possible situations which might arise under it. Some method is necessary to ease strict application of the zoning ordinance and to still achieve the purpose of the land use plan on which the zoning

No one factor is dispositive as to what constitutes undue hardship. *Mobile v. Sorrell*, 124 So.2d 463 (Ala. 1960). Instead, all relevant factors, when taken together, must indicate that the problems of the property are unique in that it cannot reasonably be used for a conforming use.

Other cases which discuss the question of undue hardship include:

- *Trussville v. Simmons*, 675 So.2d 474 (Ala. Civ. App. 1996) – city’s enforcement of its sign ordinance did not create a hardship for the property owner that would permit him to obtain a variance;
- *Asmus v. Ono Island Bd. of Adjustment*, 716 So.2d 1242 (Ala. Civ. App. 1998) – landowner did not suffer any unnecessary hardship that would entitle him or her to a variance to build a boat deck 250 feet from shore;
- *Behm v. Bd. of Zoning Adjustment of Mobile*, 571 So.2d 315 (Ala. Civ. App. 1990); *Brock v. Bd. of Zoning Adjustment of Huntsville*, 571 So.2d 1183 (Ala. Civ. App. 1990) and *Bd. of Adjustment of Mobile v. Murphy*, 591 So.2d 505 (Ala. Civ. App. 1991) – questions of undue hardship are factual issues to be submitted to the jury; and
- *Vernon’s Tri-State Pawn v. Bd. of Adjustment of Mobile*, 571 So.2d 309 (Ala. Civ. App. 1990) – jury instruction on self-inflicted hardships was correct and should have been given.
- In *Ex parte Bd. of Zoning Adjustment*, 636 So.2d 415 (Ala. 1994) – loss of potential future economic gain was insufficient to establish unnecessary hardship to justify the grant of a use variance for a mobile home park.

There are as many types of variances possible as there are design criteria incorporated into the zoning ordinance being considered. For example, variances are sought when any of the following criteria in a zoning ordinance create unnecessary hardship – set-back criteria; area criteria; height criteria; structure criteria; accessory structure criteria; fence, wall and screening criteria; and parking, storage and loading criteria.

A variance is granted to allow deviation from established design requirements. Appeal for a use variance occurs when an appeal is made to request allowance of a use within a zoning district which is prohibited by the ordinance in that district. According to courts in most jurisdictions, such an allowance negates the intent of the ordinance, constitutes rezoning and is not within the power and authority of zoning boards of adjustment. A change of use should be undertaken by the municipal governing body. **Note:** Although the above statement is the general weight of authority, the *Nelson* case cited above ruled to the contrary in Alabama. For a different opinion, see, *McKay v. Strawbridge*, 656 So.2d 845 (Ala. Civ. App. 1995). In

this case, property owners purchased a parcel of land on which they planned to relocate their truck repair shop and to build a grocery store. At the time of the purchase, the property was zoned for residential use. They petitioned the Board of Adjustment for a variance in the zoning of the property from residential use (R-1) to general commercial use (B-2). After a hearing, the board granted the variance. The Alabama Court of Civil Appeals held that a board of adjustment had no authority to grant the requested variance because the request should have been done as a rezoning.

The Attorney General cannot decide whether a board of zoning adjustment should issue a variance. This is a factual issue the board must resolve. AGO 1996-222. The Attorney General’s office cannot decide factual issues, such as whether a variance should be granted by a zoning board of adjustment or whether a mobile home comes within the definition of a mobile home as defined in a zoning ordinance. AGO 1996-314.

The Alabama Court of Civil Appeals held that a contractor did not have standing to apply for a variance because the contractor did not own the property, nor did he have any interest in the property. In this scenario, the owner had merely contracted for a contractor to perform improvements on the property. *Birmingham Zoning Bd. of Adjustment v. Jackson*, 768 So.2d 407 (Ala. Civ. App. 2000).

A landowner who knows of a zoning ordinance prohibiting mobile homes before he purchases a mobile home is not entitled to a variance to allow him to place a mobile home on his property, even if the landowner has previously secured a variance for another family member to place a mobile home on the property at an earlier date. A previously granted variance cannot be the basis on which to install a second mobile home. *Russellville v. Vernon*, 842 So.2d 627 (Ala. 2002).

When considering a request for a variance, each member of a zoning board of adjustment should decide whether the variance, if granted, would maintain adequate levels of health, safety and general public welfare for the community and the neighborhood involved.

Another aspect to be remembered is that the granting of the variance can be negotiated. Each side may have to give and take a little. For example, a variance might be granted with the stipulation that certain design features will be added.

Interpretation of Existing Zoning Ordinances. The second of the three delegated functions of the zoning board of adjustment is the interpretation of existing zoning ordinances. This does not mean that the zoning board of adjustment can adopt new or amended provisions which revise the intent of the zoning ordinance.

The most common interpretations required are: (1) the intent of the zoning ordinance, and (2) the administrative

general circulation within the municipality, or if there is no newspaper, by posting such notice in four conspicuous places within the municipality. Both insertions, or posting, must take place for at least 15 days prior to the hearing. Although not required by law, many zoning ordinances require that adjoining property owners (as determined by the latest tax assessment roll) be notified of the hearing by mail at least five days prior to the hearing, and that notices of the hearing be posted on the property in question.

Section 11-52-80, Code of Alabama 1975, requires the zoning board of adjustment to keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or not voting, indicating this fact, and to keep records of its examinations and other official actions. All of these items are to be immediately filed in the office of the board and are public records.

The statute specifies a necessary vote of four members to take any action, but does not specify the number of members required to make a quorum. However, since a minimum of four members is required to take any action, a minimum of four should constitute a quorum for doing business.

Appeals to the Zoning Board of Adjustment

Any person aggrieved or any officer, department, board or bureau of the municipality affected by any decision of the zoning administrator may appeal to the zoning board of adjustment within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds for the appeal.

The board of adjustment may provide deadlines for appeal procedures. The intent is to allow the appellant ample time to prepare an adequate appeal to the board. However, the time allowed for appeal should be limited to the shortest practical period to avoid problems arising from unnecessary delays. In most cases, a period of three weeks is sufficient for both the appellant and the board.

The officer from whom the appeal was taken must transmit to the board all papers constituting the record upon which the appeal was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after receiving the notice of appeal, that by reason of the facts stated in the certificate, a stay would in his or her opinion cause imminent peril to life and property. After certification, the proceedings shall not be stayed other than by a restraining order granted by the board or by a court of record for due cause on application of notice to the officer from whom the appeal is taken.

The board shall fix a reasonable time for the hearing of the appeal, give notice to the public and to the parties

in interest and decide the appeal within a reasonable time. Since two weeks notice is the suggested public notification period, the maximum time period for board hearings should be limited to 30 days. At the hearing, any party may appear in person or by agent or attorney.

In deciding appeals, the board, in conformity with the provisions of the state zoning laws, may reverse or affirm wholly or in part, or may modify the order, make such order, requirement, decision or determination as ought to be made and to that end, shall have all the powers of the officer from whom the appeal is taken.

Appeals from Decisions of the Zoning Board of Adjustment

Section 11-52-81, Code of Alabama 1975, provides that any party aggrieved by a final judgment or decision of the zoning board of adjustment may appeal the decision within 15 days to the circuit court, or court of like jurisdiction, by filing with the board a written notice of appeal specifying the judgment or decision from which the appeal is taken. A city has no authority to adopt an ordinance that alters the appeal process established in Section 11-52-81, Code of Alabama 1975, for appeals from a decision of the zoning board of adjustment. AGO 2002-028.

The zoning board of adjustment has a statutory duty to transmit a transcript of proceedings regarding a variance to the trial court upon neighboring landowner's timely filing of a written notice of appeal with the board. *Carter v. Prattville Bd. Of Zoning Adjustment*, 976 So.2d 459 (Ala. Civ. App. 2007).

The case is tried by the circuit court de novo. Payment of a docket fee in circuit court is not a jurisdictional requirement for perfecting an appeal from a decision by the municipal zoning board of adjustment. To establish oneself as an aggrieved party, a person must present proof of the adverse affect the changed status of the rezoned property has or could have, on the use, enjoyment and value of his or her property. *Bastian v. Bd. of Zoning Adjustment of Daphne*, 708 So.2d 187 (Ala. Civ. App. 1997).

A property owner who sold his property before the formal meeting of a city's planning commission at which his rezoning request was to be considered was not an "aggrieved party" with standing to bring an action challenging the alleged denial of the rezoning request. *Caton v. Thorsby*, 855 So.2d 1057 (Ala. 2003).

A municipality may be considered an aggrieved party and may appeal decisions of its board of zoning adjustment to the circuit court. *Ex parte Huntsville*, 684 So.2d 123 (Ala. 1996).

Nonconforming Uses

Too often a municipality is seen as the villain in the

Work in Progress

- None

Pending work:

- Street and stop signs to be replaced.
- Repair / resurface of Escambia – database of roadway problems.
- Comprehensive drainage study grant.

Request from the Public:

- A request was made to lower the speed limit on Anniston St. to 10 MPH.

Meetings Attended:

- None

Pending Recommendation to the Council:

The committee voted to recommend to the council that they accept and implement the updated work order process.

Attachments:

Meeting minutes



Sean Hickey
Chairman, Public Works