

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

CITY COUNCIL AGENDA JUNE 6, 2002

A special City Council meeting will be held on June 6, 2002, at 7:00p.m. in Room 219 of the City Administration located at 113 West Mountain Street, Fayetteville, Arkansas.

1. SELECTION OF ALDERMAN FOR WARD 3

QUESTIONS FOR APPLICANTS:

Santos: Tell us about yourself and why you want to be an alderman?
Would you like to add anything that is not on your resume?

Thiel: What issues are you most concerned about?

Young: If appointed, who would you be working for?
If you had an opinion different from that of your constituents, which way would you vote and why?

Reynolds: What are you going to bring to the table to help this council and this mayor make Fayetteville a better place to live?

Davis: What have you done in the last twelve months in community service?

Marr: How does your professional and personal experience qualify you to handle financial issues?

Jordan: How would you bring high tech jobs to Fayetteville while balancing environmental concerns?

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1. Roll call and determination of quorum to conduct business at this special city council meeting to select an alderman for the vacant position in Ward 3.
2. Introduction by Mayor Coody and explanation of interview procedure.
3. Drawing of numbers by applicants.
4. Questions for Applicants. (Answers limited to two minutes.)

Santos: Tell us about yourself and why you want to be an alderman?
Would you like to add anything that is not on your resume?

Thiel: What issues are you most concerned about?

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which way would you vote and why?

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this mayor make Fayetteville a better place to live?

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service?

Marr: How does your professional and personal experience qualify you
to handle financial issues?

Jordan: How would you bring high tech jobs to Fayetteville while
balancing environmental concerns?

5. Concluding statement by applicants.
6. Discussion by Aldermen.
7. Voting by Alderman.

Pursuant to our Rules of Procedure H.2.:

"All positions shall be decided by majority vote of the City Council. In instances where there is more than one nominee for a position... each Councilmember shall vote by naming his or her choice for that position."

Meeting of June 6, 2002

	Loc	RR ^{ex} cy			
SANTOS	✓	✓			
JORDAN	✓	✓			
REYNOLDS	✓	✓			
THIEL	✓	✓			
YOUNG	✓	✓			
MARR	✓	✓			
DAVIS	✓	✓			
COODY	✓				

SANTOS	TB				
JORDAN	BM				
REYNOLDS	TB				
THIEL	RR				
YOUNG	RR				
MARR	TB				
DAVIS	TB				
COODY					
	TB	*			

APPLICANTS

1

Jana Britton ✓

4

Chet Caldwell

2

Betty Martin ✓

5

Ken Myers

3

Robert Rhoads ✓

6

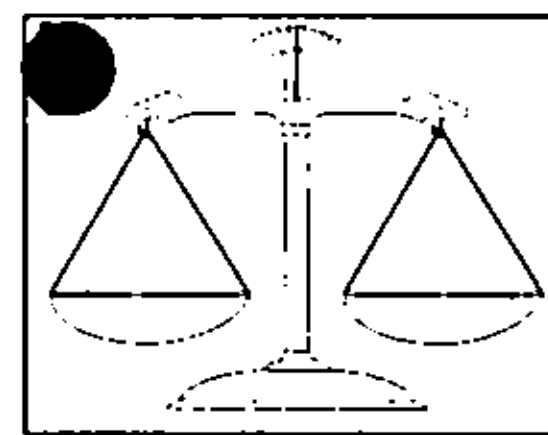
Tom Bechard

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody, Mayor**
All City Council Members
Applicants for Alderman Vacancy

FROM: **Kit Williams, City Attorney**

DATE: **June 6, 2002**

RE: **Procedure for selection process as directed by the City Council**

The City Council has directed that the following procedure be used tonight for the selection process for the vacant position of Alderman.

1. The applicants will select, by lot, their order to answer questions. The applicants will then sit in order, but go to the podium to answer each question and give their final statement.
2. Alderman Kevin Santos will ask the first question and the first question will be answered by applicant #1, followed by applicant #2 until all applicants have had a chance to respond.
3. Alderman Brenda Thiel will then ask her question which will be answered first by applicant #2, then applicant #3 will answer and so on with applicant #1 going last. This process will continue with applicant #3 going first on the third question and so on. There

will be seven questions and a final opportunity to make a statement so everyone will go first at least once and applicants #1 and #2 will go first twice.

4. Each answer by an applicant is limited to **NOT MORE THAN 2 MINUTES**. City Clerk Heather Woodruff will operate a device in which an amber light will go on when you have 30 seconds remaining and a red light will be activated when your time is up. You may finish your sentence when the red light goes on, but then must stop. The Mayor may also hold up a "STOP" sign if you fail to notice the red light.

5. Following all of the applicants' final statements, the City Council may discuss the applicants, but further questioning is not anticipated.

6. The City Council may then vote to select the new Alderman for Ward Three.

**CITY COUNCIL
AGENDA
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Would you like to add anything that is not on your resume?
- Thiel:** What issues are you most concerned about?
- Young:** If appointed, who would you be working for?
If you had an opinion different from that of your constituents, which way would you vote and why?
- Reynolds:** What are you going to bring to the table to help this council and this mayor make Fayetteville a better place to live?
- Davis:** What have you done in the last twelve months in community service?
- Marr:** How does your professional and personal experience qualify you to handle financial issues?
- Jordan:** How would you bring high tech jobs to Fayetteville while balancing environmental concerns?

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Pursuant to our Rules of Procedure H.2.:

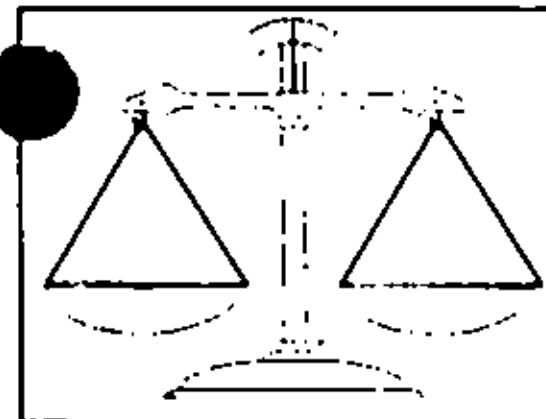
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KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: Dan Coody, Mayor
All City Aldermen

FROM: Kit Williams, City Attorney

DATE: June 3, 2002

RE: Statutory Procedural Rules for Selecting the Alderman
for the Vacant Position in Ward Three

As I explained in my March 29, 2002 memo (attached), Arkansas Statutes provide:

"Vacancies in municipal offices which are authorized by state law to be filled by appointment by the city or town governing body shall require a majority vote of the remaining members of the governing body."

A.C.A. §14-42-103 (a)

As I informed you in my December 27, 2001 memo concerning the organization of the City Council:

"As you see, you are granted the power to organize yourselves as the City Council with the mayor being the 'ex-officio president of the council (who) shall

preside at its meetings.' " "The mayor shall have a vote when his vote is needed to pass any ordinance, by-law, resolution, order or motion." A.C.A. §14-43-501(b)(1)(B).

Although Mayor Coody could normally vote to break a tie (say 3 to 3 with one absent or abstaining), his inclusion as a voter would increase the number of "members of the governing body" to eight, thus increasing the majority vote needed to five affirmative votes to fill the alderman position. I therefore believe his vote could not pass the motion to select a council member and thus he would not have the statutory power to vote. (There may be some eventuality I have not anticipated in which he could still legally vote.)

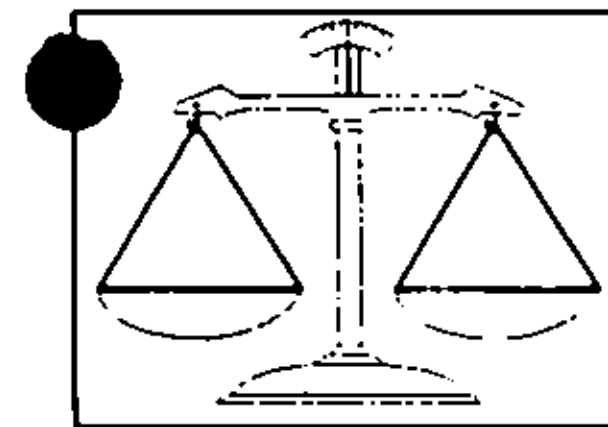
Even though the Mayor probably cannot vote, he still may properly go into executive session with the aldermen if the aldermen chose to discuss the choice privately (just as Mayor Hanna did on a couple of occasions). Please remember not to conduct any **VOTING** during the executive session. **ALL voting must be done in the open, public meeting.**

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THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: Dan Coody, Mayor
City Council Members

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', followed by a long horizontal line extending to the right.

DATE: March 29, 2002

RE: Alderman Vacancy

After the sudden and tragic death of my friend, Alderman Trent Trumbo, it is my sad duty to inform you the proper procedure to fill his remaining term of office. Since Alderman Trumbo had less than one year remaining in his current term of office, A.C.A. §14-43-411 (b) (2) mandates that "a successor shall be chosen by a majority vote of the members of the council."

A.C.A. §14-42-103 states that filling such a vacancy "shall require a majority vote of the remaining members of governing body."

Assuming the City Council decides to fill this vacancy prior to completion of the Ward Two Special Election (April 23rd) and the probable runoff (May 14th), four votes will be needed to approve the appointment of Alderman Trumbo's successor. If no candidate receives more than three votes, Mayor Coody could cast the deciding vote. If the Council waited until after the Ward Two election, four votes would still be required, but Mayor Coody could not break a tie unless one member abstained or was absent.

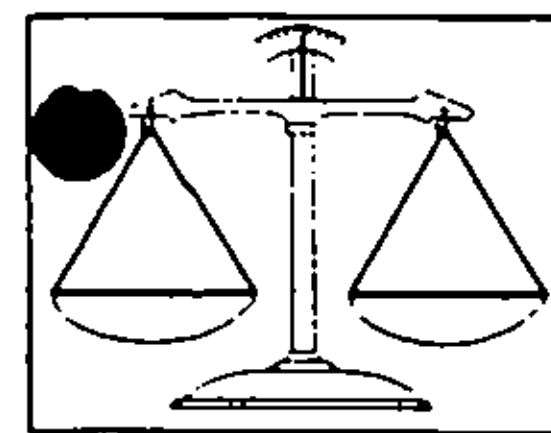
Whoever will be selected will have large shoes to fill: Vice Mayor, long time Chairman of the City Council Water and Sewer Committee, dedicated public servant, champion for the Boys and Girls Club's new building, the new Senior Citizens Center, and the new Wastewater Treatment Plant. Trent has left his mark upon our hometown and will be sorely missed by all of us who had the pleasure and privilege to serve with him.

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THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: Dan Coody, Mayor
City Council Members

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', with a long horizontal flourish extending to the right.

DATE: December 27, 2001

RE: Organization of the City Council

Attached is A.C.A. §14-43-501 Organization of City Council. As you see it requires that you "shall annually, at the first council meeting in January, assemble and organize the city council." A.C.A. §14-43-501(a)(1).

Subsection (b)(2) states: "In the absence of the mayor, the council shall elect a president pro tempore." This appears to be a position similar or identical to what we have referred to as "Vice-Mayor." I could find no mention in the statutes of a "Vice-Mayor."

As you see, you are granted the power to organize yourselves as the City Council with the mayor being the "ex-officio president of the council (who) shall preside at its meetings." "The mayor shall have a vote when his vote is needed to pass any ordinance, by-law, resolution, order or motion." A.C.A. §14-43-502(b)(1)(B).

History. Acts 1875, No. 1, § 5, p. 1; C. & M. Dig., § 7459; Pope's Dig., § 9492; A.S.A. 1947, § 19-901.

Cross References. Corporate authority of towns, § 14-45-101.

CASE NOTES

ANALYSIS

In general.
Mayors.

In General.

No one but the state may challenge the existence of a municipal corporation, nor take advantage of the abandonment of corporate rights. *Town of Searcy v. Yarnell*, 47 Ark. 269, 1 S.W. 319 (1886); *Town of Madison v. Bond*, 133 Ark. 527, 202 S.W. 721 (1918).

Mayors.

The mayor of a second class city is a member of the council of a second class city and thereby entitled to vote on the municipal council's ordinances. *Clark v. Mahan*, 268 Ark. 37, 594 S.W.2d 7 (1980).

Cited: *Leadership Roundtable v. City of Little Rock*, 499 F. Supp. 579 (E.D. Ark. 1980).

14-42-103. Vacancies in municipal offices.

(a) Vacancies in municipal offices which are authorized by state law to be filled by appointment by the city or town governing body shall require a majority vote of the remaining members of the governing body. However, there must always be a majority of a quorum of the whole number of the governing body to fill the vacancy.

(b) The governing body may appoint any qualified elector, including members of a governing body, to fill the vacancy. However, a member of the governing body shall not vote on his own appointment.

History. Acts 1977, No. 9, §§ 1, 2; 1981, No. 303, § 2; A.S.A. 1947, § 19-905.1.

CASE NOTES

Resignation.

Arkansas law does not designate who is the proper authority to accept a municipal

officer's resignation. *Hopper v. Garner*, 328 Ark. 516, 944 S.W.2d 540 (1997).

14-42-104. Vacancies in certain alderman positions.

When a vacancy occurs in any position of alderman in a city having a population of fifty thousand (50,000) or more, according to the most recent federal decennial census and having a mayor-council form of government in which the electors of each ward elect one (1) or more aldermen, a new alderman shall be chosen in the following manner:

(1) If the unexpired portion of the term of alderman exceeds one (1) year, a successor shall be elected by a vote of the electors of the ward. The city council shall order a special election to be held within sixty (60) days of the date the vacancy occurs;

1 How many votes are needed to pass an ordinance or resolution?

A majority of the entire council is required to pass any "bylaw, ordinance, resolution or order." Ark. Code Ann. § 14-55-203. A majority is whatever number it takes to have more than half. On a five-member council, this would be three, a six-member council would require four and so forth.

A fairly common misconception is that all ordinances require a two-thirds vote to pass. This is incorrect, unless a specific statute states otherwise.

Frequently Asked Questions of Law

The mayor's powers, a council quorum and city council matters are reviewed.

Compiled by David Schoen, Legal Counsel,
Arkansas Municipal League

5 Can the mayor be counted as part of the quorum?

Only in cities of the second class. Ark. Code Ann. § 14-44-107. Thus, on a six-member council, if only three aldermen show up, the mayor could be the "fourth" needed to establish a quorum in a second-class city.

6 When can the mayor vote?

Whenever the mayor's vote is needed to pass an ordinance, bylaw, order or resolution. Ark. Code Ann. §§ 14-45-501 (first class cities); 14-44-107 (second class cities); 14-45-105 (incorporated town); see also *Gibson v. City of Trumann*, 511 Ark. 581, 845 S.W.2d 515 (1995). An obvious example is when the vote is tied, for example, three-to-three on a six-member council. The mayor could cast the fourth vote needed for passage.

A tie is not the only situation in which a mayor's vote might be needed to pass, however. For example, in question 2, we had a 3-1 vote on a six-member council. This could be the result of absence and/or abstention of two council members. We don't have a tie, but three votes is not enough for passage. The mayor may cast the fourth vote in order to pass the item.

Suppose the vote in the foregoing scenario is 2-2.

4 Is either the number of votes or the number needed for a quorum affected when voting to fill a vacancy on the council?

Yes as to the number of votes, no as to the need for a quorum. Ark. Code Ann. § 14-42-105 provides that a vacancy may be filled by a "majority of a quorum of the whole number of the governing body."

Thus, on a six-member council three favorable votes out of the remaining five members would be sufficient. Ark. Atty. Gen. Op. No. 97-265. However, if the mayor voted, four votes would be required to pass as there would then be six possible votes in all.

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