

## FOREWORD

This *Pocket Guide for New Mexico Municipal Officials* has been prepared by the staff of the New Mexico Municipal League for the benefit of municipal elected officials in New Mexico.

This *Pocket Guide* presents, in brief format, some of the important statutes of interest to municipal officials. It may be used as a ready reference in meetings. However, it cannot possibly cover all questions that will arise. It is not intended to substitute for referral to the complete New Mexico Statutes Annotated 1978 and its supplements, or for consultation with the municipal attorney on matters of specific interest.

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## INTRODUCTION

New Mexico has three basic forms of municipal government: mayor-council; commission-manager; and home rule. All charters adopted since 1970 (when the Home Rule amendment to the state Constitution was passed) have created Home Rule municipalities. These three forms of government are discussed in more detail in this booklet.

Around the time of statehood, a general act was passed by the state legislature to govern the incorporation of municipalities. Since that time, all municipalities have incorporated under that general act. Every municipality must first incorporate as a mayor-council form of government and may later elect to change to commission-manager form or adopt a charter.

The structure of municipal government in New Mexico is based to some degree upon the underlying foundation of federal and state government, the doctrine of separation of powers, i.e., executive, legislative and judicial branches. In practice, however, the lines of distinction among the three branches are not as clear in municipal government. Although the mayor has specific executive functions and the council specific legislative duties, the mayor and council together are commonly referred to as the "governing body." And while the court is a separate branch of municipal government and the municipal judge may choose to hire, supervise, set compensation for and discharge court personnel, the judge's salary and budget allocation are set by the governing body.

## **MAYOR-COUNCIL MUNICIPALITIES**

### **GOVERNING BODY**

In a mayor-council municipality, the governing body consists of the mayor and not less than four, nor more than ten, councilmembers (3-12-2). Many villages use the term "trustees" and some municipalities use "councilmember" or "councilor;" however, the responsibilities are the same. The term "councilmembers" will be used in this *Pocket Guide* to cover all variations.

#### **Qualified Elector**

A candidate for the governing body must be a qualified elector (3-8-28). A qualified elector is a United States citizen, eighteen years of age or older who resides in the municipality and who is registered to vote in a general election precinct which is within or partly within the municipality (N.M. Constitution, Art. VII, Sec. 1; U.S. Constitution, 26th Amendment; 3-1-2K). Candidacy must be declared on the fifty-sixth day preceding the election. A candidate must be a resident of the municipality, and a resident of the district (if appropriate) on the date of filing and must be registered to vote prior to filing a declaration of candidacy (3-8-27).

#### **Term of Office**

The term of office for both the mayor and councilmembers is four years. There is no limit on the number of terms an official may be elected. S/he continues in office until a successor is elected and has taken office (3-8-33G). The terms of councilmembers are staggered so that half of the councilmembers are elected every two years (3-10-1D & E).

#### **Oath of Office**

By 7:00 p.m. on the sixth day after the election, all officials elected to municipal office must take an oath or affirmation to support the Constitution of the United States, the Constitution and laws of New Mexico, and the ordinances of the municipality, and to faithfully perform the duties of office (3-10-2A, 3-8-33B). Appointed officers shall also take an oath of office (3-10-2A). If this oath is not taken by any elected or appointed officer, the governing body may declare the office vacated (3-10-2C). If an elected official cannot be present at the time scheduled for oath-taking, an affidavit can be filed not later than the tenth day after the election and the elected official can be sworn in

until the thirtieth day after the election. If the officer is not sworn in by the thirtieth day after the election, the office is declared vacant. New members of the governing body assume their duties as soon as the oath is taken.

**Bond**

The governing body shall require a corporate surety bond from the treasurer, the police officer and any other employee it designates. In lieu of individual corporate surety bonds, the governing body may secure a blanket corporate surety bond. The municipality shall pay for the surety bond (3-10-2). It is good administrative practice to bond, at least, those persons authorized to sign checks for the municipality.

**Compensation**

Members of the governing body may be paid compensation which is set by ordinance. The New Mexico Constitution (Article IV, Section 27) forbids the increase or decrease of any elected official's compensation during his/her term of office. Therefore, an ordinance increasing or decreasing salaries for elected officials should be made effective for the next term of office.

**Disclosure of Interest**

Members of the governing body are required to disclose any financial interest or possible interest in any decision of the governing body before a vote is taken. Full disclosure of real or potential conflicts of interest should be a guiding principle for determining appropriate conduct. Members should treat their position as a public trust and should conduct themselves in a manner that justifies the confidence placed in them by the people.

**Districts**

Municipalities with a population of more than ten thousand are required to elect councilmembers from districts. The districts shall be single member if the governing body has fewer than six councilmembers. The districts may be dual member if the governing body has six or more members. Municipalities with a population under 10,000 may choose to district. (3-12-1.1, 3-12-2)

**Organizational Meeting**

The governing body, consisting of the newly elected and qualified members of the governing body and those whose terms have not expired or whose successors have not been elected or qualified,

shall meet not earlier than the sixth day nor later than the twenty-first day following the municipal election to organize itself (3-8-33H).

#### **Regular and Special Meetings**

The governing body shall annually determine the time and place for holding its meetings, shall determine the rules for the proceedings, and shall keep minutes of the proceedings. The governing body can compel absent members to attend meetings by prescribing penalties for non-attendance. Reasonable notice must be given for all meetings of the governing body in order that interested persons may attend. Customary procedures for meetings and requirements of the Open Meetings Act are covered beginning on page 29. The mayor or a majority of the members of the governing body may call special meetings of the governing body by giving notice to each member, personally served or left at his/her usual place of residence. The method of giving notice to the public of special meetings must be covered in the resolution adopted by the governing body concerning the notice for meetings under the Open Meetings Act. (3-12-3 and 10-15-1D)

#### **Mayor Pro Tem**

The council chooses one of its members to act as mayor pro tem in the absence of the mayor (3-12-3A). When presiding, the mayor pro tem retains his/her right to vote as a councilmember and is not able to vote a second time to break a tie.

#### **Quorum**

A quorum is necessary at any meeting in order for the governing body to conduct business. A quorum is a simple majority of all of the members of the governing body including the mayor (e.g. three of five members). A majority of those present at a meeting may act on behalf of the municipality, except that certain actions, such as the passage of ordinances and resolutions, require an affirmative vote of a majority of all the members of the entire governing body.

#### **Vote**

In a mayor-council municipality, the mayor does not have the right to vote on issues before the governing body unless there is a tie vote (3-11-3). Note that this is different from commission-manager governments in which the mayor does vote at all times since s/he is also a commissioner.

**No Veto Power**

The mayor does not have the right to veto any action of the governing body.

**Corporate Powers**

The governing body has the full corporate authority for the municipality (3-12-2, 3-18-1). The governing body has the responsibility of making public policy for the municipality through ordinances, resolutions and regulations. All other agencies within the municipality are subordinate to the authority of the governing body. The governing body holds all powers granted by law, and other municipal powers not conferred by law or ordinance on another officer of the municipality (3-12-3). The state legislature reserves the right to pass laws that restrict powers of the municipality and governing body.

**Ordinances**

The governing body passes ordinances, resolutions and regulations necessary to carry out the powers granted to municipalities (3-12-3A). Ordinances passed by the governing body cannot be inconsistent with applicable federal and state laws and constitutions, except to the extent allowed pursuant to the N.M. Constitutional home rule provisions.

**Finance Board**

The governing body is the Board of Finance of the municipality and the members of the governing body serve without additional compensation for these services (3-37-1). The governing body shall control the finances and property of the municipality; shall appropriate money for municipal purposes only; and shall provide for payment of debts and expenses of the municipality (3-37-2).

**Creation of Offices**

The governing body shall provide for the creation of various appointive offices such as clerk, treasurer and police officer (chief). It may provide for the office of attorney (3-12-4). The governing body of a mayor-council municipality with a population over 1,000 may provide for the office of manager, either by ordinance, or by calling an election initiated by a valid petition signed by 10% of the registered voters in the municipality (3-13-3). The duties of the manager are the same as the manager in a commission-manager form of government.

### **Power of Appointment**

The mayor shall appoint all municipal officers and employees except those holding elective office, subject to the approval of a majority of all members of the governing body. If the municipality has a personnel or merit system ordinance, employees must be selected according to the ordinance, but the appointment is still made by the mayor subject to the approval of a majority of all members of the governing body. The mayor may appoint temporary employees as required for the proper administration of municipal affairs. A temporary employee shall only serve until the next regular meeting of the governing body at which a quorum is present. The temporary appointment must be confirmed by the governing body at this meeting, or the employment must cease (3-11-6).

At the organizational meeting of the governing body, the mayor shall submit, for confirmation by the governing body, the names of persons who shall fill the appointive offices of the municipality and the names of persons who shall be employed at will by the municipality. If the governing body fails to confirm the name of any person, the mayor at the next regular meeting of the governing body shall submit the name of another person to fill the position (3-11-5).

### **Supervision of Employees**

The mayor has the responsibility of supervising all employees of the municipality (3-11-6C). The day-to-day responsibility is generally delegated to the heads of various departments, with the mayor retaining overall responsibility. If the municipality has a manager under the mayor-council form of government, the manager assumes the duty of supervising employees (see page 20). Any personnel ordinance of the municipality must be observed when supervising employees.

### **Power of Discharge**

The mayor may discharge an appointed official or employee with the approval of a majority of all members of the governing body (3-11-6D). Between meetings of the governing body, the mayor may suspend the person until the next regular meeting. At that time, the governing body must approve the suspension, or the official or employee must be paid for the time of the suspension (3-11-6D (3)). The governing body may also discharge an appointed official or employee by a majority vote of all members of the governing body (3-11-6D(1)). Provisions of any personnel ordinance of the municipality must be observed when discharging employees.

**Election Powers**

Municipalities have the responsibility to conduct elections for municipal officers and other elections authorized by state statutes.

It is the governing body's responsibility to give notice of a regular election by publishing a resolution not more than one hundred twelve days nor less than eighty-four days before the date of a regular municipal election. The resolution shall be published twice, once within fifteen days of adoption and again not less than sixty days nor more than seventy-five days before the election and shall state the date of the election, the offices to be filled, the questions to be submitted to the voters including questions of creating debt, the date and time of closing registration and the location of polling places and consolidation of precincts (3-8-26).

The governing body appoints precinct board members (3-8-19). The precinct board consists of not less than one election judge and not less than two election clerks for each polling place (3-8-19C).

After the election, the clerk and a magistrate, the clerk and governing body members who are not candidates or the clerk and a district judge participate in the canvassing of returns. (3-8-53).

**Enforcement Powers**

The mayor has the responsibility of seeing that the ordinances and regulations of the municipality are obeyed (3-11-4A). The mayor signs all commissions, licenses and permits granted by the governing body (3-11-7). The mayor is responsible for suppressing disorder and keeping peace within the municipality (3-11-4B). However, the mayor delegates authority, by the commissioning process, to the police officers of the municipality to enforce municipal ordinances for and on behalf of the mayor (29-1-9).

**Vacancy in Office**

If the office of the mayor is vacated, the council appoints a qualified elector by a majority vote to fill the unexpired term (3-11-2). If a vacancy occurs in the office of councilmember, it may be filled in one of two ways: the mayor may appoint a qualified elector to fill the vacancy, with the advice and consent of the governing body; or, a special election may be called by the mayor with consent of the governing body for the purpose of filling the vacancy. Any appointed councilmember must either step down or run for office at the next regular election or at a special election called for the purpose of filling the vacancy for the unexpired term. (3-12-1) Various reasons for which an office may become vacated are covered on page 39.

**Removal from Office**

Officials may be removed for misconduct in office. Procedures for removal are covered beginning on page 39.

**Recall**

There are no provisions for recall of an elected official in a mayor-council form of government.

**Initiative and Referendum**

There are no provisions for an initiative and/or referendum on an ordinance or resolution in a mayor-council form of government, except in certain specified instances such as to repeal a gross receipts tax option ordinance, to create the position of manager, to put the municipal utilities under the Public Regulation Commission, to change the number of council members, or to establish a commission-manager form of government.

**CLERK**

The governing body shall provide for the office of clerk (3-12-4). The mayor shall make the appointment subject to the approval of a majority of all members of the governing body (3-11-6A).

**Oath**

The clerk is required to take an oath or affirmation to support the Constitution of the United States, the Constitution and laws of New Mexico, and to faithfully perform the duties of office (3-10-2). If this oath is not taken, the governing body may declare the position vacated. See Oath of Office on page 2.

**Bond**

If the clerk is not also the treasurer, the clerk is required to be bonded only if so designated by the governing body (3-10-2B). However, the clerk would ordinarily be bonded if authorized to sign checks for the municipality.

**Records**

The clerk of the municipality shall keep in custody all minutes, ordinances and resolutions approved by the governing body; shall attend all meetings of the governing body; shall record all proceedings, ordinances and resolutions of the governing body; and shall upon request furnish copies of municipal records pursuant to the Inspection of Public Records Act. The clerk may charge a reasonable

fee for the cost of furnishing copies of municipal records, but the fee shall not exceed one dollar per page (3-13-1, 14-2-9).

#### **Election Duties**

The clerk shall administer the municipal elections, including seeing that all necessary supplies and equipment are obtained in time for the election. Within fifteen days of the adoption of the election resolution, the clerk shall request in writing from the county clerk the registered voter lists and signature rosters for all precincts in the municipality (3-8-7).

When candidates come into the office to declare their candidacy, the clerk must furnish a form for the declaration (3-8-27D). It is the clerk's responsibility to determine if the candidate filing a declaration of candidacy is a qualified elector of the municipality (3-8-27D).

With the consent of the governing body, the clerk secures the necessary polling places (3-8-7A).

The clerk places on the ballot the names of all those who have properly declared their candidacy and have not withdrawn and publishes the names of the candidates for each office, and addresses of polling places and names of precinct board members (3-8-27 & 30).

After the election, the clerk makes a canvass of the election returns with the help of a magistrate judge, district judge or the governing body members who are not candidates (3-8-53). The clerk then certifies the results of the election and records it in the official minute book. After determining the number of people voting in the election, he/she records it in the minute book as well. The clerk must issue certificates of election to the winners of the election (3-8-33).

#### **Election School**

Every two years before the municipal elections, the New Mexico Municipal League sponsors an Election School for all municipal clerks to assist them in properly administering the election. Copies of the *Election Handbook* published by the Secretary of State, an election calendar and other aids are distributed at the Election School. Various speakers cover election topics of concern to both new and established municipal clerks. The municipal clerk must provide an election school for municipal poll workers who have not attended such a school within the past four years (3-8-20, 3-8-21).

#### **Personnel Records**

If there is no manager or personnel director, the clerk may have the responsibility of keeping personnel and payroll records and

may have other personnel duties.

**Purchasing**

All municipalities are required to have a chief procurement officer who has successfully passed a certification examination approved by the Secretary of General Services Department.

**Secretary of the Board of Finance**

When the governing body is acting as the Board of Finance, the clerk shall serve as secretary, shall keep a public record of the proceedings, and shall convene a meeting of the Board of Finance whenever necessary or whenever requested to do so by any member of the Board of Finance (3-37-1B).

**Clerk of the Cemetery Board**

The municipal clerk serves as clerk and treasurer of the Cemetery Board without additional compensation (3-40-4).

**Handbook for Municipal Clerks**

A more comprehensive description of the duties of a municipal clerk is contained in the *Handbook for Municipal Clerks*, published by the New Mexico Municipal League.

**TREASURER/FINANCIAL OFFICER**

The office of treasurer may be combined with that of municipal clerk or it may be a separate position. The treasurer is the finance officer of the municipality unless another officer is directed by ordinance to be the finance officer (3-37-3). The mayor shall appoint the treasurer subject to the approval of a majority of all members of the governing body (3-11-6A).

**Oath**

The treasurer or finance officer must take the oath of office within ten days of appointment, or the governing body may declare the position vacated (3-10-2).

**Bond**

A municipal treasurer shall be bonded for a sum equal to twenty percent of the public moneys received by him/her in the preceding fiscal year, but in no instance shall a bond in excess of \$50,000 be required (6-10-38).

**Duties**

The municipal treasurer shall supervise the depositing and safekeeping of all money belonging to the municipality, and with the advice and consent of the Board of Finance (governing body) shall designate banks qualified to receive or deposit money entrusted to his/her care (3-37-1).

The finance officer shall:

- 1) receive all money belonging to the municipality;
- 2) keep the accounts and records in the manner prescribed by the governing body;
- 3) keep the money of the municipality separate from any other money in his/her possession;
- 4) expend the money only as directed by the governing body;
- 5) submit monthly, or more often if required by the governing body, a report of the receipts and expenditures of the municipality; and
- 6) prepare annually, at the close of the fiscal year, a financial report showing the receipts, expenditures and balances for each fund. A copy of the financial report shall be filed in the office of the municipal clerk as a public document (3-37-3).

**ATTORNEY**

The governing body may provide for the office of attorney (3-12-4). The mayor appoints a person or firm as municipal attorney subject to approval of a majority of all members of the governing body (3-11-6A). Attorneys may also be hired on a contract basis.

**Qualifications**

The attorney for a municipality must be licensed to practice law in the State of New Mexico. The governing body may require other qualifications by ordinance such as a certain number of years of experience in municipal law.

**Duties**

The duties of the municipal attorney are not specifically set out in the statutes, but usually include the following:

- 1) attendance at meetings of the governing body and other boards as necessary;
- 2) drafting or review of ordinances, resolutions,

- regulations, deeds, leases, contracts, and other documents as required by the governing body;
- 3) giving of legal advice on all matters concerning the municipality as requested by the governing body;
  - 4) acting as prosecuting attorney in violations of municipal ordinances, if required; and
  - 5) representing the municipality in suits in which the municipality is a party or is an interested party.

#### **Special Attorneys**

The governing body may appoint special attorneys to handle certain issues, but this does not relieve the municipal attorney of the responsibility for overseeing the legal affairs of the municipality.

### **POLICE OFFICERS**

The mayor may appoint a police chief subject to the approval of a majority of all members of the governing body (3-11-6). Police officers should be recommended by the police chief before being appointed by the mayor with the approval of a majority of all members of the governing body. The statutory requirements and any personnel ordinance of the municipality must be observed when selecting police officers.

#### **Commission**

Each police officer shall receive, from the governing body, an appointment in writing, as a police officer of the municipality (29-1-9). This written appointment, usually referred to as a "commission," is necessary to give the officer the authority to assume police powers within the municipality.

#### **Oath**

Each new police officer shall take an oath or affirmation, within ten days of appointment, to support the Constitution of the United States, the Constitution and laws of New Mexico, and the ordinances of the municipality, and to faithfully perform the duties of the office (3-10-2B).

#### **Bond**

The governing body shall require a corporate surety bond from the "police officer" for the care and disposition of municipal funds in the employee's custody and for faithful discharge of the employee's duties. Administrative practice in most municipalities has been to bond

the one required police officer (usually the police chief) and not each and every police officer. Expenses of the bond should be paid by the municipality. A blanket corporate surety bond may be secured instead (3-10-2B).

**Certification Required**

An applicant for certification shall provide evidence satisfactory to the Law Enforcement Academy Board that s/he:

- 1) is at least 18 years of age;
- 2) is a United States citizen;
- 3) is a high school graduate or equivalent;
- 4) holds a valid driver's license;
- 5) has not been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding his application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, DWI, controlled substances or other crime involving moral turpitude and has not received a dishonorable discharge from the armed forces;
- 6) after examination by a licensed physician and a certified psychologist, is free of any physical, emotional or mental condition which might adversely affect performance as a police officer or prohibit him/her from successfully completing the prescribed basic training;
- 7) is of good moral character;
- 8) has met any other requirements for certification prescribed by the Academy Board; and
- 9) has been awarded a certificate of completion attesting to his/her completion of an approved law enforcement training program. (29-7-6).

Temporary appointments may be made to police officers who are not certified but have passed an entry-level firearms course, providing that they are eligible to attend the New Mexico Law Enforcement Academy, do attend, and receive certification within twelve months of appointment. Certification may also be received by waiver for equivalent training, provided that other qualifications of the New Mexico Law Enforcement Academy are met.

**Duties**

Municipal police officers are required by law to:

- 1) execute and return all writs and processes as

- directed by the municipal judge of the municipality employing the officer;
- 2) execute and return all criminal process as directed by the municipal judge of any municipality in the state if the criminal process arises out of a charge of violation of a municipal ordinance prohibiting DWI;
  - 3) serve criminal writs and processes in any part of the county wherein the municipality is situated; and
  - 4) within the municipality:
    - a) suppress all riots, disturbances and breaches of the peace;
    - b) apprehend all disorderly persons;
    - c) pursue and arrest any person fleeing from justice; and
    - d) apprehend any person in the act of violating the laws of the state or the ordinances of the municipality and bring him before competent authority for examination and trial. (3-13-2)

#### **Tort Liability**

The immunity to tort liability granted pursuant to Subsection A of Section 41-4-4 (quoted on page 38 of this *Pocket Guide*) does not apply to liability for personal injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights or deprivation of any rights, privileges or immunities secured by the Constitutions and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties (41-4-12).

#### **Joint Powers Agreement**

Some smaller municipalities enter into a joint powers agreement with the county Sheriff's Department or other law enforcement agencies in order to provide police services to the municipality, instead of maintaining their own police department (11-1-1).

## **COMMISSION-MANAGER MUNICIPALITIES**

Any municipality with over three thousand residents may choose, by election, to have a commission-manager form of government. If a valid petition, signed by fifteen percent of the voters who voted for the office of mayor in the last municipal election, is filed with the clerk, the governing body calls an election to decide the issue. The election must be held within ninety days of filing the petition. An election on the question may also be called directly by the governing body. A municipality may adopt the commission-manager form of government at a regular or special election. (3-14-1, 2 & 3).

Two years after adoption, a municipality may vote on whether or not to keep the commission-manager form of government. If thirty percent of the qualified electors sign a petition, an election is held to decide the issue. If a majority votes to abandon the commission-manager form, the government reverts to the mayor-council form. If the majority of voters desire to keep the commission-manager form, there cannot be another election on that question for two years. (3-14-19)

### **GOVERNING BODY**

The governing body in a commission-manager municipality consists of five commissioners, one of whom is selected as mayor by a vote of all the commissioners. When the commission-manager form is adopted, the governing body must divide the municipality into five commissioner districts. In municipalities over 10,000 population commissioners must reside in and be elected from each district. (3-14-6).

#### **Qualified Elector**

A candidate for the governing body must be a qualified elector (3-8-28). A qualified elector is a United States citizen, eighteen years of age or older who resides in the municipality and who is registered to vote in a general election precinct which is within or partly within the municipality (N.M. Constitution, Art. VII, Sec. 1; U.S. Constitution, 26th Amendment; 3-1-2K). Candidacy must be declared on the fifty-sixth day preceding the election (3-8-27). A candidate must be a resident of the municipality, and a resident of the district (if appropriate) on the date of filing and must be registered to vote prior to filing a declaration of candidacy (3-8-27).

**Term of Office**

Commissioners are elected for four years (3-14-8). When the commission-manager form of government is first adopted, the elected commissioners determine their terms of office by lot so that three commissioners serve for two years and two commissioners serve for four years; thereafter the terms are staggered for four years each (3-14-8).

**Oath**

See Oath of Office on page 2.

**Bond**

See Bond on page 3.

**Organizational Meeting**

The governing body, consisting of the newly elected and qualified members of the governing body and those whose terms have not expired or whose successors have not been elected or qualified, shall meet to organize itself between the sixth and twenty-first day after the election (3-8-33H and 3-11-5).

**Commissioner Mayor**

Soon after the election, the commission selects one of its members to act as mayor for two years. The mayor has all the powers and duties of a commissioner including the right to vote on all matters that come before the commission. The mayor does not have the right to vote a second time to break a tie. The mayor is also the official head of the municipality for all ceremonial purposes, civil process and for military purposes (3-14-10).

**Mayor Pro Tem**

The commission appoints, by majority vote, a mayor pro tem from among its members to perform the duties of the mayor during his/her absence or disability (3-14-10). When presiding, the mayor pro tem retains his right to vote as a commissioner but is not able to vote a second time to break a tie.

**Recall**

All elected officials in commission-manager municipalities are subject to recall. If a petition is signed by the qualified electors in a number more than twenty percent of the average number of voters who voted at the previous four regular municipal elections or more

than twenty percent of the number who voted at the previous regular municipal election, whichever is greater, the commission shall call an election on the question of recall, unless the regular municipal election occurs within sixty days in which case the voters vote on the recall at the regular election (3-14-16A). If a majority favors recall, and this majority equals or exceeds the number of votes the official received when elected, the office is declared vacated (3-14-16B). The office is then filled as other vacancies.

**Vacancy in Office**

If the mayor dies, resigns, or is removed from office, the office is vacated. In this case, the commission selects one of its members to fill the office of mayor (3-14-10). When a vacancy occurs in the office of commissioner, the remaining commissioners shall appoint a qualified elector to fill the vacancy. The governing body may call a special election for the purpose of filling the vacancy for the unexpired term. Any appointed commissioner must either step down or run for office at the next regular municipal election or at a special election called for the purpose of filling the vacancy. (3-14-9)

**Removal from Office**

Other methods for removing an official from office are covered in the section Removal from Office beginning on page 39.

**Compensation**

Compensation for commissioners is set by ordinance and may not be increased or decreased during their term of office (New Mexico Constitution, Article IV, Section 27).

**Quorum**

A quorum is necessary for the governing body to conduct business at any meeting. A quorum is a simple majority of all the commissioners including the mayor. However, a majority of affirmative votes of all the commissioners, not merely a majority of those present, is required to adopt an ordinance or resolution and certain other actions.

**Vote**

The mayor in a commission-manager municipality can vote on every issue along with other commissioners (3-14-10).

**No Veto Power**

The mayor does not have the right to veto any action of the

commission.

**Powers**

All powers of the municipality are vested in the commission.

The commission shall:

- 1) pass all ordinances and other measures conducive to the welfare of the municipality;
- 2) perform all acts required for the general welfare of the municipality; and
- 3) in addition to the office of manager, create all offices necessary for the proper carrying on of the work of the municipality (3-14-12A).

As the legislative body of the municipality, the commission holds all powers expressly granted by constitution, law or charter, together with such powers necessary to carry into effect those granted. The state legislature thus reserves the right to pass laws that restrict powers of the municipality and the commission. But, the commission holds those powers that are granted to some other office or body. Ordinances passed by the commission must conform to applicable federal and state constitutional provisions and laws.

**Appointment of Manager**

The commission shall appoint a manager and shall hold the manager responsible for the proper and efficient administration of the municipal government (3-14-12B).

**Creation of Departments**

The commission may create as many departments as it desires. However, the manager appoints persons to fill the positions (3-14-15).

**Election Powers**

See Election Powers on page 7.

**Meetings**

The commission shall meet at least twice a month. Meetings shall be open to the public and the official record shall be open to inspection (3-14-11).

**Disclosure of Interest**

Full disclosure of real or potential conflicts of interest should be a guiding principle for determining appropriate conduct. Members should treat their position as a public trust and should

conduct themselves in a manner that justifies the confidence placed in them by the people.

**Referendum**

Voters in a commission-manager municipality may reject a commission-adopted ordinance or resolution. If, within thirty days following adoption, a prescribed number of qualified electors file a valid petition, the commission must conduct an election at which voters may by majority vote approve or nullify the ordinance or resolution. (3-14-17)

**Initiative**

Voters in a commission-manager municipality may of their own volition propose an ordinance, resolution or regulation for the municipality. If a prescribed number of voters petition the commission, the commission must act on the measure within thirty days. If the commission fails to act, acts adversely, or amends the proposed measure, the commission must call a special election in not less than thirty days, nor more than sixty days, to submit the question to the voters. If a majority of the voters approve the measure, the commission must adopt it. (3-14-18)

**MANAGER**

A municipality may provide for the office of manager by:

- 1) ordinance (3-13-3);
- 2) an election upon the filing of a petition with signatures of at least ten percent of the registered voters (3-13-3);
- 3) adopting a charter that provides for a manager (3-15-7);
- 4) adopting the commission-manager form of government (3-14-1).

The position of manager is created when a municipality over three thousand population adopts a commission-manager form of government. In order to create the position by ordinance or by election, a mayor-council municipality must have a population over one thousand. The office of manager created by ordinance or election carries the same responsibilities, duties and qualifications as the manager under the commission-manager form of government. (3-13-3, 3-14-1)

**Qualifications**

A manager is appointed for an indefinite term, until resignation or removal by the commission. The appointment is made on the basis of administrative qualifications without consideration being limited by reason of former residence. (3-14-13)

**Salary**

The manager's salary is set by the commission (3-14-13).

**Powers**

As chief administrator, the manager is charged with enforcing and carrying out all ordinances, rules and regulations of the commission. The manager has a seat at commission meetings, but does not have a vote. Except when clearly undesirable or unnecessary, the commission shall request the opinion of the manager on any proposed measure (3-14-14).

**Personnel**

The manager employs all persons engaged in the administrative service of the municipality, including department heads for departments created by the commission. The manager's choices may be subject to a merit system administered by a personnel board or director. The manager must observe the provisions of a personnel ordinance of the municipality when hiring or discharging personnel. (3-13-4 & 3-14-14, 15)

**Budget**

The annual municipal budget sets out how projected revenue will be distributed to achieve the governing body's objectives. The manager prepares and submits an annual budget to the governing body for approval (3-14-14).

**CLERK, ATTORNEY, POLICE CHIEF AND  
TREASURER/FINANCIAL OFFICER  
IN A COMMISSION-MANAGER MUNICIPALITY**

**Clerk**

If provided for by the governing body, the manager employs and discharges the clerk in a commission-manager municipality (3-14-14). When the position of manager exists, the clerk's duties are more likely to be restricted to records and election matters (See page 8 on the duties of the municipal clerk).

**Attorney, Police Chief and Treasurer/Financial Officer**

If provided for by the governing body, the manager appoints and discharges the attorney, police chief and treasurer/financial officer in a commission-manager municipality (3-14-14). The powers and duties of these officials are the same as in a mayor-council municipality. (See pages 8-14 for their duties).

## **HOME RULE AND CHARTERS**

Home rule is the power granted by the state to the residents of a municipality to govern themselves. Without it, municipalities have only those powers granted by Constitution or law. Home rule is established by adoption of a Home Rule Charter at a municipal election held for that purpose. The process may be initiated by a petition from qualified electors of the municipality or by the governing body. The charter is written by an appointed commission and approved by the governing body prior to the election.

### **Form of Government**

The voters of the municipality may decide the form of municipal government they want. They are not limited to the commission-manager or mayor-council forms of government. They may choose the form that will most benefit their community.

### **Home Rule Amendment**

Home rule was authorized by an amendment to the New Mexico Constitution in November 1970. The purpose of the amendment was to provide maximum local self-government. The amendment states that "A liberal construction shall be given to the powers of municipalities." (N.M. Constitution, Art. X, Section 6).

### **Powers of Municipal Officials**

A municipality that adopts home rule may decide the powers they wish to grant officials, the amount of discretion that may be used in exercising them and the functions they expect municipal government to perform. In order to exercise the home rule power, the voters of a municipality must approve a charter.

### **Charters**

A charter under the Home Rule Amendment is similar to a constitution since it outlines the basic structure of government. A charter establishes the form of government, grants powers to officials, enumerates the duties and functions of the government, and imposes limitations on the governing officials. When a municipality adopts a charter, it is able to exercise all legislative powers and perform all functions not expressly denied by constitution, law, or the charter itself. (3-15-1 through 3-15-16)

## **MUNICIPAL COURT**

The municipal court is a separate branch of municipal government equal in power and prestige with the executive and legislative branches. The municipal court has jurisdiction over violations of municipal ordinances. Except for Albuquerque and Tijeras (where municipal ordinances are tried in the Metropolitan Court), each municipality with 1,500 or more population must provide for a municipal court presided over by an elected municipal judge. Municipalities under 1,500 population must either provide for a municipal court and judge or must, by ordinance, designate the local magistrate court to serve as the municipal court. The municipal judge may issue subpoenas and warrants and punish for contempt. In some cases, the municipal court has jurisdiction over violations of campus traffic law on nearby college campuses. (35-14-1, 2 & 3)

### **Qualifications of Municipal Judge**

The qualifications of the municipal judge are determined by ordinance (35-14-3), but must include being a qualified elector. The definition of a qualified elector discussed on page 2 also applies to municipal judges. The New Mexico Supreme Court has ruled that a municipal judge need not be an attorney, unless a municipal ordinance so provides.

### **Oath of Office**

As with other municipal officials, a judge must take an oath of office to support the Constitution of the United States, the Constitution and laws of New Mexico and to faithfully perform the duties of the office. (3-10-2) See Oath of Office on page 2.

### **Term and Number of Judges**

The municipal judge is elected for a four year term regardless of year elected. Municipalities with populations under thirty thousand shall have only one municipal judge. If the municipality has a population over thirty thousand, additional judges may be elected if the governing body decides that the workload is too much for one judge. (35-14-4)

### **Salary**

The salary of the municipal judge is set by ordinance (35-14-3). However, note that the New Mexico Constitution (Article IV, Section 27) generally forbids the increase or decrease of any elected official's compensation (including the judge's) during his/her term of

office. However, Attorney General Opinion No. 79-27 indicates that if additional duties of a non-judicial nature are imposed on the office of municipal judge, a municipal judge's salary may be increased during his/her term. An attorney should be consulted as to what additional duties justify an increased salary.

**Bond**

The amount of bond required of a municipal judge is determined by ordinance of the municipality. (35-14-3)

**Temporary Municipal Judge**

During the temporary absence of a municipal judge, any qualified elector of the municipality may be appointed to the office of municipal judge and may hear all cases that arise under the ordinances. It is recommended that the governing body enact an ordinance to establish the procedure for appointing a temporary judge. The temporary judge must take an oath of office and submit monthly reports in the same manner as the regular judge. (35-14-5 & 6)

**Reports**

The municipal judge must make monthly reports to the governing body of all money collected. The money and the report must be turned in to the municipality by the tenth of the month following collection. The report must include the name of the person who paid the money, the amount paid, the purpose of the payment, and the date on which the payment was made. If a municipal judge fails to turn in the required reports or money, s/he is guilty of a misdemeanor and shall be fined not more than two hundred dollars, imprisoned not more than ninety days, or both (35-14-7, 8 & 9).

**Fines and Imprisonment**

For violation of a municipal ordinance, a municipal judge must impose the penalty mandated in the applicable ordinance. In any event, the judge may not impose a fine greater than five hundred dollars, a jail sentence of more than ninety days, or both except for conviction of DWI offenses, where the penalty may be up to a \$999 fine or 179 days imprisonment, or both. If the ordinance prescribes a specific penalty of less than those maximums, the judge is bound by the specific limitations. (3-17-1)

**Vacancy in Office**

The governing body of any municipality may fill a vacancy by appointment of a municipal judge to serve until the next municipal election (35-14-4).

**Training Required**

Each municipal judge shall annually, as a condition of discharging the duties of that office, successfully complete a judicial training program conducted under the authority, or with the approval of, the court administrator, unless exempted from this requirement by the Chief Justice of the Supreme Court. No municipal judge shall receive salary until s/he has successfully completed, or been exempted from, the required judicial training program (35-14-10). The Judicial Education Center and the New Mexico Municipal League conduct these annual training programs. Additionally, the Judicial Education Center provides an intensive orientation for newly elected judges.

**Municipal Benchbook**

Each municipal judge should have a copy of the *New Mexico Municipal Benchbook* distributed by the Judicial Education Center. The *Benchbook* is a practical guidebook to assist the judge in performing the day-to-day duties of the office. It has been reviewed by the Administrative Office of the Courts, the Supreme Court and the Judicial Education Center.

## **ORDINANCES, RESOLUTIONS AND CODES**

The governing body can adopt ordinances, resolutions and codes for discharging the duties and powers of the municipality; for improving the safety, health, prosperity, morals, order, comfort and convenience of the inhabitants; and for enforcing obedience to the ordinances (3-17-1).

### **ORDINANCES**

An ordinance is a local law that establishes regulations of a general and permanent nature. It is distinguished from state law since it applies only within the municipality. An ordinance can only be amended by another ordinance and not by a resolution or motion.

#### **Types of Ordinances**

The state legislature has empowered municipalities to pass ordinances to regulate various issues such as animals, traffic and nuisances. Municipalities may also prescribe standards for sewage facilities, construction of buildings, public health, and prevention of fires. Municipalities usually have ordinances on general criminal offenses and planning and zoning. Many other areas in which municipalities are empowered to pass ordinances are covered in Chapter 3, Articles 18 to 57.

#### **Notification of Proposed Ordinance**

Notice by title and subject matter of any proposed ordinance must be published as a legal advertisement in a newspaper of general circulation at least two weeks prior to consideration of final action of the governing body (3-17-3), unless there is no newspaper of general circulation with an office in the municipality. In that case, posting the notice in six public places is sufficient (3-1-2J). Exceptions to the notice provisions are made for:

- 1) ordinances dealing with an emergency declared by the mayor or chairman of the governing body; and
- 2) ordinances amending a city zoning map, if the amendment has been considered by, and recommended to, the governing body by the planning commission (3-17-3A).

Copies of the proposed ordinance must be made available to interested persons upon payment of a reasonable fee to the municipal clerk (3-17-3C).

### **Adopting an Ordinance**

An affirmative vote of a majority of all governing body members is required to pass an ordinance. The clerk records the vote of each member in the minute book (3-17-4A).

Within three days after the governing body has passed an ordinance, the mayor must sign it and mark it approved. The mayor does not have veto power over the actions of the council. (3-17-4B)

The ordinance must also be signed by the clerk and must bear the seal of the municipality. It must then be published as it was passed or by title with a summary of the subject matter. The ordinance does not become effective until five days after it has been published unless otherwise provided by law. (3-17-5A, B)

If the ordinances of the municipality are codified, publication of the entire code is not required prior to adoption. However, an ordinance must be published referring to the codification by title and stating one place in the municipality where it might be inspected during normal working hours. (3-17-5A, B & C).

### **Enforcing Ordinances**

The governing body may adopt ordinances that are not inconsistent with the laws of New Mexico. Ordinances may be enforced by prosecution in the municipal court and upon conviction:

- 1) imposing fines up to \$500, by imprisonment for not more than ninety days, or both (3-17-1C); and
- 2) for a conviction of violation of an ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor or drugs, a fine of not more than \$999 or imprisonment for not more than 179 days, or both;
- 3) for violations of an industrial user wastewater pretreatment ordinance as required by the U.S Environmental Protection Agency, a fine of not more than \$1,000 per day for each violation. (3-17-1)

Cases concerning violations of ordinances are heard by the municipal judge (35-14-2).

### **Proof of Ordinance**

The ordinance has to be published in order to be effective. Any court will accept, as evidence that the ordinance has been published, the ordinance record book, a copy of the ordinance certified by the municipal clerk, the ordinance published in a book authorized

by the municipality, or a codification of ordinances. (3-17-5)

## **RESOLUTIONS**

Less formal than an ordinance, a resolution is generally an expression of the intent of the governing body on some issue. It is ordinarily of a temporary nature, while an ordinance prescribes a permanent rule of government. A resolution is not a law affecting the residents of the municipality; however, the governing body should observe its own resolutions, or rescind them. A resolution must be signed and approved by the mayor in the same way as an ordinance (3-17-4B).

## **CODES**

### **Codification**

A codification is a compilation of the ordinances of the municipality arranged in an orderly sequence with a table of contents and an index. When a municipality has adopted a large number of ordinances over the years, a codification is useful to identify and locate any particular ordinance.

### **Codes by Reference**

A governing body may adopt, by ordinance, any code not in conflict with the laws of New Mexico. Some specific codes that may be adopted are: administrative, air pollution, building, elevator, electrical, fire prevention, health, housing, plumbing and traffic codes. A code that is adopted by a municipality must provide minimum requirements at least equal to state requirements on the same subject. The ordinance adopting the code by reference may refer to the proper title and the date of the code only without spelling out the entire code and may include exceptions or deletions to the code. It must state at least one place within the municipality where the code may be read during working hours. Any amendment to such a code may be adopted in the same manner as other ordinances are adopted. (3-17-6)

## **MEETINGS AND COMMITTEES OF THE GOVERNING BODY**

The governing body determines the time and place and the rules for holding its meetings, providing these rules do not conflict with laws such as the Open Meetings Act. (3-12-3A(5), 10-15-1). This section offers some ideas on customary procedure.

### **MEETINGS**

#### **Quorum**

A quorum must be present in order for the governing body to conduct its meeting (3-12-2B). A quorum is a majority of the members of the governing body (the mayor is included when counting the number of the governing body, although the mayor need not be present if there is a majority otherwise).

#### **Open Meetings Act**

All members of the governing body should be aware of the provisions of the Open Meetings Act (10-15-1). This Act requires that all meetings of the governing body, boards, commissions or other policy making body be public meetings except in certain specified instances. The governing body must give reasonable notice of each meeting so that interested persons may attend. At least once each year, the governing body must adopt a resolution stating what is considered "reasonable notice" for both its regular and special meetings. Generally, the date, time and place of meetings are published in the local newspaper, or may be posted in several public places, one of which should be the office of the municipal clerk. (3-1-2(J))

Closed meetings are permitted only for the following:

- 1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions must be taken at an open meeting;
- 2) limited personnel matters; provided that for purposes of this Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this

subsection shall not be construed as to exempt final actions on personnel from being taken at open public meetings; nor does it preclude an aggrieved public employee from demanding a public hearing;

- 3) deliberations by a public body in connection with an administrative adjudicatory proceeding. An "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. The actual proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;
- 4) the discussion of personally identifiable information about any individual student, unless the student, his parent or guardian requests otherwise;
- 5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policy-making body and a bargaining unit representing the employees of that policy-making body and collective bargaining sessions at which the policy-making body and the representatives of the collective bargaining unit are present;
- 6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars (\$2,500) that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;
- 7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;
- 8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body; and
- 9) those portions of meetings of committees or boards of public hospitals that receive less than fifty percent

of their operating budget from direct public funds and appropriations where strategic and long-range business plans are discussed.

- 10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the Gaming Control Act. (10-15-1H)

A governing body may convene a meeting that is closed to the public. Notice of closed meetings must be given in the same manner as for other meetings and must also state the authority for the closure and the subject to be discussed.

An open meeting also may be closed during the meeting by a majority vote of the quorum present, by citing the authority for closure and subject to be discussed. Votes to go into closed session shall be taken in an open meeting and each individual member's vote must be recorded in the minutes. Only those subjects announced prior to closure may be discussed in a closed meeting. The minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. (10-15-11 & J)

#### **Agenda**

An agenda is a list of specific items of business to be discussed or transacted at the meeting of the governing body. Members of the governing body and other municipal officials should have copies of the agenda and any related materials as much prior to the meeting as possible. The agenda shall be available to the public at least 72 hours prior to the meeting (10-15-1F).

Items of interest to large numbers of people may be placed first on the agenda as a courtesy to those attending as well as to the governing body. People waiting for an item to be considered can cause considerable distraction for the members of the governing body. Grouping the types of subject matter can also allow interested persons to leave when their items have been considered. Any new items not appearing on the agenda may be discussed but not acted upon at that meeting (10-15-1F).

Any time an item is to be considered which affects a department head or employee, it is proper to request their presence at the meeting. Indeed, if there is a city manager, s/he must be present and consulted (3-14-14B).

The following is an example of a typical order of business for a meeting:

- 1) call to order;
- 2) roll call;
- 3) approval of minutes of previous meeting;
- 4) recognition of visitors, receipt of requests and communications;
- 5) introduction or adoption of ordinances and resolutions;
- 6) reports of officers, boards and committees;
- 7) bids and contracts;
- 8) unfinished business (each item specifically identified);
- 9) new business (each item specifically identified);
- 10) miscellaneous (each item specifically identified);
- 11) announcement of date, time and place of next regular meeting;
- 12) adjournment

The first three items should be considered in the order listed above, though the rest of the agenda may be varied according to items to be considered.

#### **Consent Agenda**

A consent agenda consists of a few routine items which are enacted by one motion with no discussion of the separate items. These items may be grouped on the agenda or marked with asterisks. If any member of the governing body wishes to discuss a particular item, it should be removed from the consent agenda and considered separately.

#### **Rules of Procedure**

Although many governing bodies establish rules of procedure only by usage and custom, it is better to have them in the form of a resolution. Many governing bodies use *Robert's Rules of Order* as a standard. New members who are unfamiliar with these rules of procedure may wish to obtain a copy from their public library or bookstore. There is also a more comprehensive description of how to conduct a meeting in the *Handbook for Municipal Clerks*, which the municipal clerk should have. This section outlines some of the usual procedures in a meeting.

### **Proceedings**

The meeting is conducted by the mayor or in his/her absence the mayor pro tem as the presiding officer. The presiding officer calls the meeting to order and asks the clerk to call the roll. A motion is made by a councilmember and seconded by another council member to approve the minutes of the last meeting and they are corrected, if necessary, and approved. The presiding officer announces that the minutes are approved as read or corrected. The clerk records any corrections in the minutes. The meeting continues as outlined on the agenda.

### **Gaining the Floor**

A person who wishes to speak should address the presiding officer and await recognition before speaking.

### **Calling the Speaker to Order**

The presiding officer may call to order a speaker who is violating the rules. If a member of the governing body calls a speaker to order, the speaker must stop until the presiding officer rules on whether or not the speaker is out of order.

### **Making and Seconding Motions**

A member of the governing body may make a motion by saying "Mayor, I move that . . ." Another council member may second the motion by saying, "Mayor, I second the motion." In formal rules, some motions require a second, and others do not. The purpose is to show that more than one person is interested in the proposal, and it is worthy of being debated. When the situation is informal, the second may be omitted.

### **Motions Requiring a Second - According to *Robert's Rules of Order***

- 1) to fix a time at which to adjourn;
- 2) to adjourn;
- 3) to recess;
- 4) to table;
- 5) to move the previous question;
- 6) to modify debate;
- 7) to postpone (definitely or indefinitely);
- 8) to commit or recommit;
- 9) to amend;
- 10) to make a main motion;

- 11) to appeal;
- 12) to suspend the rules;
- 13) to divide the question;
- 14) to close nominations;
- 15) to consider serially;
- 16) to reconsider; and
- 17) to remove from the table.

**Motions Not Requiring a Second - According to *Robert's Rules of Order***

- 1) to call for agenda of the day;
- 2) to make a point of order;
- 3) to call to order;
- 4) to call for division; and
- 5) to withdraw a motion

**Stating the Motion**

After it has been moved and seconded, if a second is required, the presiding officer restates the motion so that it is clear to all members of the governing body. The clerk records it in the minutes and may be asked to read the motion to ensure that it has been properly recorded. Until the presiding officer has stated the motion, it is not properly before the governing body for debate or amendment.

**Appeal from Decision of the Chair**

If a member disputes any ruling by the presiding officer, one of the members of the governing body may appeal the decision. After decision, the governing body votes on whether the presiding officer's decision should stand. If the decision of the presiding officer is not sustained, the governing body proceeds with a discussion of the motion.

**Debate**

When the motion is debatable, the presiding officer asks for any remarks after he/she has stated the motion.

**Debatable Motions - According to *Robert's Rules of Order***

- 1) to postpone (definitely or indefinitely);
- 2) to refer to committee;
- 3) to amend;
- 4) to make a main motion;
- 5) to appeal (if the decision to which it relates is the natural right of the governing body); and

- 6) to reconsider (if the motion to be reconsidered is debatable).

**Non-Debatable Motions - According to *Robert's Rules of Order***

- 1) to fix adjournment time;
- 2) to adjourn;
- 3) to take a recess;
- 4) to table;
- 5) to move the previous question;
- 6) to modify debate;
- 7) to appeal (if it relates to the rules of speaking, to priority of business, or to a decision on a non-debatable question, or if made while a vote is being determined);
- 8) to suspend the rules;
- 9) to make a point of order;
- 10) to call to order;
- 11) to make a request;
- 12) to object to consideration;
- 13) to call for division;
- 14) to withdraw a motion;
- 15) to divide the question;
- 16) to reconsider (if the motion to be considered is not debatable); and
- 17) to take from the table.

**Voting on a Motion**

The presiding officer calls for a vote after sufficient debate has taken place. The vote of each member of the governing body must be recorded by the clerk (3-17-4, 10-15-1G). The vote may be taken by a show of hands or by calling the roll. A voice vote, though more difficult for the clerk to record, may also be used. If a roll call is required, the presiding officer will announce that the clerk will call the roll.

**Dividing the Question**

If a question that is introduced has two or more independent propositions, it may be divided into separate parts upon motion of a member.

**Moving the Previous Question**

If a member of the governing body says "I move the previous question" or "I call the question," he is making a motion to close debate

and vote on the question at hand. It usually refers to the last pending motion. The decision on closing debate, or not, is then voted upon. It is usually best to debate only one question at a time. The voting should also be on one question at a time.

#### **Amendments**

Up to two amendments may be proposed to a main motion. Voting is done on the second amendment, the first amendment, and the main motion as amended, in that order.

#### **Substitute Motion**

If many amendments are proposed to a main motion, a member of the governing body may introduce a substitute motion. The presiding officer states the substitute motion, then returns to the main motion for debate and one amendment. No vote is taken on the main motion at this time. The substitute motion is then open for debate and one amendment. The vote is taken on the substitute motion first. If the substitute motion is adopted, the main motion as substituted is put to a vote.

### **COMMITTEES**

#### **Committees of the Governing Body**

While there is no statute requiring them to do so, many governing bodies have set up committees as an integral part of their organization. In practice, a good part of the work of the governing body can be accomplished through them. Meeting apart from regular and special meetings of the full body, these committees give detailed attention to the programs and policies entrusted to their study and investigation.

The real purpose of committees of the governing body is to study the programs and policies entrusted to their study and to make recommendations as to policies for the operation of such departments. In properly doing their work, the committees should confer with the mayor, manager and department heads to get their views on the policies and program under consideration. These chief executives will be responsible for carrying out such policies. After making a thorough study of the facts involved with a particular problem assigned to it, the committee presents its conclusions and recommendations to the full body for appropriate action. The committee is not an administrative body, and it is not created for the purpose of exercising any executive authority over the administrative departments of the municipality. It is customary practice for the mayor

to appoint committee members with approval of the governing body.

**Boards and Commissions**

The governing body may appoint citizens to various standing Boards or Commissions (e.g. Planning and Zoning Commission). The duties and authority, whether advisory or administrative, of these Boards or Commissions are specified when they are established.

**Citizen's Committees**

Citizen's committees may be used to advantage by governing bodies. Some are legally required, such as the municipal charter committee on which only qualified electors of the municipality may serve (3-15-5). Some are not legally required but may be utilized by the governing body in an advisory capacity to conduct in-depth reviews of such items as the municipal annexation program, personnel or purchasing practices, park maintenance, or relations with other governmental entities and the public.

## **TORT LIABILITY**

All members of the governing body should be aware of the provisions of the Tort Claims Act (41-4-1 through 41-4-27). The Tort Claims Act states, in part, that:

- A. A governmental entity and any public employee while acting within the scope of duty are granted immunity from liability for any tort except as provided in the Tort Claims Act.
- B. Except as provided in Section 41-4-12 (referring to law enforcement officers), public employees are personally liable for malicious or fraudulent torts when committed while acting within the scope of their duties. A governmental entity is immune from liability for such torts committed by public employees.
- C. When liability is alleged against any public employee for any torts alleged to have been committed within the scope of his duty, or for a violation of property rights or any rights, privileges or immunities secured by the Constitution and laws of the United States or the Constitution and laws of New Mexico, the governmental entity shall provide a defense and pay any settlement or judgment. If an insurance carrier provides a defense to any public employee sued, the duty to defend imposed by this subsection shall be deemed to have been satisfied. (It is important that members of the governing body be aware of this possibility of being sued for the violation of a person's civil rights.)
- D. The duty to defend and to pay any tort claim or judgment as provided in Subsection C of this section shall continue after employment with the governmental entity has been terminated, if the occurrence for which liability is alleged happened within the scope of duty while the public employee was in the employ of the governmental entity (41-4-4).

There are various exceptions to the Tort Claims Act relating to motor vehicles, maintenance of buildings, airports, public utilities and law enforcement officers, among others.

## **REMOVAL FROM OR VACANCIES IN OFFICE**

### **Removal for Misconduct**

Any elected municipal official may be removed for misconduct in office if the official:

- 1) is convicted of a felony or misdemeanor involving immoral conduct;
- 2) fails, neglects, or refuses to discharge the duties of his office;
- 3) knowingly demands or receives illegal fees as an officer;
- 4) fails to account for money coming into his hands in his official capacity;
- 5) is grossly incompetent and negligent in his duties; or
- 6) is guilty of any act which the court or jury decides is corruption in office or gross immorality and makes him unfit for the office (10-4-2);
- 7) acquires a financial interest in a business when this interest will be directly affected by his/her official act (3-10-4); or
- 8) commits an act determined to be malfeasance in office. The district court may remove the official upon complaint by the mayor or governing body (3-10-7).

### **Automatic Vacancy in Office**

Any county, precinct, district, city, town or village office automatically becomes vacant by operation of law under the following circumstances (10-3-1):

- 1) death of the party in office;
- 2) removal of the officer as mentioned above;
- 3) failure of the officer to qualify for the office;
- 4) expiration of the term of office when no successor is chosen as provided by law (Note that this provision would be overruled by Section 3-8-33G relating to municipal officials only. Municipal officials whose term of office has expired continue in office until a successor is elected and qualified);
- 5) when the officer moves out of the municipality;
- 6) when the officer is absent from the municipality for six consecutive months. (Does not apply to offices in which the law provides that the duties may be discharged by a deputy, when the absences are caused by illness or other unavoidable causes);

- 7) resignation of the officer; or
- 8) when the officer accepts and begins to discharge the duties of another incompatible office.

#### **Grand Jury Accusation**

An accusation against any municipal officer for any of the reasons mentioned in the paragraph under Removal for Misconduct may be presented by a grand jury in the district court. The accusation is presented to the court and the judge must transmit it to the district attorney. The district attorney then must serve the defendant who has an opportunity to come in to court and defend the accusation. In the event the defendant chooses to deny the accusation, s/he has a right to a trial by jury. In the event of a conviction, the defendant has a right to appeal to the Supreme Court, but until the judgment is reversed, the defendant is suspended from office. (10-4-3 through 10-4-16)

#### **Order of Suspension**

In the event the district attorney is presented with sworn testimony to the effect that a municipal officer is guilty of a matter that is cause for removal, the district attorney must present the evidence to the court. If the court has reasonable grounds to believe that the matter stated will be established at trial, the court may enter an order suspending the officer until after final hearing (10-4-21). If the court does not believe the matter shows grounds for suspension, it may deny the motion to suspend or dismiss the proceedings (10-4-23).

Any person serving while an officer is suspended must be appointed by the judge of the district court and must follow the same requirements of other municipal officers taking office (10-4-28). In the event a suspended person is reinstated, he has a right to his prior office and to receive pay for the entire time of his suspension (10-4-26, 27 & 28).

#### **Suspension by State Secretary of Finance and Administration**

The Secretary of Finance and Administration may suspend a municipal officer in all cases where an audit, approved by the State Auditor, reveals any of the following (10-5-2):

- 1) fraudulent misappropriation or embezzlement of public money;
- 2) fiscal management resulting in violation of law;
- 3) willful violation of the regulations of the Department of Finance and Administration; or
- 4) willful failure to perform any duty imposed by any law

which the Secretary of Finance and Administration is charged with enforcing.

Upon suspension by the Secretary of the Department of Finance and Administration, the Secretary may take charge of the office of the suspended officer (10-5-2). Under this type of suspension, the Secretary must give the defendant a hearing at which the defendant has an opportunity to defend himself (10-5-3). In the event the Secretary does not change his decision, the defendant may petition to district court to require the Secretary to show cause for not reinstating the officer (10-5-7). On written order of suspension by the Secretary, the defendant must deliver to the Secretary all money, records, and other property in the office (10-5-9).

#### **Incompatible Offices**

Public officials may not hold incompatible offices. Offices may be considered incompatible for physical reasons, such as the time necessary to be devoted to one position conflicts with the other (10-6-3). Offices may also be considered incompatible for functional reasons, such as where one position is subordinate to the other (e.g. councilmember and department head) or where one person could not faithfully discharge the duties of both positions without conflict (e.g. municipal judge and police officer).

An officer who accepts other employment so that he/she cannot devote his/her time to the normal extent necessary to the office for thirty days shall be deemed to have resigned and permanently abandoned the office (10-6-3). No person shall receive compensation for a position during the period that he/she has abandoned the office (10-6-6).