

1 HB451
2 196875-1
3 By Representative Rogers (N & P)
4 RFD: Jefferson County Legislation
5 First Read: 16-APR-19

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to the City of Birmingham; to amend
14 Sections 45-37A-52.55, 45-37A-52.56, 45-37A-52.59,
15 45-37A-52.95, 45-37A-52.128, 45-37A-52.134, 45-37A-52.198,
16 45-37A-52.200, and 45-37A-52.270, Code of Alabama 1975,
17 relating to the mayor-council form of government; to further
18 provide for the powers and duties of the mayor and the
19 council.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 45-37A-52.55, 45-37A-52.56,
22 45-37A-52.59, 45-37A-52.95, 45-37A-52.128, 45-37A-52.134,
23 45-37A-52.198, 45-37A-52.200, and 45-37A-52.270, Code of
24 Alabama 1975, are amended to read as follows:

25 "§45-37A-52.55.

26 ~~"At the first meeting, which shall be held~~
27 ~~immediately following May 5, 2016, and then subsequently at~~

1 ~~the first meeting held after the election of the council after~~
2 ~~May 5, 2016, and every two years thereafter, the~~ The council
3 shall elect an officer of the city who shall have the title of
4 president of the council and shall preside at meetings of the
5 council ~~and.~~ The council shall also elect a president pro tem,
6 who shall act as president of the council during the absence
7 or disability of the president. The terms of office of the
8 president and the president pro tem shall be ~~two years and~~
9 until the council members shall qualify following the next
10 succeeding biennial election ~~successors are elected and~~
11 ~~qualified.~~ If a vacancy shall occur in the office of president
12 of the council, the council shall elect a successor for the
13 completion of the unexpired term. Both the president of the
14 council and the president pro tem shall be elected from among
15 the council members.

16 "§45-37A-52.56.

17 "~~Except those powers specifically granted by this~~
18 ~~part to the mayor or as otherwise granted to the mayor by law,~~
19 ~~all~~ All powers of the city, including all powers vested in it
20 by this part, by the laws, general and local, of the state,
21 and the determination of all matters of policy, shall be
22 vested in the council. Without limitation of the foregoing,
23 the council shall have power to:

24 "(1) Establish administrative departments and
25 distribute the work of divisions.

26 "~~(1)~~ (2) Adopt the budget of the city.

1 "~~(2)~~ (3) Authorize the issuance of bonds or
2 warrants.

3 "~~(3)~~ (4) Inquire into the conduct of any office,
4 department, or agency of the city and make investigations as
5 to municipal affairs.

6 "~~(4)~~ (5) ~~Except as otherwise provided by law or Act~~
7 ~~2016-277, appoint~~ Appoint the members of all boards,
8 commissions, or other bodies authorized hereunder or by law.
9 This provision for appointment of members of boards,
10 commissions, or other bodies authorized hereunder or by law
11 shall supersede any different provision for appointment of
12 such members contained in any statute or ordinance in effect
13 at the time of adoption by the city of the mayor-council form
14 of government set up by this part, and shall include power to
15 remove any member of any board, commission, or body to the
16 same extent as might be done by the governing body of the city
17 at the time of adoption by the city of the mayor-council form
18 of government set up by this part and to appoint another in
19 his or her stead. And wherever in any statute in effect at the
20 time of adoption by the city of the mayor-council form of
21 government the chief executive officer of the city is
22 designated to act in any capacity ex officio, the mayor shall
23 act. ~~This subdivision shall not override the express terms of~~
24 ~~the Lewis Spratt Act, Subpart 1, commencing with Section~~
25 ~~45-37A-50, Part 1 of this article.~~

26 "~~(5)~~ (6) Succeed to all the powers, rights, and
27 privileges conferred upon the former governing body of the

1 city by statutes in effect at the time of adoption by the city
2 of the mayor-council form of government and not in conflict
3 with this part.

4 "~~(6)~~ (7) Levy property and license taxes and local
5 improvement assessments.

6 "~~(7)~~ (8) Employ for and on behalf of the city such
7 employees as the council may deem necessary to assist the
8 council and perform such duties relating to the work of the
9 council as the president of the council may assign. Each such
10 employee shall serve at the pleasure of the council at such
11 compensation as the council may set, and shall not be under
12 any merit or civil service system. Each such employee shall by
13 reason of such employment become a member of the pension
14 system covering the general employees of such city, if there
15 be such a system, to the same extent and in the same manner as
16 other general employees of the city; provided, application for
17 such inclusion in such pension system be made to the board or
18 other authority administering such pension system within 30
19 days of May 31, 1984, or, thereafter, within 30 days of their
20 appointment. If no such application be made within such time,
21 such council employees shall not hereafter be a member of such
22 system.

23 "§45-37A-52.59.

24 "~~Upon the written approval of the mayor, the~~ The
25 council by ordinance may create, change, and abolish offices,
26 departments, or agencies, other than the offices, departments,
27 and agencies established by this part. ~~Upon the written~~

1 ~~approval of the mayor, the~~ The council by ordinance may assign
2 additional functions or duties to offices, departments, or
3 agencies established by this part, but may not discontinue or
4 assign to any other office, department, or agency any function
5 or duty assigned by this part to a particular office,
6 department, or agency.

7 "§45-37A-52.95.

8 "The mayor shall be the head of the administrative
9 branch of the city government. The mayor shall not sit with
10 the council nor shall he or she have a vote in its proceedings
11 and he or she shall have the power and duties herein
12 conferred. The mayor shall be responsible for the proper
13 administration of all affairs of the city and, subject to any
14 civil service or merit system law applicable to such city and
15 except as otherwise provided herein, he or she shall have
16 power and shall be required to:

17 "(1) Enforce all law and ordinances.

18 "(2) Appoint and, when necessary for the good of the
19 service, remove all officers and employees of the city except
20 as otherwise provided by this part and except as he or she may
21 authorize the head of a department or office to appoint and
22 remove subordinates in such department or office; provided
23 that he or she shall not appoint or remove officers and
24 employees of:

25 "a. Any library board of the city.

1 ~~"a.~~ b. Any board of the city having control over any
2 park, recreation facility, fair, or exhibit, ~~or any library~~
3 ~~board of the city.~~

4 ~~"b.~~ c. Any municipally-owned public utility,
5 including electric, gas, and water systems, while such utility
6 is operating under a board constituted by law or required by
7 the terms of any indenture, mortgage, or deed of trust
8 providing for employment by other authority.

9 ~~"c.~~ d. Any ~~nonelected~~ school board of the city.

10 ~~"d.~~ e. Any planning board or zoning board of the
11 city.

12 "(3) Exercise administrative supervision and control
13 over all departments created by this part or by law or
14 hereafter created by the council except those enumerated in
15 paragraphs a. to ~~d.~~ e., inclusive, of subdivision (2) and
16 except those otherwise given independent status under this
17 part.

18 "(4) ~~Shall keep~~ Keep the council fully advised as to
19 the financial conditions and needs of the city; prepare and
20 submit the budget annually to the council and be responsible
21 for its administration after its adoption; prepare and submit,
22 as of the end of the fiscal year, a complete report on the
23 financial and administrative activities of the city for such
24 year ~~and prepare a detailed report within 10 days of the~~
25 ~~council's request except the mayor shall have an extension of~~
26 ~~five additional days if the information is not readily~~
27 ~~available.~~

1 "(5) Recommend to the council such actions as he or
2 she may deem desirable.

3 "(6) Prepare and submit to the council such reports
4 as may be required of him or her.

5 "(7) Perform such other duties as may be prescribed
6 by this part.

7 "(8) Fix the salaries or compensation of all
8 officers and employees of the city who are appointable by him
9 or her, subject, however, to any civil service or merit law
10 applicable to the city.

11 "(9) Employ as members of his or her staff such
12 employees as the mayor may deem necessary for and on behalf of
13 the city to assist the mayor and perform such duties relating
14 to the mayor as the mayor may assign. Each such employee shall
15 serve at the pleasure of the mayor for such compensation as
16 the mayor may set. Such staff members shall not be under any
17 merit or civil service system, but, should a member of the
18 classified service under any merit or civil service system
19 applicable to the city be appointed hereunder, the provisions
20 of this section notwithstanding, he or she may be paid at the
21 salary established for his or her classification at the time
22 of appointment and such person shall not lose any rights under
23 such merit or civil service system by reason of his or her
24 appointment hereunder, and shall, upon termination of service
25 on the mayor's staff, have the right to return to the
26 classified service, with full credit for time served on the
27 mayor's staff, at the same or higher classification as that

1 held upon appointment hereunder. Each such employee shall by
2 reason of such employment become a member of the pension
3 system covering the general employees of the city, if there be
4 such a system, to the same extent and in the same manner as
5 other general employees of the city, provided such employee
6 apply to the board or other authority administering such
7 pension system within 30 days of appointment; otherwise, such
8 employee shall not be a member of the system. This section
9 shall not limit the authority of the mayor to appoint other
10 staff under the merit system or as otherwise authorized by
11 law. No person employed in one of these staff positions shall
12 run for elected office while so employed.

13 ~~"(10) Retain the services of outside counsel and~~
14 ~~other professional services, to the extent that it is in the~~
15 ~~budget, and will not impact the budget, to meet the needs of~~
16 ~~the city when, in the opinion of the mayor, such action would~~
17 ~~best serve the interests of the city.~~

18 "§45-37A-52.128.

19 "After the conclusion of the public hearing, the
20 council, ~~by an affirmative vote of five members and only if~~
21 ~~approved in writing by the mayor,~~ may insert new items of
22 expenditures or may increase, decrease, or strike out items of
23 expenditure in the general fund budget, except that no item of
24 expenditure for debt service, or any other item required to be
25 included by this part or other provision of law, shall be
26 reduced or stricken out. The council shall not alter the
27 estimates of receipts contained in the budget except to

1 correct omissions or mathematical errors and it shall not
2 cause the total of expenditures as recommended by the mayor to
3 be increased without a public hearing on such increase, which
4 shall be held not less than three days after notice thereof by
5 publication in a newspaper of general circulation published in
6 the city. The council shall in no event adopt a general fund
7 budget in which the total of expenditures exceeds the receipts
8 and available surplus, estimated as provided in Section
9 45-37A-52.123, unless at the same time it adopts measures for
10 providing additional revenue in the ensuing fiscal year,
11 estimated as provided in Sections 45-37A-52.121 and
12 45-37A-52.124, sufficient to make up the difference.

13 "§45-37A-52.134.

14 "Appropriations in addition to those contained in
15 the original general fund budget ordinance, may be made by the
16 council by not less than five affirmative votes, but only on
17 the recommendation of the mayor ~~in writing, copies of which he~~
18 ~~or she shall provide to the director of finance,~~ and only if
19 the director of finance certifies in writing that there is
20 available in the general fund a sum unencumbered and
21 unappropriated sufficient to meet such appropriation.
22 Additional appropriations may be made by the council, by not
23 less than five affirmative votes, from the funds of any
24 utility for the operation of that utility, but only if the
25 director of finance certifies in writing that there is
26 available in the funds of the utility, a sum unencumbered and
27 unappropriated sufficient to meet such appropriation.

1 "§45-37A-52.198.

2 ~~"Except as expressly provided by this part, all~~ All
3 laws and parts of laws relating to establishment of an
4 authority for fairgrounds, parks, exhibits, exhibitions, and
5 other installations, facilities, and places for the amusement,
6 entertainment, recreation, and cultural development of the
7 citizens of a city, and for the powers, authority, mode of
8 financing, and conduct of the same, contained in the general
9 or local laws of the state or in Title 62 of the Code of
10 Alabama of 1940, as amended, as the same may apply and be in
11 effect with respect to any city at the time when such city
12 shall elect to be governed by this part, shall continue in
13 full force and effect, and without interruption or change as
14 to the establishment or conduct of any authority created
15 thereunder, after adoption of the mayor-council form of
16 government by such city.

17 "§45-37A-52.200.

18 ~~"To the extent consistent with the terms of this~~
19 ~~part, all~~ All ordinances and resolutions of the city in effect
20 at the time of adoption by the city of the mayor-council form
21 of government herein set up shall continue in effect unless
22 and until changed or repealed by the council. ~~To the extent~~
23 ~~any current or future ordinance or resolution of the city is~~
24 ~~inconsistent with the express terms of this part, the~~
25 ~~ordinance or resolution shall be void and of no effect to the~~
26 ~~extent of its inconsistency.~~

27 "§45-37A-52.270.

1 ~~"Except as otherwise provided by this part, all~~ All
2 laws and parts of laws, general, local, or special, relating
3 to or affecting the city, its powers, functions, duties, and
4 property, in force on September 9, 1955, are hereby continued
5 in effect; but all such laws relating to the exercise of
6 powers, functions, and duties by the commission or
7 council-manager or some other form of government shall be
8 superseded to the extent that the same are inconsistent with
9 this part."

10 Section 2. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law.