

# APPOINTMENT OF MUNICIPAL OFFICIALS AND AGENCY BOARD MEMBERS

By:

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With the 2003 municipal elections having passed, and the new boards or councils (as the case may be) now being seated, we thought a timely topic would be to review the manner of appointment for various municipal officials and agency board members, such as the municipal manager or administrator, the municipal attorney, the clerk (where the position is not elected), the treasurer, the fire chief and police chief, the Board of Fire and Police Commissioners, members of the Zoning Board of Appeals, and the members of the Planning Commission.

The manner in which officers and members of agency boards are appointed varies depending upon the type or form of municipal government. In Illinois, there are four primary types of municipal governments: (1) the aldermanic form of government; (2) the commission form of government; (3) the managerial form of government; and (4) the strong-mayor form of government. While home rule municipalities can utilize their home rule powers to combine elements from the above types of governments, generally the authorization to appoint municipal officials derives from one of the above noted four types of governments.

Except as otherwise noted, the terms of appointed municipal officers may be set by ordinance, but may not exceed the term of the mayor or president. However, we caution that the election of a new mayor or president does not automatically mean that an appointed office is vacated. Until the successor qualifies and is appointed to the office, the remaining officer serves as a "defacto" officer.

## **Aldermanic Form of Government**

**Clerk:** The office of the City Clerk is an elected position under the aldermanic form of government. However, villages with a population of less than 5,000 inhabitants may, by resolution adopted by not less than two-thirds of the village board, choose to have a clerk appointed. In such instance, the clerk is appointed by the mayor or village president with the concurrence of the village board.

**Treasurer:** In cities with more than 10,000 inhabitants, the treasurer is an elected position. However, municipalities with 10,000 or fewer inhabitants may, by ordinance, choose to have the treasurer appointed by the mayor or president with the advice and consent of the council.

**Manager or Administrator:** Although the position of manager or administrator is not specifically named in the list of officers that may be appointed by the mayor or president under the aldermanic form of government, Section 3.1-30-5(a) of the Illinois Municipal Code provides that the mayor or president may, with the advice and consent of the council or board, appoint "other officers necessary to carry into effect the powers conferred upon municipalities." Accordingly, a manager or administrator of a city or village under the aldermanic form of government is appointed by the mayor with the advice and consent of the council. It is important to distinguish between a manager in a managerial form of government, and a manager or administrator in another form of government.

While the positions may be titled the same in both forms of government, powers and duties of a manager differ and may be altered only by referendum in a managerial form of government.

**Attorney:** The attorney is an appointed position in all cities and villages. The municipal attorney is appointed by the mayor or president, as the case may be, by and with the advice and consent of the city council or board of trustees.

**Fire and Police Chief:** The fire chief and the police chief and all officers and members of the fire and police departments of the city, village or town, with a population of at least 5,000 and not more than 250,000, or with a population less than 5,000 that has chosen to adopt the Fire and Police Commission Act, are appointed by the Municipal Fire and Police Commission, unless the city council or board of trustees, by ordinance, provides that the fire chief and police chief are to be appointed by other means. Cities and villages under the aldermanic form of government that are not subject to the Fire and Police Commission Act may appoint a fire chief or a police chief in the same manner as other officers, unless specifically provided otherwise by another statute.

**Board of Fire and Police Commissioners:** Fire and Police Commissioners in those cities or villages which are subject to the Fire and Police Commission Act are appointed by the mayor or president with the advice and consent of the council or board. Three commissioners, whose terms of office shall be three years, are required to be appointed by the mayor or president. No appointments may be made by the Mayor within 30 days before the expiration of his term of office. Members of the Board of Fire and Police Commissioners must not hold any other office in the municipality, may not have been convicted of a felony, and may not be related to any elected official. In addition, no more than two members can belong to the same political party.

**Zoning Board of Appeals Member:** Cities and villages with populations of less than 500,000 may provide for the appointment of a Board of Appeals consisting of seven members serving 5-year terms. Unless otherwise provided by the ordinance creating a Zoning Board of Appeals, appointments to the board are made by the mayor or president, as the case may be, with the advice and consent of the city council or the board of trustees.

**Planning Commissioner:** Appointments to the planning commission are made by the mayor of the city or president of a village board, subject to confirmation by the corporate authorities of the municipality. No term limits on planning commissioners are provided by statute; however, planning commissioners must by statute reside within the municipality or within one and one-half miles of the corporate limits and not in another municipality.

## **Commission Form of Government**

**Clerk:** Unlike the aldermanic form of government, under the commission form of government, the city or village clerk is always an appointed position. Also, unlike the aldermanic form of government, the clerk is appointed by a majority vote of the city or village council which consists of four commissioners and the mayor. The clerk is appointed at the first regular meeting after the general election or as soon as practicable after the election.

**Treasurer:** Unlike the aldermanic form of government, under the commission form of government, the treasurer is always an appointed position. Also, unlike the aldermanic form of government, the treasurer is appointed by a majority vote of the city or village council which consists of four commissioners and the mayor. The treasurer is appointed at the first regular meeting after the general election or as soon as practicable after the election.

**Manager or Administrator:** The city manager or administrator is an appointed position in cities or villages operating under the commission form of government. While not specifically identified as an office within the commission form of government, municipal managers or administrators may be appointed under the provisions of Section 4-5-4 of the Illinois Municipal Code which authorizes the council, in its discretion and by a majority vote, to appoint "any additional officers that the council considers necessary or expedient."

**Attorney:** The city attorney is an appointed position in all cities or villages operating under the commission form of government. Appointment is made by a majority vote of the city council. An exception applies to cities of over 50,000 population that have adopted the commission form of government and the Civil Service Act. In such instances the office of municipal attorney and all other members of the legal department are assigned to the Department of Public Affairs and are appointed by the mayor as the commissioner over the Department of Public Affairs.

**Fire and Police Chief:** The fire chief and the police chief of a city or village operating under the commission form of government and with a population of at least 5,000 and not more than 250,000 or with a population less than 5,000 that has chosen to adopt the Fire and Police Commission Act, are appointed by the Municipal Fire and Police Commission unless the council, by ordinance, provides that the fire chief and police chief are to be appointed by other means. If a municipality has enacted an ordinance that removes the power of the board of fire and police commissioners to appoint the police chief or fire chief, then the police chief and fire chief are appointed by the majority of the city council, if it so chooses, or, in the event it does not so choose, then by the commissioner of the Department of Public Health and Safety.

**Board of Fire and Police Commissioners:** Fire and police commissioners in those cities or villages operating under the commission form of government, and subject to the Fire and Police Commission Act, are appointed by the mayor with the advice and consent of the council. Three commissioners, whose terms of office shall be three years, are required to be appointed by the mayor or president. No appointments may be made by the Mayor within 30 days before the expiration of his term of office. Members of the Board of Fire and Police Commissioners must not hold any other office in the municipality, may not have been convicted of a felony, and may not be related to any elected official. In addition, no more than two members can belong to the same political party.

**Zoning Board of Appeals:** Cities and villages with populations of less than 500,000 may provide for the appointment of a Board of Appeals consisting of seven members serving 5-year terms. Unless otherwise provided by the ordinance creating the Zoning Board of Appeals, appointments to the board are made by the city council.

**Planning Commissioner:** Appointments to the planning commission are made by the mayor of the city or president of a village board, subject to confirmation by the corporate authorities of the municipality. No term limits on planning commissioners are provided by statute; however, planning commissioners must by statute reside within the municipality or within one and one-half miles of the corporate limits and not in another municipality.

## **Managerial Form of Government**

**Manager:** The manager of a city or village adopting the managerial form of government is appointed by a majority of the council or the board of trustees. The city manager under the managerial form of government is the administrative head of the municipality and is responsible for the efficient administration of all departments. The manager is appointed for an indefinite term and the conditions of his or her employment may be set forth in an employment agreement.

Attorney: The city attorney is appointed by the city manager in the managerial form of government.

Fire and Police Chief: The fire chief and the police chief of cities and villages not subject to the Fire and Police Commission Act are appointed by the manager. The fire chief and police chief of cities and villages subject to the Fire and Police Commission Act are appointed by the municipal Fire and Police Commission unless the city council or board of trustees, by ordinance, provides that the fire chief and police chief are to be appointed by the manager.

Board of Fire and Police Commissioners: Fire and police commissioners in those cities or villages operating under the managerial form of government and subject to the Fire and Police Commission Act are appointed by the mayor or president, with the advice and consent of the council or board.

Zoning Board of Appeals Member: Cities and villages with populations of less than 500,000 may provide for the appointment of a Board of Appeals consisting of seven members serving 5-year terms. Unless otherwise provided by the ordinance creating the Zoning Board of Appeals, appointments to the board are made by the city manager.

Planning Commissioner: Appointments to the planning commission are made by the mayor of the city or president of a village board, subject to confirmation by the corporate authorities of the municipality. No term limits on planning commissioners are provided by statute; however, planning commissioners must by statute reside within the municipality or within one and one-half miles of the corporate limits and not in another municipality.

Directors of departments and all other officers: Section 5-3-7 of the Municipal Code gives the manager the power to appoint all directors of departments, but does not provide a definition for determining who is a director.

## **Strong-Mayor form of Government**

Clerk: The office of the city clerk is an elected position under the strong-mayor form of government.

Treasurer: The office of the city treasurer is an elected position under the strong-mayor form of government.

Fire and Police Chief: The fire chief and the police chief of cities and villages not subject to the Fire and Police Commission Act are appointed by the mayor. The fire chief and police chief of cities and villages subject to the Fire and Police Commission Act are appointed by the municipal Fire and Police Commission unless the city council or board of trustees, by ordinance, provides that the fire chief and police chief are to be appointed by other means.

Board of Fire and Police Commissioners: Fire and police commissioners in those cities or villages operating under the strong-mayor form of government and subject to the Fire and Police Commission Act are appointed by the mayor pursuant to the provisions of section 5/6-4-14 of the Illinois Municipal Code

Zoning Board of Appeals Member: Cities and villages with populations of less than 500,000 may provide for the appointment of a Board of Appeals consisting of seven members serving 5-year terms. Unless otherwise provided by the ordinance creating the Zoning Board of Appeals, appointments to the board are made by the mayor.

Planning Commissioner: Appointments to the planning commission are made by the mayor of the city or president of a village board, subject to confirmation by the corporate authorities of the municipality. No term limits on planning commissioners are provided by statute; however, planning commissioners must by statute reside within the municipality or within one and one-half miles of the corporate limits and not in another municipality.

Under the strong-mayor form of government the mayor of the municipality is authorized to appoint and remove his administrative assistants, budget and finance director, heads of all departments, and to appoint and remove all other officers of the municipalities, commissions, boards and agencies, except those covered by the Civil Service Act.