

## DISAPPROVAL OF ORDINANCE #14-034 AND OBJECTIONS

On December 18, 2018, the Mobile City Council passed Ordinance #14-034, An Ordinance to Amend [and Restate] Chapter 14 of the Code of Ordinances for the City of Mobile, Alabama, entitled "Contracts" to Provide for Filing, Disclosure and Other Requirements for Certain City Contracts; and to Identify Officers Authorized to Execute Contracts on Behalf of the City.<sup>1</sup>

The City Clerk transmitted a copy of the Ordinance to the office of the Mayor for my consideration, *Alabama Code* § 11-44C-28;

I HEREBY disapprove of the attached Ordinance #14-034 and, pursuant to *Alabama Code* § 11-44C-28, return it to the clerk with the following objections:

1. The City Clerk delivered two different Ordinances, both #14-034, and both stamped and signed by the City Clerk as "Adopted by the Council of the City of Mobile at its meeting held on December 18, 2018."
2. At its meeting on December 18, 2018, the Council voted on and approved only one Ordinance 14-034. The two Ordinances transmitted by the Clerk differ. For example, one repeals subsections (g), (i) and (l) of City Code section 2-66; the other repeals subsections (e), (f), (g), (h), (i), (j), (k), (l) and (m) of City Code section 2-66. Both cannot be correct. I disapprove both and return both versions of Ordinance#14-034 to the Clerk with this Disapproval, see attachments 1 and 2.
3. Alternatively, and in addition thereto, with respect to the ordinance most similar to the ordinance attached to the City Council agenda for December 18 (Attachment 2), I disapprove that purported Ordinance and return the same to the Clerk with the following objections:
4. The contract approval process the city follows was adopted in 1994, by an agreement reached between the city council and the mayor. These two bodies, the legislative and administrative/ executive branches of city government, acting together, developed procedures for handling of payments by the City of Mobile. Over the decades that followed, these procedures have been accepted by the city and its contractors as valid on a legal, administrative and financial basis, and as promoting accountability and efficiency in city operations, see Employee Handbook, Contracts Chapter, Council Approval Requirements for Contracts. These procedures, deliberately adopted, should not be precipitously amended through the unilateral action of the council.

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1. <sup>1</sup> The City Clerk transmitted two Ordinances #14-034 to the mayor's office. One is entitled "An Ordinance to Amend Chapter 14 of the Code of Ordinances for the City of Mobile, Alabama, entitled "Contracts" to Provide for Filing, Disclosure and Other Requirements for Certain City Contracts; and to Identify Officers Authorized to Execute Contracts on Behalf of the City." The second is entitled, "An Ordinance to Amend and Restate Chapter 14 of the Code of Ordinances for the City of Mobile, Alabama, entitled "Contracts" to Provide for Filing, Disclosure and Other Requirements for Certain City Contracts; and to Identify Officers Authorized to Execute Contracts on Behalf of the City."

5. The Ordinance relies on the erroneous finding that, “[a]ll powers of the city are ‘vested in the council...’” The municipal government of Mobile is known as a “mayor-council form of government,” Section 11-44C-11. All executive and administrative powers of the city are vested in the mayor, who is responsible for the proper administration of all affairs of the city, Section 11-44C-37. Not all powers of the city, section 11-44C-12, are exercised by the council. That Mobile operates under a mayor-council form of government is fundamental, as it was approved by the State Legislature and adopted by popular vote.
6. The definition of “contract” at section 14-2(a) is overbroad. Among other things, it would improperly restrict the authority of the mayor to appoint and remove personnel, Section 11-44C-37(2).
7. Section 14-2(b), Disclosure Requirements, is a request for the production of documents within 30 days following the effective date of the ordinance. A request for records is not a proper topic for an ordinance, which is a legislative enactment, a determination of the sovereign power of the state as delegated to the municipality.
8. Section 14-3(b), Bid Awards, for the first time requires all bids to be awarded by resolution adopted by the council. Under one version of ordinance #14-034, Attachment 2, a new section 14-8 authorizes the purchasing agent to execute contracts for routine purchases less than \$7,500. Whether the award of bids less than \$7,500 required approval by the Council is not clear.
9. Every item on the council agenda requires staff time from the department in which the requisition is made, the finance department, the legal department, the mayor’s office and the city clerk’s office. The number of items that would be added to the agenda under the new 14-3(b) is not known but clearly will be substantial. Staff would be required to comply with 14-3(b), significantly adding to their workloads and detracting from their essential functions. The stated purpose for this new procedure is to promote transparency in the contracting process, Section 14-1(f). The existing contracting process is completely transparent. All bids are advertised and posted on the City website and, for public works bids, published in the newspaper, well in advance of the date bids are due. Vendors are notified of bids in which they may be interested. Bid awards are advertised on the city website. These are the communications on which vendors, bidders and the public rely. Adding a two (2) week delay to the award of bids by placing them on a council agenda would slow down and overburden city government, and would not result in greater transparency.
10. Section 14-3(b) is particularly burdensome and unnecessary in the context of public works contracts, ALA CODE Section 39-2-2, et seq. Public works contracts appear on the council agenda after the department selects the lowest responsive and responsible bidder, that bidder provides proof of insurance, performance and payment bonds, and executes a contract. Requiring the council to award the bid by resolution on one agenda and approve the execution of the contract on another serves no purpose and compromises the city’s ability to meet the deadlines for executing public works contracts under ALA CODE Section 39-2-8, and Section 39-2-9.
11. Section 14-3(c), Settlements, for the first time prohibits any payment to settle, adjust, or compromise any litigation, claim, debt, account, dispute, demand for or against the city in excess of \$5,000 which is not reduced to writing, presented to and approved by the council. Like 14-3(b), this section does not promote the best interests of the city, yet imposes a significant increase in the workloads of the revenue department, the motor vehicle maintenance department, other city departments involved in claims, city legal and the mayor’s office.

12. Section 14-3(e), Budgeted Performance Contracts, purports to direct the mayor to prepare and submit budgeted performance contracts to the council not later than 30 days after the effective date of the general fund budget. This provision is disapproved. Once funds have been appropriated legislatively by the adoption of the budget, the spending of appropriated money becomes a discretionary executive function. This section would usurp the mayor's discretionary administrative and executive authority delegated to the mayor by statute.
13. Section 14-8, Contracts for Routine Purchases, should apply, as it does now, to all competitively bid awards, not restricted to the award of bids less than \$7,500. This new procedure would slow down the award of bids and add to the workload of city staff for no purpose. Current procedures provide transparency.
14. Ordinance #14-034, adopted December 18, 2018, is disapproved in its entirety. The ordinance is not a valid exercise of the Council's delegated legislative authority because it infringes on the mayor's executive and administrative authority.

Done this \_\_\_\_\_<sup>th</sup> day of December, 2018.

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William S. Stimpson  
Mayor  
City of Mobile