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DEPARTMENT OF JUSTICE
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90 – B – 4 – PUBLIC MEETINGS – State & Local Governing Bodies

La. Const. Art. XII, §3
La. R.S. 33:103
La. R.S. 33:405

La. R.S. 42:19

The Honorable Tina Miceli
Mayor, City of Harahan
6437 Jefferson Highway
Harahan, LA 70123

The Council for the City of Harahan may adopt a procedure governing its meetings which allows individual council members to place items on the agenda, provided such a request complies with the timelines set forth in the ordinance and the notice provisions of the Open Meetings Law. With respect to the agenda for a special meeting, an individual council member may not place an item on the agenda if such agenda item lacks the support of a majority of the members, as required by La. R.S. 33:405(C), irrespective of whether the council member attempts to add such an item more than twenty-four hours before the meeting. Further, as La. R.S. 42:19(A)(1)(b)(ii)(cc) requires unanimous approval of the members present to add an item to the agenda, the City of Harahan may not, by ordinance, lessen this requirement to a majority vote. Withdrawing an item does not require unanimous approval of all members present, as described by La. R.S. 42:19(A)(1)(b)(ii)(cc).

Dear Mayor Miceli:

Pursuant to La. R.S. 33:103(B), the mayor of the City of Harahan has appointment authority over members of the Harahan Planning and Zoning Commission. An ordinance providing otherwise is without effect.

Our office received your request for an opinion relating to the application of the Open Meetings Law, La. R.S. 42:11-28, and the Lawrason Act, La. R.S. 33:32-481, to Ordinance No. 1797, adopted by the Council for the City of Harahan ("Council") on August 20, 2015.¹ More specifically, your letter raised the following questions:

- (1) Is it lawful to have an ordinance in place that states that any member of the Council shall be allowed to place items on the agenda of a regular meeting if received within the proper notice time frame?
- (2) Is it lawful to have an ordinance in place that states any member of the Council shall be allowed to place items on the agenda of a special city council meeting if received no later than 25 hours prior to the time of the fixed special meeting?
- (3) If a special city council meeting can only be called by the Mayor, or a majority of the Council and the agenda is set at the time the special meeting is called for, can one council member add to or change the agenda prior to the actual meeting within the proper notice time frame?

¹ While the provisions of the Lawrason Act refer to the legislative body of a municipality governed by these laws as the "Board of Aldermen," your request and City of Harahan Ordinances refer to the City's legislative body as the "City Council." Both terms appear in this opinion, as this opinion cites applicable provisions of the Lawrason Act and city ordinances; however, either term, as applied to the City of Harahan, is intended to refer to the City's legislative body.

- (4) If state law requires the Council to amend the agenda for a special or regular city council meeting by unanimous consent at the meeting, can the City have an ordinance that states that only a majority vote of the Council is needed to amend the agenda?
- (5) Does withdrawing an item on the agenda at a council meeting constitute amending the agenda? If so, which would prevail: Robert's Rules of Order, which was adopted by ordinance as governing council meetings, or the Open Meetings Law?
- (6) Is it the sole duty of the Mayor to appoint members to boards, such as the Planning and Zoning Board and the Variance Board? Can an ordinance be put in place that allows the Council to also nominate members?

Agenda Preparation

The right to observe the deliberations of public bodies, except in cases established by law, is guaranteed by La. Const. art. XII, §3.² The Open Meetings Law describes and defines this constitutional right. The legislature has identified the purpose of this body of law in La. R.S. 42:14(A), instructing liberal construction:

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of this Chapter shall be construed liberally.

Your first two questions concern preparation of the agenda. The Open Meetings Law does not delegate the preparation of the agenda to a specific member of a public body; however, your request notes that the City of Harahan is governed by the Lawrason Act, La. R.S. 33:321-481. La. R.S. 33:421 indicates that the city, town or village clerk is responsible for recording the proceedings of the mayor and the board of aldermen and for maintaining a municipal docket, providing, in pertinent part:

[t]he clerk shall keep a book, to be styled "Municipal Docket, City of ____," or "Town of ____," or "Village of ____," as the case may be, upon which he shall enter each claim against the municipality, and each subject matter to be acted upon by the mayor and board of aldermen. After each meeting he shall make up such docket for the next regular meeting.

Our office has consistently stated that in a Lawrason Act municipality, the mayor has control over what items are placed on the agenda for meetings of the board of aldermen. More specifically, La. Atty. Gen. Op. Nos. 13-0221, 11-0102, 08-0325, 05-0145 and 03-0288, all reached this conclusion taking into consideration both La. R.S. 33:405(A)(1), which designates the mayor as presiding officer of the meetings of the

² There is no debate that any meeting of the Council is subject to the Open Meetings Law. See La. R.S. 42:14(A), La. R.S. 42:13(A)(2) and La. R.S. 33:405(G).

board of aldermen, and La. R.S. 33:404(A)(9), which gives the mayor the authority to perform any duty as may be necessary or proper for the administration of municipal affairs which is not denied by law. Notably, however, these opinions reached the conclusion that the mayor has the authority to set the agenda in the absence of any adopted procedures or ordinances governing agenda preparation in those municipalities.

Ordinances have been passed addressing order and procedure of City of Harahan meetings. See, generally, Article II of the Code of Ordinances for the City of Harahan. Section 2-67 provides an order of business for meetings as follows: Call to order by the mayor; pledge of allegiance to the flag; Roll call; Special presentations; Address the council; The reading of the minutes of the preceding meeting or meetings and corrected and approval of the same unless dispensed with by the council and correction of the minutes of the previous meeting; Communications; Resolutions; Ordinances for final passage; Ordinances for first reading; Old business; New business; Address the council; Secretary's report; Reports; Pay bills; Executive Session; Adjournment.³ Many of the items on this order of business are general categories which are likely intended to serve as a template to start from in order to prepare a more detailed agenda of items to be considered at a City meeting. It follows that, when considering the authority of the mayor, as provided for in the Lawrason Act, along with our previous opinions interpreting this authority as it relates to agenda setting, the mayor has some discretion in taking this order of business and detailing, with reasonable specificity, agenda items which may be taken up under these categories such that the agenda complies with the notice requirements of the Open Meetings Law.⁴

You have indicated that the Council recently passed Ordinance No. 1797, adopted on August 20, 2015, which amends Ordinance No. 1080 to allow individual council members to place items of business on the agendas of regular and/or special meetings of the City of Harahan. Section 1 of Ordinance No. 1797 provides that "[a]ny member of the Harahan City Council shall be allowed to place items on the agenda of a regular meeting if received no later than 4:30 p.m. on the Friday immediately preceding the regular meeting." Your first question asks whether this section of the Ordinance is permissible, as the mayor has traditionally controlled what items appear on the agenda.

³ Section 2-67 of the Harahan Code of Ordinances notes that this order is subject to Section 2-68, which provides that any matter before the city council may be considered at any time, regardless of the order of business, provided a majority of the councilmen vote in the affirmative to do so. Changes to the agenda are discussed *infra* at Questions 5-6.

⁴ La. R.S. 42:19(A)(1)(b)(ii)(bb) provides that each item on the agenda of a meeting of a public body must be listed separately and described with reasonable specificity. When preparing the agenda, the mayor, as presiding officer, should provide further details of any action which the city may take under the various categories listed in the template agenda. For example, one of the categories is "Old Business," which does not convey an action the city may take. If the city intends to take any action under the broad umbrella of "Old business," the city must provide notice to the public of any intended action by listing the action separately and with some reasonable degree of detail sufficient to let the public know what action is being contemplated.

Our office has previously recognized that the board of aldermen in a Lawrason Act municipality has the authority to adopt rules controlling its meetings. See La. Atty. Gen. Op. No. 94-277 and 08-0235.

In the scenario you have presented, the Council has adopted an ordinance which gives council members the ability to place items on the agenda, provided that the submission occurs within a certain timeframe prior to the meeting. The legislature has clearly designated the mayor as presiding officer of a municipal meeting governed by the Lawrason Act. La. R.S. 33:405(A)(1). Your inquiry suggests that the ordinance in question impedes upon the authority of the mayor to serve as presiding officer.

It is well settled that a municipality lacks the authority to enact ordinances which are inconsistent or in contravention with state law. See *Restivo v. City of Shreveport*, 566 So.2d 669, 671 (La. 2 Cir. 1990) and the citations therein. A municipal ordinance which is more strict than state law is permissible as long as it does not forbid what the state legislature has expressly or implicitly authorized. *Id.* and citations therein.

In La. Atty. Gen. Op. No. 06-0083, the Mayor for the City of Gretna, which, like Harahan, is a Lawrason Act municipality, asked our office whether the city council for Gretna could adopt an ordinance which *only* allowed council members to place items on the agenda of a meeting. The opinion concluded that such an ordinance was enforceable, except for two very specific scenarios provided for by law. *Id.*⁵ In its reasoning, this opinion referenced La. Atty. Gen. Op. No. 94-277, which opined that the Mayor of Lockport would be bound to comply with rules adopted by the board of aldermen pertaining to meetings, such as what items will appear on the agenda and any limitations related to public participation. See also La. Atty. Gen. Op. No. 05-0145, which concluded the Mayor for the Town of Amite had the authority to adopt procedures which determine what items appear on a town meeting agenda "*as long as these actions are not in conflict with the clerk's duties set out in La. R.S. 33:421 or with any procedures adopted by the board of aldermen.*" (Emphasis added).

Therefore, in response to your first inquiry, it is the opinion of this office that the legislative body in a municipality governed by the Lawrason Act may pass an ordinance permitting a council member to place an item on the agenda, provided the submission complies with any time constraints contained within the ordinance in question and the notice provisions of the Open Meetings Law. See La. R.S. 42:19.

Your second question concerns Section 2 of the recently adopted Ordinance No. 1797, which provides that "[a]ny member of the Harahan City Council shall be allowed to place items on the agenda at call of special meeting." Special meetings are addressed in the Lawrason Act, La. R.S. 33:405(C) providing:

⁵ The opinion references La. R.S. 33:405(C) and (D)(1), which address the mayor's authority to call a special meeting or an emergency meeting. If the mayor issues the call for such a meeting, then the law also allows the mayor to determine what matters will be discussed.

Special meetings of the mayor and board of aldermen may be called by the mayor or a majority of the members of the board. The board shall establish by ordinance how notice of special meetings shall be provided to members of the board and the mayor. The notice for a special meeting shall specify the business to be considered at the special meeting. Public notice shall be given as provided in R.S. 42:19. Notwithstanding any other law to the contrary and pursuant to Act No. 131 of the 2008 Regular Session of the Legislature, an item which is not on the meeting agenda may be considered by the mayor and the board of alderman only after a unanimous vote of consent by the board and only after announcing the purpose of the item and allowing anyone in the audience to speak on the item.

La. R.S. 33:405(C) authorizes the calling of a special meeting by either the mayor or a majority of the members of the board of aldermen. The notice must specify the business that will be considered, and public notice must be provided for as described by La. R.S. 42:19. Also relevant, the City of Harahan has adopted an ordinance which addresses how notice is provided to members of the city council and the mayor. Section 2-61(a) of the Code of Ordinances for the City of Harahan provides:

Special meetings of the mayor and the city council may be called by the mayor or a majority of the members of the council. The notice for a special meeting shall specify the business to be considered at a public meeting. It shall be signed by the officers calling for the special meeting.

Specifically, your concern is whether Section 2 of Ordinance No. 1797 is consistent with state law. The Ordinance states that any member of the council is allowed to place an item on the agenda of a special meeting at the call of the meeting. La. R.S. 33:405(C) permits either the mayor or a majority of the board of aldermen to call a special meeting.⁶ The Ordinance permits any council member to advance an item for consideration for placement on the agenda; however, state law requires that any item on the agenda of a special meeting of a Lawrason Act municipality must be agreed upon by a majority of the board members. Thus, the lawfulness of Section 2 of Ordinance No. 1797 depends upon the application of Ordinance No. 1797. If a majority of the council agree that an agenda item advanced by one council member should be included on a call for a special meeting, then this item is appropriate to include on a call for the special meeting. However, if a proposed agenda item advanced by one council member for a special meeting lacks support from a majority of the members of the council, then such an agenda item would not be proper for inclusion on the call for a special meeting. This would not prevent a council member from attempting to have the matter addressed at the actual meeting by requesting the agenda be amended to

⁶ Similarly, as highlighted above, Section 2-61(a) mimics the language in state law recognizing the board of aldermen's authority to call a special meeting when a *majority* of the board wants to call such a meeting.

include the proposed item, however, such a measure would require the support of all the members present.⁷

Changes to the Agenda

Your third question is whether one council member can unilaterally modify the agenda of a special meeting.

As discussed in the response to your second question, the notice for a special meeting must specify the business which will be discussed and should be contained within the call for the special meeting signed by a majority of the members of the council or the mayor. Therefore, it is the opinion of this office that if a council member wishes to add an item to the agenda after a special meeting has been officially called by a majority of the council members or the mayor, the proper method for doing so is by amending the agenda at the time of the meeting, which requires unanimous approval of all members present at the meeting. Further, the motion to add the item to the agenda must describe the proposed item with reasonable specificity and include the reason for the addition.⁸ Finally, as described by La. R.S. 42:19, before any vote may be taken on the motion to amend the agenda, there must be an opportunity for public comment.

In light of the above, it is our view that one council member may not unilaterally modify or amend the agenda of a special meeting.

Your fourth question references a conflict between an ordinance and state law with respect to the approval required to amend the agenda. In particular, as referenced in responding to earlier questions, La. R.S. 42:19(A)(1)(b)(ii)(cc) requires unanimous approval of the members present for a public body to take up a matter not on the agenda. You ask whether an ordinance is enforceable which allows an agenda to be amended by only a majority vote of the members of the Council. Again, it is well settled that an ordinance cannot provide a less stringent requirement than state law.⁹ Requiring approval of a majority of the council, rather than all of the members present at the meeting, is less stringent than the requirements under the Open Meetings Law. Therefore, the requirement for unanimous approval dictated by state law prevails.

⁷ An amendment to the agenda must comply with the requirements of La. R.S. 42:19(A)(1)(b)(ii)(cc), which provides,

[u]pon unanimous approval of the members present at a meeting of a public body, the public body may take up a matter not on the agenda. Any such matter shall be identified in the motion to take up the matter not on the agenda with reasonable specificity, including the purpose for the addition to the agenda, and entered into the minutes of the meeting. Prior to any vote on the motion to take up a matter not on the agenda by the public body, there shall be an opportunity for public comment on any such motion in accordance with R.S. 42:14 or 15. The public body shall not use its authority to take up a matter not on the agenda as a subterfuge to defeat the purposes of R.S. 42:12 through 23.

⁸ La. R.S. 42:19(A)(1)(b)(ii)(cc).

⁹ See *Restivo*, *supra*, and references therein.

The next issue you ask us to address is whether withdrawing an item on the agenda constitutes an amendment to the agenda. La. R.S. 42:19(A)(1)(b)(ii)(cc) allows a public body to take up a matter which was not on the posted agenda, provided the addition of such item is supported by all members present at the public meeting.¹⁰ You have asked whether the law requires unanimous approval when a member of the public body wishes to withdraw an item from the agenda.

The notice provisions of the Open Meetings Law ensure that the public is given advanced notice of matters pending before a public body. One reason to require advanced notice of agenda items is to ensure that if a member of the public wants to be heard on a matter or observe a public body's deliberations on an issue, he or she can check the agenda posted twenty-four hours in advance to see if the matter is scheduled for consideration. However, the legislature has also acknowledged, in La. R.S. 42:19(A)(1)(b)(ii)(cc), that a public body may wish to address a matter which did not appear on the original agenda. The requirement for unanimous approval ensures that every member agrees an item proposed to be added to the agenda is appropriate for consideration, despite the lack of advanced public notice, and that the agenda item is not being added at the time of a meeting as a way to circumvent the notice requirements.

Your question is not concerned with a public body taking up a matter which did not appear on the posted agenda, but rather, *not* discussing a matter scheduled for discussion. While the general understanding of the word "amend" could certainly encompass any type of change to the agenda, including removal of an item, pursuant to the language contained within La. R.S. 42:19(A), unanimous approval of the members present at a meeting of a public body to amend the agenda is required only when an item is *added* to the agenda. The effect of a withdrawal of an agenda item means that the public body will not vote on it. Therefore, it is the opinion of this office that a motion to withdraw an item on the agenda does not require unanimous approval, and could pass with a majority vote.¹¹ In light of our conclusion that unanimous approval of the members present is not required to support a motion to withdraw an item from the agenda, it is not necessary for us to address your follow up question concerning a conflict between state law and Robert's Rules of Order.

Nomination Authority

Your last question concerns the mayor's authority to appoint members to boards. Specifically, you have asked whether an ordinance may be adopted permitting the city council to nominate members of the Harahan Planning and Zoning Commission. The

¹⁰ See footnote five, *supra*.

¹¹ However, we note that if the item appeared on the original agenda, it follows that even if a council member moves to withdraw an item for discussion, members of the public should still be given the opportunity to make public comment on this agenda item.

Harahan Planning and Zoning Commission was established pursuant to the authority granted to municipalities by La. R.S. 33:102.¹²

La. R.S. 33:103(B) discusses membership of a municipal planning commission, providing:

A municipal planning commission shall consist of not less than five nor more than nine members, at the discretion of the local legislative body, all to be appointed by the chief executive of the municipality, who may remove any member of the commission, after public hearing, for inefficiency, neglect of duty, or malfeasance in office.

Thus, the legislature has indicated that members of a municipal planning commission are appointed by the chief executive of the municipality. The mayor is the chief executive officer in a Lawrason Act municipality. La. R.S. 33:362(B).

As previously established, a municipality may not enforce an ordinance which contravenes state law.¹³ Here, the legislature has given the chief executive officer, or, specific to the facts you have presented, the Mayor of the City of Harahan, appointment authority over members of the Harahan Planning and Zoning Commission. Any provision of an ordinance which purports to redesignate this appointment authority to the board of aldermen is without effect.

Conclusion

To summarize the responses to your various question, it is the opinion of this office that the Council for the City of Harahan may adopt a procedure governing its meetings which allows individual council members to place items on the agenda, provided such a request complies with the timelines set forth in the ordinance and the notice provisions of the Open Meetings Law. With respect to the agenda for a special meeting, an individual council member may not place an item on the agenda if such agenda item lacks the support of a majority of the members, as required by La. R.S. 33:405(C), irrespective of whether the council member attempts to add such an item more than twenty-four hours before the meeting. Further, as La. R.S. 42:19(A)(1)(b)(ii)(cc) requires unanimous approval of the members present to add an item to the agenda, the City of Harahan may not, by ordinance, lessen this requirement to a majority vote. Withdrawing an item does not require unanimous approval of all members present, as described by La. R.S. 42:19(A)(1)(b)(ii)(cc). Finally, pursuant to La. R.S. 33:103(B), the

¹² La. R.S. 33:102 provides: "[e]very parish and every municipality may make, adopt, amend, extend, add to, or carry out official plans as provided in this Subpart [pertaining to Planning Commissions], and may create by ordinance a planning commission with the powers and duties as provided by this Subpart, and may appropriate funds for the commission." See also Appendix A, Section XIX of the Code of Ordinances for the City of Harahan.

¹³ See *Restivo, supra*, and references therein.

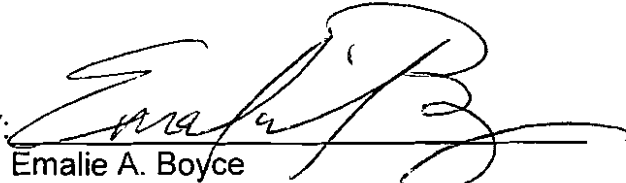
mayor of the City of Harahan has appointment authority over members of the Harahan Planning and Zoning Commission. An ordinance providing otherwise is without effect.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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