



**A MANUAL**

**FOR ELECTED MUNICIPAL OFFICIALS**

**OF A MAYOR-CITY COUNCIL**

**FORM OF GOVERNMENT**

**IN A CITY OF THE FIRST CLASS**

Compiled and Edited by Trey Smith



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## **Preface**

Ever since I compiled the document, City of Russellville, City Council Rules of Procedure and Standing Rules, in 2009, I have always had this undefined idea of a supplementary document to that publication which could aid municipal officials in some of the basic forms of their roles in city government and the processes each person involved in city government has. Sometime in late 2021, while looking for a document which would better define the vague idea I had for what I wanted to complete for the city I work for, I came across Washington State's Mayors and Councilmember Handbook. It crystallized my idea of what I wanted to compile for my city. So while did it capture most of my thoughts on the matter, I used it as a template and changed all Washington state references to Arkansas law and citation references from publications from the Arkansas Municipal League. I also used general legal information from municipal league organizations from the great states of Michigan, Montana, Nebraska and Wyoming. I hope that all municipal officials who read this Manual find that it is an easy first point of reference and come away with a better understanding of the basics of city government and their processes which run the daily operations of their city.

## **Dedication**

This work is dedicated to all those who have taken up the calling to serve in city government to make their city a better place for the residents who live there. I personally dedicate this work to my parents, my son, and to my first floor coworkers at City Hall who make work a pleasure every day.

## **Disclaimer**

This Handbook should not be used as a substitute for the applicable current Arkansas statutes and constitutional provisions. It is not intended as legal advice, nor is it designed to replace the specialized legal services available to city officials through the Office of the City Attorney or the Arkansas Municipal League General Counsel and legal staff attorneys. In all cases, elected officials are urged to consult with their municipal legal counsel for specific legal advice, as well as to read the specific language of statutes and constitutional provisions. The information in this book should never be substituted for the advice of local legal counsel.

## Foreword

Serving as a local elected official is one of the most demanding—and often thankless—tasks a citizen can perform. Municipal officials can be called upon day and night. They are subject to constant criticism, and almost everything they do will be wrong in someone’s opinion. Many spend their own money to campaign for election; most receive little, if any, pay for the job.

But serving in local office can also be rewarding and productive. For many, it is more important than being in Congress or the state legislature because the city is the real world where municipal officials can make good things happen for their fellow citizens.

I hope this Manual will offer a few suggestions that will make your job easier. Such a guide cannot possibly touch upon every relevant subject, but it does include what I believe are the most important topics. Throughout, however, it should be recognized that this Handbook is only a guide and that there is no substitute for competent legal advice regarding interpretations of the law and other questions that might arise in specific situations.

If you don’t find the answers to your questions about the part of city government you are covering or the issues being faced by the City today, the office of city attorney is ready to assist you in any way it can.

I wish you great success in your new office.

Trey Smith  
City Attorney  
City of Russellville, Arkansas

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## **Prologue**

### **Origins and Characteristics of Municipal Government**

*“Despite the enormous role that local government plays in our daily lives, the Constitution makes not one mention of it.”*

-Anthony Albanese

“Man is by nature an animal intended to live [in] a polis [city],” Aristotle wrote more than 2,000 years ago. Human history seems to validate Aristotle’s ancient insight that man is, by nature, a social animal best suited for living in a community. Beginning about 6,000 years ago, at the dawn of the agricultural revolution, governed agricultural communities, emerged on the banks of the Tigris and Euphrates Rivers in Mesopotamia (modern day Iraq). Whether for the purpose of defense against hostile neighbors or as a means to gain the economic benefits of specialized labor and commerce, or both, the city emerged from its primitive, communal origins to become the defining institution of human civilization.

It is difficult to think of civilization at all except in the context of “a city.” Improvements to the human condition made by the inhabitants who populated ancient Athens, Rome, Florence, and London or, for that matter, Tenochtitlan (Mexico City) or Mesa Verde, should remind us that it is within the city where human creativity flourishes. It is where wealth is accumulated and where individuals and their families seek safety in numbers.

It is in Roman law that the term “municipal” is first used even though governed cities existed thousands of years before the advent of the Roman Empire. Cities by Roman law were called *municipia*. As such, Roman municipalities were governed, at least in theory, by local law and custom but the residents enjoyed the privileges of Roman citizenship and paid Roman taxes. The term “municipality” is derived from the Latin term *municipium* and today refers to a unit of general purpose local government that, in Arkansas, is called either a “city” or a “town.”

When North America was colonized by Europeans from the 17th century onward, there was initially little control from governments back in Europe. Settlers had to fend for themselves; compact towns sprung up based as legal corporations in what has been described as “pure democracy”. As an example, the nation’s first local government was formed before the administration or constituents had set foot on U.S. soil. On November 11, 1620, passengers aboard the *Mayflower* fleeing English religious persecution drafted and signed a civil contract to abide by when they reached the new world. In signing the *Mayflower Compact*, members of this group, that came to be known as Pilgrims, bound themselves into an orderly society with offices, laws, and institutions to aid the common good. These laws, they agreed, were to be supreme and obeyed. The Pilgrims had signed the Mayflower Compact with the intent to “provide the basis for secular government in America.”

The founding of governed communities at Roanoke (1585), Jamestown (1607) and the Massachusetts Bay Colony (1630), mark the origins of modern cities in the United States. The community of New York was known as a “city” by 1653. One might reasonably suppose that a definition of the term “city” and an accompanying body of municipal law might readily be traced back through these colonial origins to England and thence to the ancient civilizations. However, that is not the case. Modern scholars of municipal law agree that, in the United States, the terms “city” or “municipality” never acquired a historically definite, technical meaning in law.

The Founders do not mention or define cities in the U.S. Constitution, and therefore municipal law is one of the many undefined doctrines of American federal law, left to state legislative processes and court battles, under the rubric of the Ninth<sup>1</sup> and Tenth<sup>2</sup> Amendments which reserves all other powers not previously delegated or prohibited to the states and people. Therefore, each state is responsible for granting broad or limited authority to each local branch of government, such as counties, municipalities, school districts, and other political subdivisions. *As a consequence, the terms municipality, city and town have developed meanings, which depend entirely upon how the terms are defined, employed or intended in a state constitution or in the laws adopted by state legislatures.* The legal definition of these commonly used terms may well be different in Arkansas than in any one (1) of our sister states. For example, Arkansas law creates only “cities” and “towns” as incorporated municipalities. *Unlike a number of other states, there are no incorporated “townships,” “villages” or “boroughs” in Arkansas.* The lack of consistency from state to state in classification of municipalities, along with differences in power and authority granted to municipalities, creates significant complexity and ambiguity in how government operates at the local level. Consequently, the United States has one of the most complex and diverse local governance structures in the world with vast differences in form and function not only from state-to-state, but within states as well.

Alexis de Tocqueville understood well that participation in local government is a cornerstone of American democracy: “It is incontestably true that the love and the habits of republican government in the United States were engendered in the townships and in the provincial assemblies. [I]t is this same republican spirit, it is these manners and customs of a free people, which are engendered and nurtured in the different States, to be afterwards applied to the country at large.” A. de Tocqueville, Democracy in America 181 (H. Reeve trans. 1961)

As put another way in today’s modern language, “Citizens, however, cannot learn the lessons of self-government if their local efforts are devoted to reviewing proposals formulated by a faraway national legislature. If we want to preserve the ability of citizens to learn democratic processes through participation in local government, citizens must retain the power to govern, not merely administer, their local problems.” FERC v. Mississippi, 456 U.S. 742 (1982), at 790, (Justice O’Connor, concurring in the judgment, in part, and dissenting, in part.)

In trying to deduce from American examples some idea of the probable influence of modern democracy on city government, it must bear in mind that the municipal history of America differs greatly from that of Europe. In Europe, as a general rule, municipalities either existed before the state or grew up in spite of the state; that is, they were fresh attempts to keep alive the sparks of civilization in the Middle Ages, before anything worthy of the name of a state had been organized, or else they sprang into being as a refuge from or a protest against state despotism. In either case they always had a life of their own, and often a very vigorous and active life. No European city can be said to have owed its growth to the care or authority of the central power. Both kings and nobles looked on cities with suspicion and jealousy; charters were granted, in the main, with reluctance, and often had to be maintained or extorted by force of arms. These classes recognized liberties or franchises which already existed, rather than granted new privileges or powers. Municipal life was either an inheritance from the Roman Empire, or an attempt at social reorganization in a period of general anarchy.

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<sup>1</sup> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

<sup>2</sup> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

American cities, on the contrary, are without exception the creations of a state; they have grown up either under state supervision or through state instigation; that is, they owe their origin and constitution to the state government. Their existence have usually been devised or influenced by people who did not expect to live in the cities, and who had no personal knowledge of their special needs. In other words, an American municipal city has been rather the embodiment of an *a priori* view of the kind of thing a city ought to be, than a legal recognition of pre-existing wants and customs. The complete predominance of the state has been a leading idea in the construction of all American creations of city governments. No legislature has been willing to encourage the growth of an independent municipal life. No grant of authority for municipal government has been looked on as a finality or as organic law. In fact, the modification or alteration of municipal existence of their express powers and privileges has been a favorite occupation of all legislatures, stimulated by the rapid growth of the cities and by the absence of all historical experience of municipal life.

### **Start of the Modern Municipality**

Once predominantly rural, in the late 19<sup>th</sup> century the industrialization of American society sparked a population boom in cities and towns. This accelerated the demand for commercial enterprise and ultimately increased service levels that counties were largely unable to manage. States granted authorities for municipalities to become incorporated and establish government structures to address the needs of the people—primarily including sanitation, utilities, infrastructure, public safety, and regulation of both civic and commercial activities. Even though American city government already existed in the British colonial era in the United States, early era local governments were not organized and did not provide municipal utilities or other services. Rapidly growing industrialized cities knit together urban consumers and rural producers into a single, integrated national market. Food production and consumption, for instance, became national in scope.

Between 1880 and 1900, cities in the United States grew at a dramatic rate. Owing most of their population growth to the expansion of industry, U.S. cities grew by about 15 million people in the two (2) decades before 1900. The new technologies of the time led to a massive leap in industrialization, requiring large numbers of workers. New electric lights and powerful machinery allowed factories to run twenty-four hours a day, seven days a week. Workers were forced into grueling twelve-hour shifts, requiring them to live close to the factories. Also, many of those who helped account for the population growth of cities were immigrants arriving from around the world to escape the problems of famine or religious persecution. Moreover, steady streams of people from rural America also migrated to the cities during this period to leave behind the declining prospects of preindustrial agriculture in the hope of better wages in industrial labor. Between 1880 and 1890, almost 40% of the townships in the United States lost population because of migration.

Today, the United States is today a highly urbanized country with about 80% of the American population lives in municipalities, and municipal governments affect the lives of many citizens. This statistic makes city governments critically important in the overall pattern of American government. To a greater extent than on the federal or state level, the city directly serves the needs of the people, providing everything from police and fire protection to sanitary codes, health regulations, education, public transportation and housing.

## Municipality Defined

The U.S. Census Bureau defines municipal governments as “organized local governments authorized in state constitutions and statutes and established to provide government for a specific concentration of population in a defined area; includes those governments designated as cities, villages, boroughs (except in Alaska), and towns (except in the six New England states, Minnesota, New York, and Wisconsin).”

Authoritative sources define the American municipality as having four (4) essential characteristics, each of which is considered in detail immediately below. To exist as a municipality in the United States, the entity must have:

1. Law making authority authorized by the state;
2. Legal personality such that it can sue and be sued and hold and dispose of property;
3. A local court that enforces local law; and
4. A defined territorial area.

**1. The municipality and its law-making authority are authorized to exist by the state.** The governing relationship between state and municipal government in America has a complex and convoluted legal history. Prior to about 1850, American municipalities enjoyed substantial autonomy and were generally free to exercise wide governing discretion with little interference from their respective state governments. That is mainly because American localities' legal status was highly uncertain. After 1850, the balance of governing power began to shift substantially toward state government culminating, by the turn of the century in wide judicial acceptance of “Dillon’s Rule” that *local government is entirely the creature of the parent state and has no governing authority that has not been specifically or impliedly delegated by the state*. Named after Iowa Supreme Court Justice John F. Dillon who first stated Dillon’s Rule in 1868<sup>3</sup>. It was not until the middle of the 1870's that his rule was accepted as the dominate position. Prior to the emergence of Dillon's Rule as the fundamental doctrine regulating the relationship between state and local government, the Cooley Doctrine was the main principle establishing the foundation for state and municipal interaction. The Cooley Doctrine was written by Thomas M. Cooley, who was the 25th Justice and a Chief Justice of the Michigan Supreme Court, between 1864 and 1885, found support in the court system in 1871<sup>4</sup>. This doctrine established a more flexible relationship between states and local governments, granting certain rights to local governments not granted by Dillon. The doctrine was a legal theory of an inherent but constitutionally-permitted right to local self-determination.

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<sup>3</sup> “The true view is this: Municipal corporations owe their origin to, and derive their power and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there are some constitutional limitations on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are so to phrase it, mere *tenants at will* of the legislature.” Clinton v Cedar Rapids and the Missouri River Railroad, (24 Iowa 455; 1868)

<sup>4</sup> “Some things are too plain to be written ... the usages, the customs, the maxims, that have sprung from the habits of life, modes of thought, methods of trying facts by the neighborhood, and mutual responsibility in neighborhood interests, the precepts which have come from the revolutions which overturned tyrannies, the sentiments of manly independence and self-control which impelled our ancestors to summon the local community to redress local evils, instead of relying upon king or legislature at a distance to do so—if a recognition of all these were stricken from the body of our constitutional law, a lifeless skeleton might remain, but the living spirit, that which gives it force and attraction, which makes it valuable and draws to it the affections of the people ... would be utterly lost and gone ... It would be the boldest mockery to speak of a city as possessing municipal liberty where the state not only shaped its government, but at discretion sent in its own agents to administer it. Local government is [a] matter of absolute right; and the state cannot take it away.” People v. Hurlburt, 1871, 104 (Cooley, concurring).

The U.S. Supreme Court ratified Dillon’s Rule as the legal view that the prevailing law deems local governments mere creatures of state legislatures and state constitutions, under their control in two (2) cases at the turn of the twentieth (20<sup>th</sup>) century<sup>5</sup>. The U.S. Supreme Court also commented on the power of local governments in Community Communication Co. v. Boulder<sup>6</sup>. The court in that case declared that:

“[A]ll sovereign authority within the geographic limits of the United States resides either with the government of the United States, or [with] the states of the Union. There exists within the broad domain of sovereignty but these two (2). There may be cities, counties, and other[s]...but they are all derived from, or exist in, subordination to one or the other of these.”

As cities came into the modern era under Dillon’s Rule, views on local self-determination in municipal law began to look at the Cooley Doctrine again and push for more legislative freedom at the local level of government. The echoes of the Cooley Doctrine became wrapped up in this modern trend of greater legislative freedom for local governments of the various states. The new term for such enabling state legislation became known as Home Rule<sup>7</sup>. It is based upon the premise that the best government comes from that which is controlled at the most local level. Home Rule may be considered a device for allocating powers and functions between the state and its municipalities. It may also be considered both a legal and a political concept; legal in the sense that the allocation of powers and functions rests upon law; and political in the sense that it involves exercise of political judgment. Home rule does not mean, and has never been intended to mean, complete local autonomy within the state, because home rule cities must always remain integral parts of state government and must assume, like non-home rule cities, responsibility for enforcement of state law. Two (2) forms of Home Rule exist: constitutional and statutory.

Constitutional home rule, as the name implies, involves enactment of the rule via a state constitutional amendment. Missouri first adopted a constitutional home rule provision in 1875. Several states—California (1879), Washington (1889), Minnesota (1896), Colorado (1902), Virginia (1902), Oregon (1906), Oklahoma (1907), Michigan (1908), Arizona (1912), Ohio (1912), Nebraska (1912), and Texas (1912)—followed suit by establishing constitutional authority for use of a locally drafted charter to be ratified by local voters or the city council. Statutory home rule, the other form, is a less popular alternative as its stability is hampered by an obvious vulnerability to legislative whims. Several variations of the constitutional form exist. The self-executing version is the most favorable for municipalities because they are free to exercise Home Rule without the enacting procedures required with other forms.

Although older than constitutional home rule, legislative or statutory home rule is frequently viewed, sometimes unjustly, with considerable prejudice and skepticism. Since the home rule grant rests solely upon a legislative basis, it may be retracted by subsequent state legislation. Moreover, where legislative home rule exists, the state legislature has a tendency to ignore it by continuing to legislate in local affairs. Statutory home rule is conferred on cities by the passage of state legislation by the state legislative body. It is authorized in New Jersey, Florida, Georgia, North Carolina, Delaware, New Hampshire, New Mexico, and Kentucky. Arkansas also has the statutory version of Home Rule.

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<sup>5</sup> Atkin v. Kansas, 191 U.S. 207 (1903); Trenton v. New Jersey, 262 U.S. 182 (1923)

<sup>6</sup> Community Communications v. City of Boulder, 455 U.S. 40 (1982)

<sup>7</sup> Home Rule involves two components: (1) the power of local government to manage "local" affairs; and, (2) the ability of local government to avoid interference from the state.

Historically, Arkansas courts have long recognized that cities in Arkansas have been subject to Dillon’s Rule. “It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied<sup>8</sup>.”

However, the modern trend in the state has been to loosen the iron grip of Dillon’s Rule on cities in Arkansas. “[T]he passage of the Home Rule Act, Ark. Stat. Ann. §§ 19–1042—19–1046 (Repl.1980 and Supp.1983) [now A.C.A §§14-43-601 through 14-43-610]. The Home Rule Act ... authorizes any city of the first class to ‘exercise any function or legislative power upon ... state affairs if not in conflict with state law.’ Ark. Stat. Ann. § 19–1043 (Supp.1983) [now A.C.A §14-43-601]. Based upon the Home Rule Act, a city is empowered to enact an ordinance dealing with state affairs so long as the ordinances avoid conflict with state law<sup>9</sup>.”

Finally, the General Assembly modified Dillon's Rule with the passage of Act 1187 of 2011, codified at A.C.A. §14-43-602(b), by recognizing Home Rule has been granted to municipalities, thus making Arkansas a hybrid Dillon’s Rule/Home Rule state. As noted by the Arkansas Supreme Court in Davis v. City of Blytheville, 2015 Ark. 482, 4, 478 S.W.3d 214, 217 (2015), that the “rule of decision known as ‘Dillon's Rule’ is inapplicable to the municipal affairs of municipalities.” A.C.A. §14-43-602(b). However, the state still reserves the right to limit any power, function and authority of a city. A.C.A. §14-43-610. As mentioned in passing in the previous paragraph, the State has reserved in A.C.A. §14-43-601(a)(1) a number of subjects which are declared as state affairs, not subject to legislation by a city unless such municipal legislation is not in conflict with state law. A.C.A. §14-43-601(a)(2)(B). Based on these state statutes currently in effect, Arkansas is a combination of Dillon’s Rule and Home Rule with one (1) of the two (2) laws applying depending on the subject matter a city wishes to legislate on.

Figure 1 at the end of this Prologue chapter provides a quick review of all U.S. states on whether they follow Dillon’s Rule, Home Rule or a combination of the two (2).

## **2. The municipal entity has a legal “personality”.** In Arkansas:

“Cities or incorporated towns organized under the provisions of this subtitle are declared to be bodies politic and corporate, under the name and style of ‘The city of .....’ or ‘The incorporated town of .....,’ as the case may be, capable to:

- (1) Sue and be sued;
- (2) Contract and be contracted with;
- (3) Acquire, hold, and possess real and personal property;
- (4) Associate with other municipalities for the promotion of their general welfare;
- (5) Join with other municipalities in the purchase of equipment, supplies, or services;
- (6) Have a common seal and change and alter it at pleasure; and

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<sup>8</sup> Yancey v. City of Searcy, 213 Ark. 673, 678, 212 S.W.2d 546, 548 (1948) citing Dillon on Municipal Corporations, 5th Ed., Vol. I, sec. 237(89) and quoted the foregoing in Cumnock v. City of Little Rock, 154 Ark. 471, 243 S.W. 57, 25 A.L.R. 608 (1922), and in Arkansas Utilities Co. v. City of Paragould, 200 Ark. 1051, 143 S.W.2d 11 (1940).

<sup>9</sup> Tompos v. City of Fayetteville, 280 Ark. 435, 438, 658 S.W.2d 404, 406 (1983).

- (7) Exercise such other powers and have such other privileges as are incident to other corporations of like character or degree, not inconsistent with the provisions of this subtitle or the general laws of this state<sup>10</sup>.

Once an area of a county is successfully incorporated into a city under A.C.A. §14-38-101 *et seq.*, the city or municipal corporation is recognized in all judicial proceeding once the city has organized itself through the first election of its officers. A.C.A. §§14-38-105 and 14-38-108.

**3. There is a local court that enforces local law.** Every Arkansas municipality has a division of a district court of limited jurisdiction, which is responsible for interpreting and enforcing local ordinances adopted by the governing body of the municipality and for certain civil proceedings involving the city or town under Title 16, Chapter 17 of the Arkansas Code.

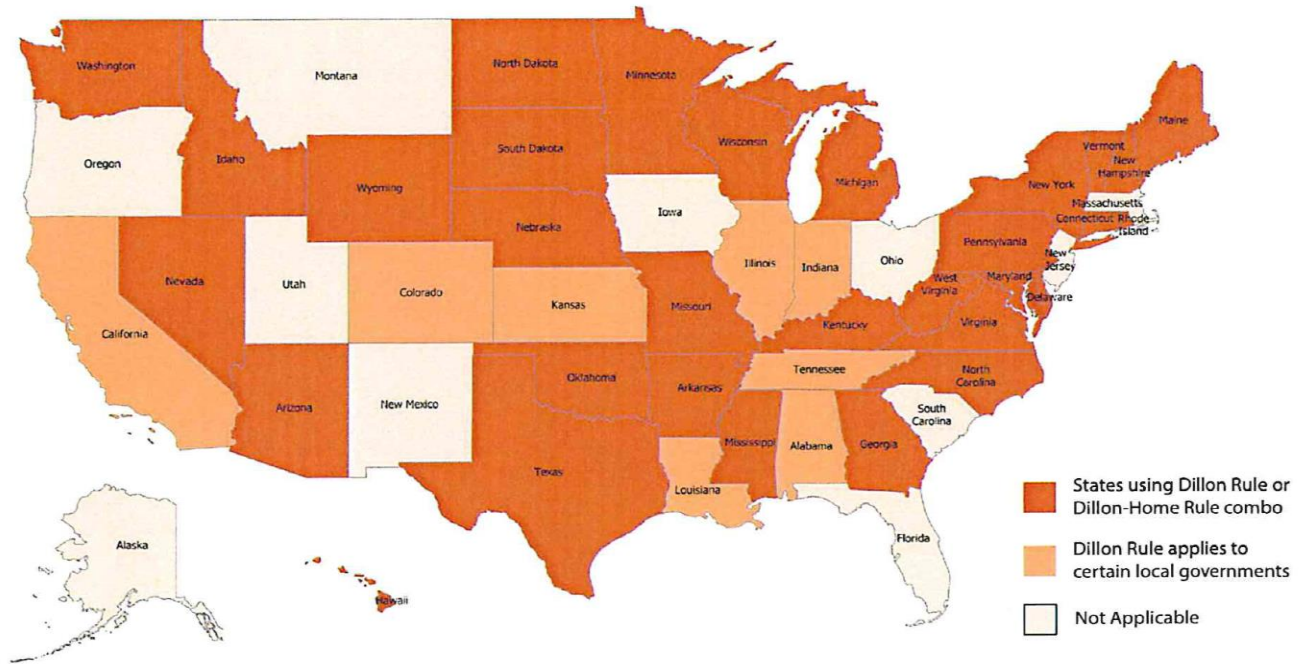
**4. The municipality includes a defined territory.** Municipal governments in Arkansas and elsewhere in the United States are defined in terms of having determinate boundaries (city or town limits), which define and limit who may participate in the municipality's governing affairs and who comes within reach of its jurisdiction for most purposes.

Under certain limited and statutorily defined circumstances, a municipal government may be empowered by state law to exercise its jurisdiction beyond its own city or town limits. This so-called extraterritorial authority varies significantly according to the functions or services for which the extraterritorial authority was granted by the legislature. For example, the extraterritorial authority of a municipality to enforce health and quarantine ordinances extends one (1) mile or five (5) miles for quarantine purposes beyond city or town limits A.C.A. §14-262-102; whereas the extraterritorial zoning authority of a city of population 8,000 to 60,000 and on a navigable stream is only one (1) mile A.C.A. §14-56-413.

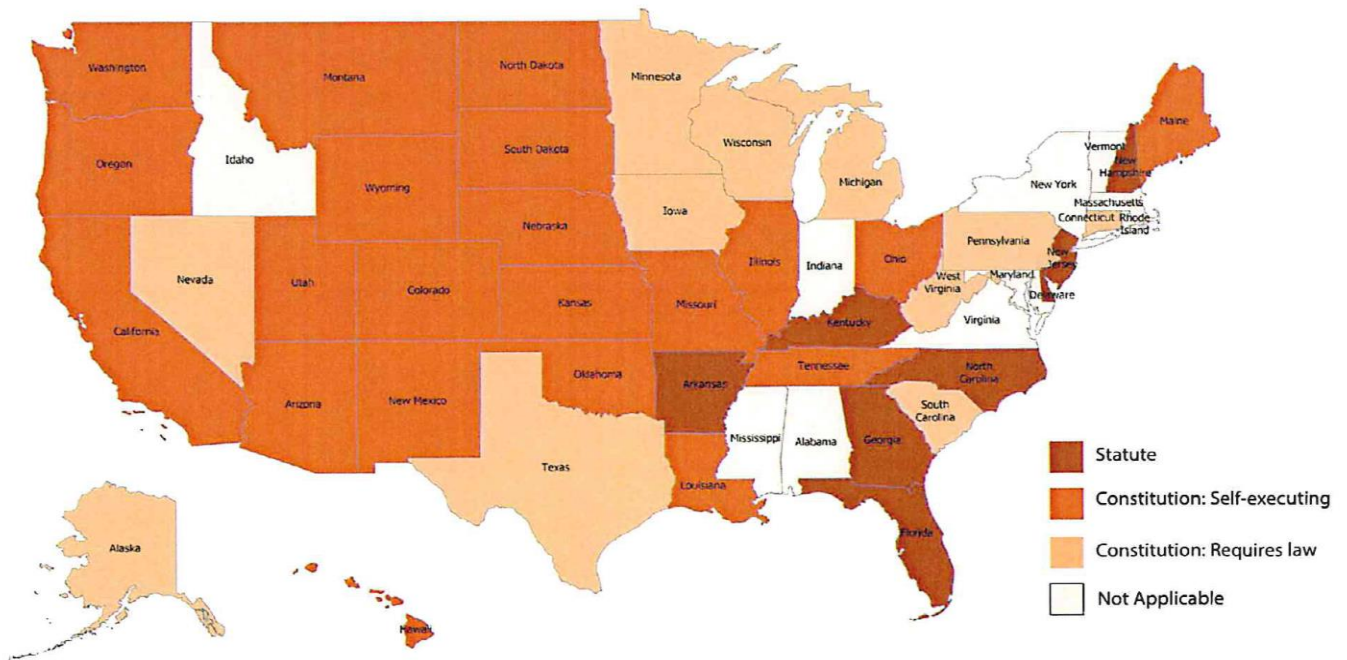
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<sup>10</sup> A.C.A. §14-54-101

**Figure 1**  
Dillon Rule and Dillon-Home Rule States



States providing for Home Rule via Constitution or Statute



## **Chapter 1**

### **Introduction**

*“What we need is not more Federal government, but better local government.”*  
-Calvin Coolidge

This Manual is intended to serve as a reference guide for mayors and city council members of the City of Russellville, Arkansas, a municipal corporation, organized and incorporated under the laws of the State of Arkansas, and a city of the first class that operates under the mayor-city council form of government.

A mayor wears many hats. As the chief executive officer of the city a mayor will deal with human resources, contracts, budgeting, infrastructure, economic development, police and fire protection, zoning, planning, city development, and a host of other issues. When chairing council meetings and public hearings, or when dealing with the press, you will have to choose your words carefully, deciding when is the appropriate time to be tactful or more direct.

It’s no wonder that mayors and council members often feel overworked and underpaid! Those who come to the job without having substantial experience in city government have a lot to learn.

The basis of this Manual is to provide a quick education on the role of a mayor and council member, to assist newly elected mayors and council members in learning their statutory duties and responsibilities, as well as procedures to improve the effectiveness and efficiency of municipal governments and also be a resource with answers to some frequent problems.

Use this publication to learn how to get information, assistance and advice. When your questions are not answered by the text, it will hopefully guide you to either the relevant laws and publications or to those people who can best answer your questions.

Being an effective leader is not something that just magically happens when you are elected to office. Leadership skills must be learned like any other skill through continued learning, development and practice. You will need to listen to the residents of the city, other fellow elected council officials, City department heads and other persons employed by the City with particular knowledge and expertise in specialized municipal fields in order to develop goals and then work effectively to achieve your objectives. There are a lot of people counting on you. They want you to succeed and so do we. Good luck!

### **Welcome to Public Service!**

Once the flush of election victory has faded a little and you’ve taken the oath of office. You’re now probably asking yourself, “What do I do next?”

Serving as an effective official requires dedication, knowledge and a substantial commitment of time and effort. No matter your motivation or background, as a member of the council you have the opportunity to make important contributions to shape the future of your community. For this reason, becoming a local elected official can be one of the most rewarding experiences of your life.

Being an elected official means being well informed, listening carefully and knowing how to make decisions will enhance those qualifications you need to succeed as a public official: integrity, intelligence and a genuine concern for people.

There is no substitute for thoroughly understanding the issues as well as the federal, state and local laws affecting these issues. As a public official, you will receive an enormous amount of information. It is important to be able to handle this material efficiently and effectively. Being well-informed of the issues before the City is the best way handle the City's business.

### **For starters:**

- *Become familiar with your current city laws and operating procedures.* Ask your clerk for a copy of city documents you wish to familiarize yourself with.
- *Know the duties and limitations of your office and of the municipality.* This requires familiarity with the state and federal constitutions, local ordinances and the court cases interpreting them.
- *Know your city.* Know its history, its operations and its finances. Review all reports from the mayor, department heads, citizen boards and commissions.
- *Become familiar with your municipality's plans.* Review the master plans, the parks and recreation plan, the infrastructure and economic development plans. There may also be a number of other documents outlining the goals, objectives and plans for your city.
- *Be aware of current state and federal legislation, pending court cases and other factors that affect local issues.* The Arkansas Municipal League and the National League of Cities frequently send materials to help you stay up to date.
- *Talk to people with differing points of view and relevant information.* Your constituents, officials in neighboring cities and towns, and county and state officials will all have important and different perspectives on each issue.

### Listening

Although seventy percent of our waking day is spent in some form of communication, and at least six (6) hours a day is spent listening to some form of oral communication. We don't always do this well. Yet, it is imperative to listen actively and accurately to be an effective council member.

### Making Decisions

No government official can make decisions that always pleases everyone. Honest people have honest differences of opinion. Making decisions is not always easy; it takes hard work and practice. However, each council member must eventually "stand up and be counted." It is this process by which your constituency judges you and for which it will hold you accountable.

### **Responsibilities of an Elected Official**

The specific duties of city officials are spelled out in the state laws and ordinances of each municipality. However, all elected officials share certain responsibilities. First and foremost, council members must remember they are elected to make decisions as a collective body, not to act as individuals or apart from the council. Together, as well as individually, it is their responsibility to:

- *Identify Community Needs and Determine Priorities.* Each city is unique, with its own set of problems, and each person has a different view of the relative importance of those problems. You must discover the specific needs of your municipality and the relative importance of each.

- *Observe.* Take a tour of the community with the rest of the council, the mayor and department heads. Such a tour is especially valuable for newly elected officials. They often discover areas never seen before, learn where the legal boundaries are and see where major trouble spots are now and where they might develop. Keep your eyes open as you go back and forth to work or to city hall, taking the opportunity to look for problems. Use a different route to see more than just one area. There is really no substitute for firsthand observation.
- *Talk with Citizens.* Direct interaction with your constituents is both politically and practically prudent. Municipal officials need to be accessible, concerned and open minded—and you will be if you talk not just with friends, but also with people you do not know well or at all. Be sure to include people representing various economic levels, professions, occupations and cultural backgrounds. In talking with citizens, be concerned primarily with listening. Avoid arguing or defending existing positions. Your attitude should reflect a genuine desire to secure information. In addition to seeking information in a person-to-person setting of your choice, you should also be prepared to receive unsolicited information and criticism from citizens who seek you out.
- *Read.* Elected officials receive a large amount of printed material: minutes, reports, articles, letters, proposed state and federal legislation and more. Much of this relates to problems and possible solutions, and some of it may help you discover the needs and wishes of your constituents. A letter or a newspaper article may reveal a problem that had not surfaced previously. Problems in other communities that are spelled out in journals and other printed sources may raise the question, “Do we have that same problem in this community?”
- *Establish Priorities.* Having defined the problems and needs of the community, it is important to establish the priority of each. How is this done while remembering that the resources, both human and financial, of any municipality, are limited? Even if resources were unlimited, there are a number of activities that would not—and should not—be engaged in by the local government. Each request should be examined in terms of citizen demand, financial cost, benefit to the entire community, availability from other sources and even political expediency. A balance should be maintained between the flexibility required to reorder priorities when conditions require and the firmness required to resist changing the programs to meet the momentary whims of special interest groups in the community.
- *Participate in Formal Council Meetings.* The council meeting is the final step in determining the projects and programs required to meet community needs. Here, under public scrutiny (sometimes face to face with suspicious and distrustful citizens), the municipal lawmaker must transact the business of the community based on established priorities and data that have been gathered and analyzed.

In council meetings, it is important to:

- **Look attentive, sound knowledgeable** and be straightforward and meticulously honest.
- **Be familiar with a systematic and efficient way to handle business brought before the council.** The mayor or president, manager or clerk will have prepared a concise and easily understood agenda outlining for you— and the general public—the order in which items will be considered during the meeting. This

agenda may allow the general public and the members of the council themselves to bring up additional items of business for discussion. Your copy of the agenda will come with a packet of background material. These should be read before the meeting, to assist you in decision making.

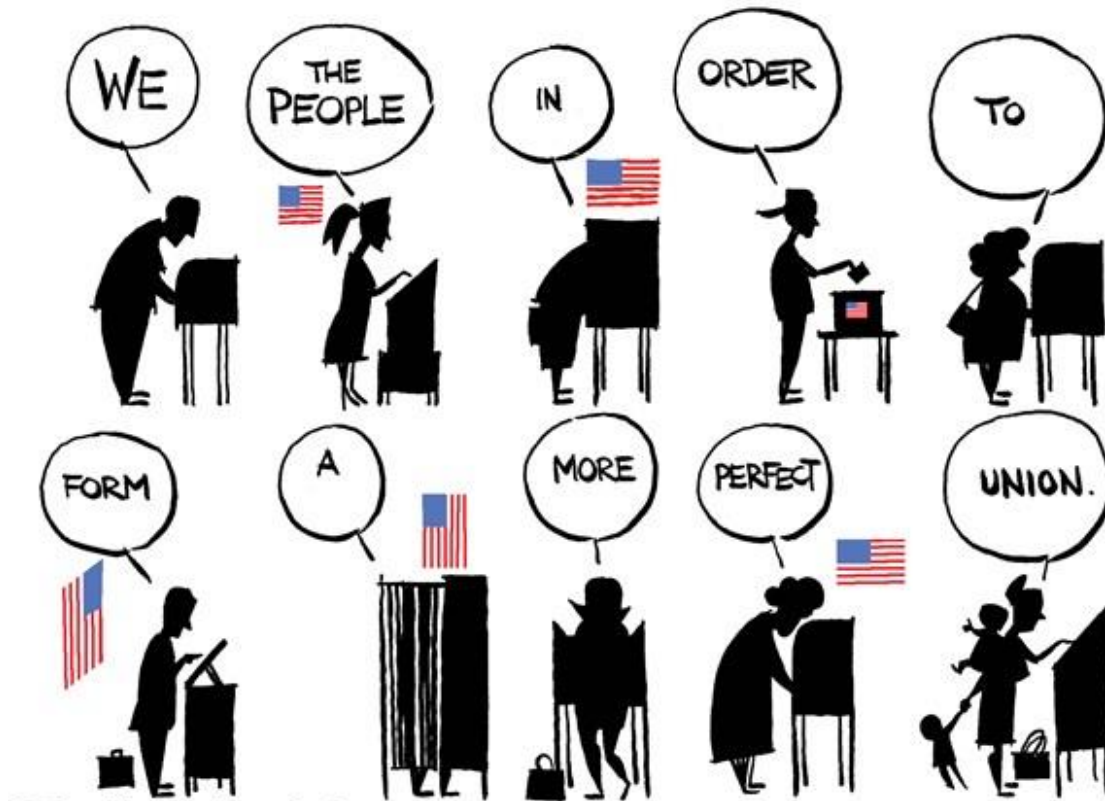
- **Bring all appropriate documents, notes and memoranda to the meeting.** Arrange the material in the same order as the agenda so pertinent information can be found easily. **Have a reasonable knowledge of parliamentary procedure and the rules of procedure the council has adopted.** This will keep the meeting moving smoothly and efficiently, with a clear indication of each item's disposition. However, too much attention to procedure can slow down the meetings with complicated rules.
- **Eliminate personal remarks intended to ridicule another person.** Regardless of the actual relationships between the members of the council or commission, the general atmosphere of any meeting should be relaxed, friendly, efficient and dignified. Sarcasm, innuendoes and name calling should be avoided in interactions with the other council members, staff and the public. This does not mean falsehoods, misinterpretations, distortions and challenges to your integrity or honesty should be left unanswered. They should be answered—and sometimes vigorously—but these rejoinders should address the facts rather than the qualities, or lack of them, of the person being addressed.
- *Engage with Citizens.* One of the greatest assets to elected officials is the public. Having causal and frequent interactions with community members is a great way to build relationships and learn about community concerns and ideas. It's also important to establish more formal engagement strategies for important policy initiatives and planning projects. Effective engagement strengthens the community, improves government-citizen relationships, builds capacity, and eases program/policy implementation. Because project and policy-based engagement can sometimes be a long and challenging process, it is recommended for smoother civic participation, the following:
  - Develop a vision and goals for what engagement should look like.
  - Start engagement in the project/policy ideation phase, and continue through plan formation and implementation.
  - Build a diverse team of residents and community stakeholders representative of the community to guide public engagement activities.
  - Build capacity by developing local leaders and partnering with organizations and community groups.
  - In partnership with the stakeholder group, build a campaign around the work, develop a project timeline, and celebrate accomplishments to keep the momentum going.
  - Document activities in traditional and social media, evaluate engagement strategies, and make changes accordingly.
  - Have fun! Stay open minded, positive, and energized throughout the process.
- *Communicate with the Media.* If you have had little or no experience with members of the press, whether newspaper, radio or television, you may suddenly realize that public figures live in a different world than the rest of us. Anything you say in public—whether seriously or jokingly— can appear in the paper or on the TV screen the same day. An unguarded comment about a person or about someone's idea may be indelibly printed,

much to your embarrassment. A poor choice of words, made on the spur of the moment, may be used to distort your opinion on a public issue. It is important to learn to work with the press effectively and comfortably.

### **Tips for Working with the Media:**

- *Be honest.* Covering up, lying and distorting statements and actions are guaranteed to establish poor relations with the press.
- *Never say “No comment.”* It is always better to say that you don’t have all the facts yet and are not prepared to publicly discuss the issue at this time.
- *If you don’t know the answer to a question, say so.* Offer to refer the reporter to a staff person with more information, or offer to call back later with more details. If you are going to call later, be sure to ask when the reporter’s deadline is, and call promptly.
- *Be consistent.* Do your best to maintain the same position on public matters from one meeting to the next. If the facts have changed or you have thought through an issue and come to a rational change in opinion, be sure to carefully explain that to the media.
- *Be cautious.* Even though you may trust a reporter, remember that reporters have a story to get and that what you as a public official say or think or do, is news.
- *Do not make statements “off the record.”* They will only come back to haunt you later.
- *Be positive in your attitude toward the press.* The media can help the village president or city mayor, manager and council communicate the work of the municipality to the citizens of your community. A good working relationship can be established if the council is open in its dealings with the press. Under the Arkansas Freedom of Information Act, the press is entitled to attend all public meetings. Provide members of the press with copies of reports, recommendations and other documents related to the business of the city and initiate contact with reporters rather than waiting for them to come to you.

**Remember** – when you have a particular problem, chances are somebody else has already dealt with the same issue.



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## **Chapter 2**

### **Know Your Form of Government**

*“That government is the strongest of which every man feels himself a part.”*  
-Thomas Jefferson

It is important to know your city’s classification. Also important are the different forms of government in Arkansas: mayor-council, city manager, and city administrator. This section explains some of the basics. The City of Russellville, Arkansas currently operates under a mayor-council form of government. The general laws governing a mayor-council form of government in a city of the first class are found at Ark. Code Ann., Title 14, Chapters 42 and 43.

All cities have an elected official with the title of “mayor,” but the authority of the mayor depends upon the form of the government. Mayors in mayor-council cities are sometimes referred to as “strong mayors” because they have considerably more authority than mayors in city manager or city administrator cities. The general laws governing a city manager and city administrator form of government are found at Ark. Code Ann., Title 14, Chapters 47 and 48, respectively.

#### **City classification**

City and town governments in Arkansas are classified according to their population at the time of organization (usually incorporation) or reorganization as delineated in Ark. Code Ann §14-37-103. There are three (3) basic classifications for municipalities in the State of Arkansas: first class cities, second class cities and incorporated towns per Ark. Code Ann §14-37-102. Cities may move up or down in classification based on their population growth or decrease and accompanying legislative action from the local municipal governing body. See A.C.A. §§14-37-17 through 14-37-114. Table A below reflects the city classification system in the State of Arkansas.

**Table A**

<b>Class of City</b>	<b>Population</b>	<b>Referred to As</b>
First	2,500 or more	City of the First Class
Second	500-2,499	City of the Second Class
Incorporated	499 or fewer	Incorporated Town

Although some of the state laws, or statutes, are the same for all classes of cities, many of the laws are different. State laws are located in different chapters of the Arkansas Code Annotated. The Arkansas Code Annotated (A.C.A. or Ark. Code Ann.) is the compilation of the laws passed by the state legislature which in Arkansas is called the General Assembly that is composed of two chambers, the House of Representatives and a Senate. “Statutes” are the laws contained in the A.C.A. which are enacted through Acts passed by the General Assembly and signed by the Governor into law.

**What difference does it make?**

Depending on the city classification, there are some important differences with respect to the power and authority of the city government. A city must reach first class status in order to qualify to change its form of government from mayor-council to either the city manager or city administrator form.

### **Forms of Municipal Government**

There are three (3) basic forms of municipal government in Arkansas: mayor-council, city manager and city administrator form. A flow chart of all three (3) forms of government is at the end of this Chapter in Figure 2.

#### **Mayor-Council Form of Government**

In the mayor-council form, all legislative and other corporate powers not otherwise prohibited by state law are vested in the city council. The city council has management and control of the finances and all real and personal property. The administrative authority of the City's day to day activities is vested in the mayor. The mayor also has the ability to veto any ordinance, resolution or order passed by the city council. The roles of the Mayor and City Council members in a mayor-council form of government is covered in detail in Chapters 4, 5 and 6. Nationally, this is the second most common form of government. It is found mostly but not exclusively in older, larger cities, or in very small cities, and is most popular in the Mid-Atlantic and Midwest.

#### **City Manager Form of Government**

The city manager form of government is a product of a progressive movement of the early 20<sup>th</sup> century. At that time, municipalities sought ways to reduce the political corruption prevalent in strong mayor cities. At the time, "political machines" were headed by a "boss" who determined which candidates could run for political office within a particular party. In many major U.S. cities, bosses wielded significant influence though rarely held any political office themselves or had any check upon their power by the people. In cities where corruption was rampant, mayors and their appointed government staff were able to leverage their positions to solicit bribes and punish political adversaries.

The council-manager system was established as a way to reduce the likelihood of public corruption in government. Under the council-manager form of government, the mayor, along with each council member, collectively comprise the council as a singular policy-making body. Thus, the mayor and the council members each have an equal voice and all vote on the policy decisions. The mayor has the additional authority to set the agenda, run the council meetings, and serves as the figurehead for the city. However, because the mayor is an equal member of the council, he or she has no authority to veto or otherwise alter the majority decision of the council of which the mayor is a member.

The council, inclusive of the mayor, hires a manager/administrator to manage the day-to-day operations of the government. City managers/administrators are responsible for hiring government employees based on professional qualifications and competitive service. City managers remain accountable to the people through the people's elected representatives on the council. If the city manager fails to meet the council's expectations, they may be fired at any time and replaced through a simple majority vote of the council. City managers are ethically prohibited from participating in political activities. City managers must "Refrain from all political activities which undermine public confidence in professional administrators." City managers may not donate money to campaigns, advocate for political candidates, run for elected

office, or otherwise position themselves as political actors. This assures that the confidence of the public that the city manager serves all people equally regardless of political interests.

This form of local government provides clear lines of authority and responsibility with the city manager as the chief executive officer who can be held strictly accountable for municipal operations. The city manager form of government combines the political leadership of elected board members with the managerial experience of an appointed manager. This is the most common form of government in the U.S. According to surveys by the International City/County Management Association (ICMA), this form of government has grown from 48% usage in 1996 to 55% usage in 2006. It is most popular in cities with populations over 10,000, mainly in the Southeast and Pacific coast areas.

In Arkansas, a city having the city manager form of government, the board of directors employs a city manager who serves at the will of the board for an indefinite term and receives a salary determined by the board. A.C.A. §14-47-119. Only cities with a population of at least 2,500 may adopt the city manager form of government. See A.C.A. §14-47-101.

In the city manager form of government, Arkansas law provides for seven (7) elected representatives known as directors per A.C.A. §14-47-109. However, cities under the city manager form of government that form or reorganize under the City Manager Enabling Act of 1989 may choose, by ordinance, to increase or decrease the number of directors, provided that the board of directors, including the office of mayor, shall always be an uneven number and never less than five (5) members per A.C.A. §14-61-105.

A city director chosen by the board to be mayor retains the right to vote as a director but does not have the power of veto, unless by a majority vote of the qualified electors of the city, the mayor is given the veto. If a mayor is given veto power, he or she shall have the power to vote only when necessary to pass a measure per A.C.A. §14-61-114(d).

In the city manager form of government, all elections are non-partisan. Only a plurality is required for election to the offices of city director. All terms of office are four (4) years per A.C.A. §14-47-109.

Act 978 of 2019 makes various changes to the city manager form of government, including organization and authorizing the city board to provide additional powers to the mayor, including to hire the city manager, subject to a three-fourths ( $\frac{3}{4}$ ) override of the board. Act 978 also allows for the creation of “districts” to work in conjunction with wards for the election of city directors. Districts work as an alternative to traditional “at-large” positions, and votes on the district board members are made at-large unless there is an election to choose to vote on the “districts” by residents of the “district.”

### **The Duties of the City Manager**

A.C.A. §14-47-120 provides that the city manager shall have the following powers and duties:

- (1)(A) To the extent that such authority is vested in him or her through an ordinance enacted by the board of directors, a city manager may supervise and control all administrative departments, agencies, offices, and employees.
- (B) In addition, in cities with a city manager form of government having a population of more than one hundred thousand (100,000) persons according to the most recent federal decennial census, the city manager also shall have the authority to supervise and control

the city attorney and may remove and replace the city attorney at any time at the city manager's discretion if the city manager has been given the authority to remove and replace the city attorney pursuant to A.C.A. § 14-47-108(a)(2);

- (2) He or she shall represent the board in the enforcement of all obligations in favor of the city or its inhabitants which are imposed by law, or under the terms of any public utility franchise, upon any public utility;
- (3) He or she may inquire into the conduct of any municipal office, department, or agency which is subject to the control of the board, in which connection he or she shall be given unrestricted access to the records and files of any such office, department, or agency and may require written reports, statements, audits, and other information from the executive head of the office, department, or agency;
- (4)(A)(i) Except as provided in subdivision (4)(A)(ii) of this section, he or she shall nominate, subject to confirmation by the board, persons to fill all vacancies at any time occurring in any office, employment, board, authority, or commission to which the board's appointive power extends.
- (ii) If the mayor has appointment power pursuant to A.C.A. § 14-47-108(a)(2)(E), the nominations shall be made by the mayor.
- (B)(i) He or she may remove from office all officials and employees, including, without limiting the foregoing, members of any board, authority, or commission who under laws, whether applicable to cities under the mayor-council or management form of government, may be removed by the city's legislative body.
- (ii)(a) Removal by the city manager shall be approved by the board.
- (b) Where, under the statute applicable to any specific employment or office, the incumbent may be removed only upon the vote of a specified majority of the city's legislative body, the removal of the person by the city manager may be confirmed only upon the vote of the specified majority of the members.
- (C) The provisions of this subdivision (4) shall have no application to offices and employments controlled by any civil service or merit plan lawfully in effect in the city.
- (5)(A) To the extent that, and under such regulations as, the board may prescribe by ordinance, he or she may:
  - Contract for and purchase, or issue purchase authorizations for, supplies, materials, and equipment for the various offices, departments, and agencies of the city government, and he or she may contract for, or authorize contracts for, services to be rendered to the city or for the construction of municipal improvements. However, in such connection, the board shall, by ordinance, establish a maximum amount, and each contract, purchase, or authorization exceeding the amount so established shall be effected after competitive bidding as required in A.C.A. § 14-47-138;
  - Approve for payment, out of funds previously appropriated for that purpose, or disapprove any bills, debts, or liabilities asserted as claims against the city. However, the board shall, by ordinance, establish in that connection a maximum amount, and the payment or disapproval of each bill, debt, or liability exceeding that amount shall require the confirmation of the board or of a committee of directors created by the board for this purpose;
  - Sell or exchange any municipal supplies, materials, or equipment. The board shall, by ordinance, establish an amount, and no item or lot, to be disposed of as one (1) unit, of supplies, materials, or equipment shall be sold without competitive bidding unless the

city manager shall certify in writing that, in his or her opinion, the fair market value of the item or lot is less than the amount established by ordinance as prescribed; and

- Transfer to any office, department, or agency or he or she may transfer from any office, department, or agency to another office, department, or agency any materials and equipment.
- (B) For the purpose of assisting the city manager in transactions arising under subdivisions.
- (5)(A)(i)-(iii) of this section, the board may appoint one (1) or more committees to be selected from its membership. Or in the alternative, it may create one (1) or more offices or departments to be composed of personnel approved by the city manager. If, for these purposes, the board shall create any new office or department, the person appointed to fill the office or to head the department shall be responsible to the city manager and act under his or her direction;
- (6) He or she shall prepare the municipal budget annually and submit it to the board for its approval or disapproval and be responsible for its administration after adoption;
- (7) He or she shall prepare and submit to the board, within sixty (60) days after the end of each fiscal year, a complete report on the finances and administrative activities of the city during the fiscal year;
- (8) He or she shall keep the board advised of the financial condition and future needs of the city and make such recommendations as to him or her may seem desirable;
- (9) He or she shall sign all municipal warrants when authorized by the board to do so;
- (10) He or she shall have all powers, except those involving the exercise of sovereign authority, which, under statutes applicable to municipalities under the mayor-council form of government or under ordinances and resolutions of the city in effect at the time of its reorganization, may be vested in the mayor; and
- (11) He or she shall perform such additional duties and exercise such additional powers as may, by ordinance, be lawfully delegated to him or her by the board.

In addition, A.C.A. § 14-42-110(b) states:

City managers in cities having a city manager form of government shall have the power to appoint and remove all department heads. In cities with a city manager form of government and with civil service commissions, the civil service commission shall have the power to override the city manager's appointment or removal of the police or fire chief by a majority vote of the total membership of the commission.

### **The Duties of the Mayor in the City Manager Form of Government**

The mayor of a city with a city manager form of government has the following duties set forth in A.C.A. §14-47-116(b):

- Presides at all meetings of the board;
- Is recognized as the head of the city government for all ceremonial purposes and by the Governor for the purposes of military law;
- Signs, on behalf of the city, all written agreements, contracts, bonds, mortgages, pledges, indentures, conveyances, and other written instruments, the execution of which has been approved by the board; and

- May vote on all matters coming before the board but shall have no veto power, except as provided in The City Manager Enabling Act of 1989, A.C.A. §14-61-101 et seq., which provides that in certain circumstances a mayor may obtain veto power by an ordinance referred to the electors and approved by a majority of the qualified electors voting on the issue. A.C.A. §14-61-114.

### **The Duties of the Board of Directors in the City Manager Form of Government**

- The board shall constitute the supreme legislative and executive body of the city and, subject to
- A.C.A. § 14-47-120 (10), shall be vested with all powers and authority which, immediately prior to the effective date of the reorganization, were vested under then-existing laws, ordinances, and resolutions in the mayor and council of that city and in its board of public affairs. A.C.A. §14-47-109(a)(2).
- The board has the responsibility to hire a city manager and to set his or her salary. However, in cities with a population of more than 100,000, the mayor may be authorized to employ the city manager by either an ordinance or an initiated measure. A.C.A. §14-47-119.
- The board, on the vote of a majority of its elected membership, or the mayor, if authorized, may terminate the city manager’s employment at any time, either with or without cause. A.C.A. § 14-47-119.
- The board shall meet on days to be chosen in advance by the board within the first and third weeks in each calendar month, except when any meeting date falls on a legal holiday, in which event the meeting shall be held on a substituted date fixed by adjournment at the preceding meeting. A.C.A. §14-47-123(b).

Special meetings may be called at any time by the mayor or by directors representing a majority of the elected membership of the board. The board may, by ordinance, establish the procedure for calling and giving notice of special meetings. A.C.A. § 14-47-123(c)(1)-(2).

Any person who shall have been elected or appointed a director and shall neglect or refuse to qualify and serve as such shall be guilty of a misdemeanor and fined in any sum of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300). A.C.A. §14-47-111(a).

### **City Administrator Form of Government**

In the city administrator form of government, there are seven (7) elected directors and a mayor elected in non-partisan elections. See A.C.A. §§14-48-108 and 14-48-110. A city with the city administrator form of government is divided into four (4) wards “composed of contiguous territory and substantially equal population” per A.C.A. §14-48-107. The persons elected to fill these positions must reside in their respective wards. The other three (3) positions and the position of mayor are elected at large per A.C.A. §14-48-110. Any first class city or any city with a population of at least 2,500 may adopt the city administrator form of government per A.C.A. §14-48-101.

### **The Duties of Mayor in the City Administrator Form of Government - A.C.A. § 14-48-111**

- Is recognized as the head of the city government for all ceremonial purposes.
- Presides at regular and special board meetings, but does not have a vote on any matters that come before the board.

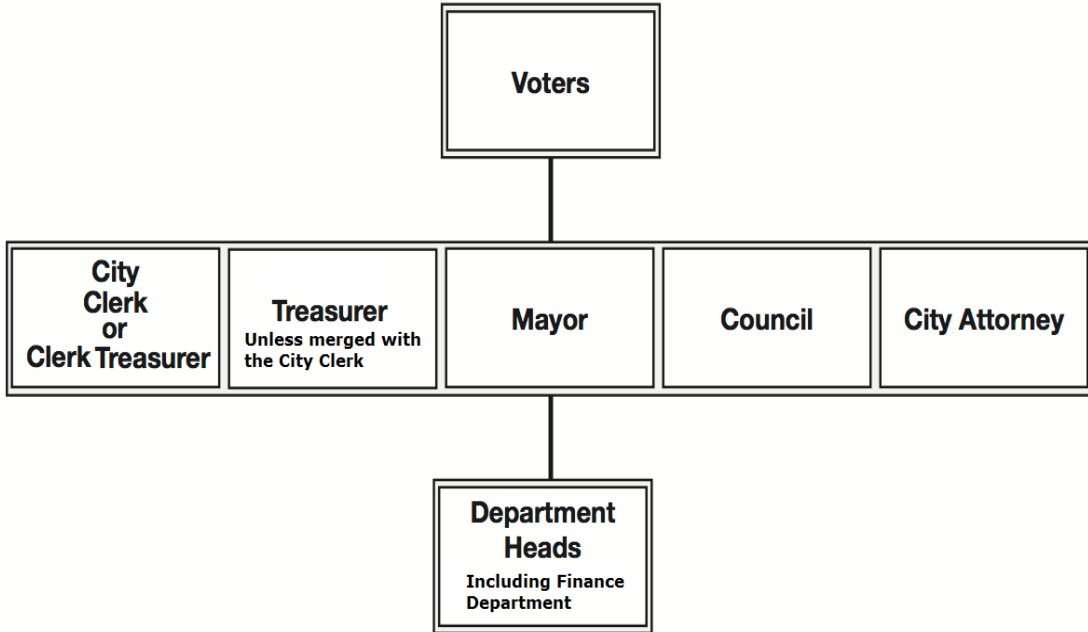
- Has the authority to sign on behalf of the city all written agreements, contracts, bonds, mortgages, pledges, indentures, conveyances, and other written instruments that have been approved by the board of directors.
- Has the power to veto all decisions made by the board except personnel decisions. The mayor's veto may be overridden by the affirmative vote of five (5) or more board members.
- May receive a salary that is determined by the board of directors.
- Must take the oath of office as required by the Arkansas Constitution.

### **The Duties of the Board of Directors in the City Administrator Form of Government**

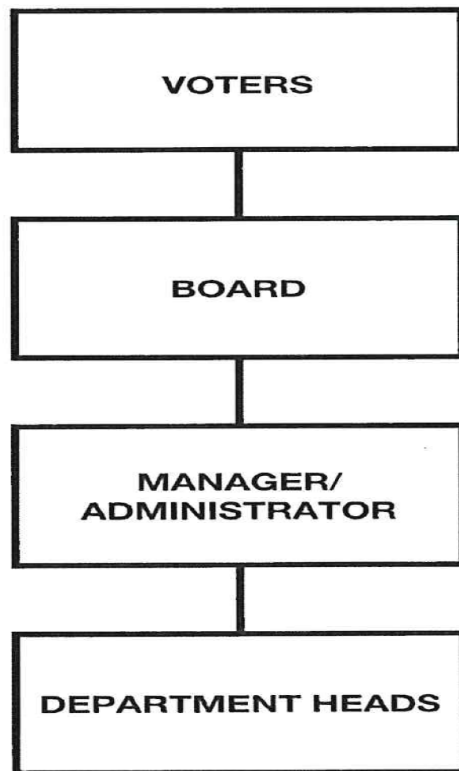
- The board of directors of the city shall constitute the legislative and executive body of the city, subject to the powers of the mayor in A.C.A. § 14-48-111, and shall be vested with all powers and authority which, immediately prior to the effective date of the reorganization, were vested under then existing laws, ordinances, and resolutions in the governing body of the city and in its board of public affairs subject to the powers of the city administrator in A.C.A. §14-48-117. See A.C.A. §14-48-110.
- The board has the responsibility to hire a city administrator and to set the salary per A.C.A. §14-48-116.
- The board, on the vote of a majority of its elected membership, may terminate the city administrator's employment at any time, either for or without cause. However, the city administrator's employment may not be terminated between the dates of January 1 and March 1 of the year following any general election in which members of the board are elected per A.C.A. § 14-48-116(d).
- The governing body of a municipality shall, by general ordinance, direct the number of subordinate police officers to be appointed. See A.C.A. §14-52-201.
- The board shall meet twice during each calendar month, and, until otherwise provided by ordinance, the meetings shall be held on the first and third Monday evenings of each calendar month, unless that day is a legal holiday, in which case the meeting shall be held on the following evening. Special meetings may be called by a majority of the membership of the board. See A.C.A. §14-48-120(b)-(c)(1).

Any director who fails to attend five (5) consecutive regular meetings of the board, or who fails to attend fifty percent (50%) of the regular meetings of the board held during a calendar year while he is a qualified member of the board, shall be deemed to have resigned per A.C.A. §14-48-120(k).

**Figure 2**  
**Mayor/Council Diagram**



**City Manager/Administrator Diagram**



## Chapter 3 Getting Started

*“No man is good enough to govern another man without the other's consent.”*  
-Abraham Lincoln

By their action at the polls, the people of your community have given you a vote of confidence and expressed faith in your ability to act in their best interest. And you don't want to let them down. But as the election campaign fades in your memory, the magnitude of your new job begins to sink in. Whether you come to this job after years of service to the city or were elected with no prior background in city government, there's still a lot to learn.

As a new mayor or council member, you have a lot to learn about providing leadership and governing. But don't take yourself or the business of government so seriously that you don't enjoy it. It should be a fun and rewarding experience.

### **Your first days on the job**

The role of mayor has varied greatly over the years in the city, depending on the size of the city, history, and level of involvement. Some new mayors are overwhelmed by the amount of administrative work that their job entails. Many council members also feel overwhelmed by everything they need to learn and are sometimes surprised to discover that there are limits on their role in making decisions and setting city policy.

What is clear, however, is that it is a very big job. Here are some tips for getting started.

### **Getting oriented**

First on the agenda for a new council member should be an orientation session – a broad overview of the functions of the city to include finance, public works, public safety and other departments. The mayor may want to arrange time to sit down with you and key department heads. Take this opportunity to learn all you can about your city, its history, its operation, and its financing.

New mayors should meet with all department heads to get a basic understanding of each departments' missions and goals as well as their day to day activities. New mayors should meet with other new or incumbent elected officials to grasp the understanding and responsibility needed for moderating city council meetings, public hearings, work sessions, rules of procedure to pass legislation and directives on behalf of the city government.

Orientation should also include a tour of the physical facilities of the city. A firsthand inspection is often the best way to acquaint yourself with the city's day to day operations.

### **Keeping some perspective**

- Pace yourself. Recognize that life – and the city – is dependent on a lot of things over which we have little control. Set some priorities, recognize the need to spend time with your family, and don't burn yourself out.
- Develop a thick skin. Remember that they don't dislike you personally, they just don't like your ideas.

## **Review key documents**

The following is a list of key city documents that should be reviewed. Ask the clerk or staff if they exist and to help you locate them. Also, ask them to suggest other useful documents.

- Current operating and capital budgets
- Information on key programs and services
- Comprehensive annual financial report
- Organizational chart, staff roster and phone list
- The organization's primary planning documents
- Map showing city boundaries, buildings and facilities
- Mission statement and goals
- Council rules/meeting procedures
- Meeting minutes for last twelve months
- Work program and significant staff reports from last twelve months
- Human resource policies and other administrative policies
- Facts about your city: population, form of government, incorporation date, number of employees, total budget, total debt, etc.
- List of governmental agencies providing services or impacting your organization
- Calendar of important events

Don't be afraid to ask questions. No one is expected to know all the answers immediately. The mayor will want to find out about employee vacation and sick leave policies, purchasing procedures within departments, proposed development projects – anything you need to know for a better understanding of city operations and issues currently facing the community.

## **Legal restrictions**

Keep in mind that the city's adopted ordinances must be followed until the council takes action to amend or repeal them. And that's just the beginning – the number of federal and state laws and regulations that also govern your actions can be mind-boggling! If you are unsure of your responsibilities or authority in certain areas, be sure to seek clarification from the city attorney.

## **Mayor's role in working with staff**

As a full time mayor for the City, you'll soon come to depend heavily on your department heads and their administrative staff.

## **Value and respect your staff**

If your city is fortunate enough to have experienced staff, recognize these individuals as a valuable resource – don't take them for granted or casually replace them.

A good staffer and administrator can be your lifeline, helping you to fulfill your legal responsibilities and ensure that the city functions smoothly. Staff who have been with the city for some time have some valuable historical perspectives, and can help "fill in the gaps" for a new mayor.

Make sure your staff are well trained and keep up in their field – encourage your staff or administrator to attend training sessions and professional meetings of their peers. These sessions are well worth the investment – staff can learn from their peers around the state, avoid reinventing the wheel, and share challenges and solutions.

Resist the urge to drastically change the organization before you know how it really works. Many of your city's policies have evolved over the years through trial and error. While some methods may appear to need an immediate overhaul, it pays to watch the operation for a while before trying new methods. Don't seek change simply to do things differently!

Give yourself at least six (6) months to learn the fundamentals of the task you have undertaken. Many potentially-fine public servants have come to an unhappy ending because of errors in judgment they made by being overly aggressive during those first six (6) months. Even if you come to the mayor's job with many years of service on the council, you will find there is still a lot to learn.

### **Public and private sector differences**

A word of caution: You may have run for office with the pledge to "run the city more like a business." While there are certainly similarities, there are some important differences between the public and private sectors that will become apparent as you get used to your new role.

Here are just a few of those differences:

- Much of your work will be done in the public eye. Consequently, things may move more slowly and take more time. All deliberations of council are done in public meetings and most public records are available to anyone.
- City revenues are limited by laws. You can only raise taxes so high, so you can't always pass on the costs directly to the consumer.
- Salaries are often compared to employees in other cities. It is common for employees to expect an annual cost of living increase.
- Public employees have different constitutional rights and legal protections. With additional laws governing your actions as an employer, you can expect more grievances, claims and litigation.
- Some things that you may just consider "good business sense" could run afoul of Arkansas state constitution's prohibition against public funds to private entities without adequate consideration.
- Public works projects and contracting often must go through a public bidding process. This takes more time and sometimes costs more.

### **Practical advice**

#### Initial words of wisdom...

- **Listen.** Listen to everyone. Listen until your ears fall off. Soak it up. After six (6) months in office, you will round out the picture of the complexities of city government and your role.
- **Carry a notebook around for the first six (6) months and write everything down.**
- **Don't be afraid to say, "I don't know."**
- **Don't make promises you can't deliver!** Most major decisions and actions require approval of the council.
- **Gear your mind to process a tremendous amount of seemingly conflicting information.**
- **Don't enter office with an unmovable set agenda.** Learn as much as possible before taking on a major program or effort. Don't be strangled by campaign promises that were made without sufficient information.

- **If you come on board as a big critic of the “way things have been done,” you may be surprised to find how hard the job really is.** You’ll soon gain better appreciation for those who came before you.
- **The job can be very complex.** Try to stay focused on the big issues.

Mayors will want to...

- **Meet with each department head separately.** Learn all you can. Spend time with the previous mayor, if feasible.
- **Ask for help when you need it.** Don’t be afraid to use outside resources (your attorney, AML, or a neighboring city or county).
- **Don’t be intimidated by larger cities.** Bigger cities have many of the same problems and may be willing to lend expertise or staff resources.
- **Network with others in the same boat.** Have monthly lunches with mayors from neighboring communities. They can provide support, new ideas, and give you an opportunity to vent.
- **Find an experienced mentor from another city.** Ask for advice when you need help. You’ll get empathy and a clearer vision from someone who has been there.
- **Ask opinions, and listen.** Spend time with those individuals who have different opinions than yours (maybe even your opponent in the election). Listen, don’t argue the points, then rethink your positions.
- **Don’t reinvent the wheel.** Someone has probably done it elsewhere. Use information available from AML. Attend workshops and conferences, especially the AML Annual Conference.



## **Chapter 4**

### **The Mayor's Leadership Role**

*“When the burdens of the presidency seem unusually heavy, I always remind myself it could be worse. I could be a mayor.”*

-Lyndon B. Johnson

#### **Origins and Evolution of the Office of Mayor**

In general, American local governments are modelled on the British system (going back to ‘shires’) of elected councils. The difference is that in the American system there is also a strong executive level. In its beginnings in America, the office of mayor was modeled on its English prototype. The mayor of the colonial borough was usually appointed by the governor, as in New York, or chosen by the aldermen and councilmen from among the aldermen, as in Philadelphia. In the latter city, for example, the colonial mayor held office for one (1) year, received no salary at first, and was usually reappointed, subject to removal by the aldermen and councilmen for misconduct. Refusal to serve made him liable to a fine which some appointees preferred to pay.

The mayor presided over the common council, but had no veto power, nor, in Philadelphia, a vote. He could summon council meetings and propose business, but had few administrative functions. He sometimes presided in the borough court and sat as a magistrate with jurisdiction over minor offenses. Legislative, executive, and judicial powers were thus combined in the colonial mayor and councils.

After the Revolution, the mayor continued to be chosen by the aldermen or councils from among the former, but later councils selected him from the freeholders, and after 1839 he was elected in Philadelphia by popular vote. By 1840, the office had generally become elective throughout, the country. The mayor further departed from colonial traditions after 1796 by becoming a salaried officer and by gaining the veto power, as in Baltimore, subject to a two-thirds ( $\frac{2}{3}$ ) vote of councils, in imitation of the federal plan. In 1789 the bicameral system was introduced in Philadelphia and the mayor ceased to form part of councils. From 1799 to 1839 the mayor of Philadelphia appointed all the officers, except the city treasurer, and after 1796 he published and enforced the ordinances, directed and supervised the city treasurer and commissioners, and drew orders on the city treasurer for the payment of municipal debts. In 1839, when Philadelphia's mayor became elective, the general appointing power was restored to councils.

After the Civil War, American cities gained rapidly in population and the municipal executive gradually assumed a position of independence and power. In 1854, for example, Philadelphia's mayor acquired the veto power and other general powers he had not formerly enjoyed, his term was lengthened to two (2) years, and he was given the right to appoint the police and a few unimportant officers. After 1887, he could appoint and remove the department heads, subject to the approval of select councils, and hold office for a four (4) year term. This development separated legislative and executive powers and concentrated control of administration in the mayor. From little more than the nominal head of common council, with limited powers and no control over the departments, he became the real head of the city government with full executive powers.

The mayor has thus gradually gained at the expense of councils since colonial days. But a reaction has lately set in against the independent municipal executive due to a variety of causes. The deadlocks between mayors and councils resulting from the division of powers were the

cause, if not the occasion, of the rise of the commission city form of government plan after 1900. This plan disclosed defects in practice which contributed after 1910 to the development of the city manager plan. Under the city manager plan, the municipal executive becomes again dependent on council which appoints him as it did prior to 1839 in Philadelphia and as it does today in European countries. The functions of legislation and of administration are separated, but ultimate control is centered in the council. The mayor becomes as of old the presiding officer of council and the manager becomes the real executive with all the powers and duties of that office. In the attempt to find a remedy for the weaknesses of city government, the cities are thus returning to an adaptation of the original American plan, which is also the plan of organization of the most successful business concerns in the country.

### **State Corporation Authority of Mayor and City Council**

The mayor is vested as one (1) of the two (2) corporate authorities in a mayor-council form of municipal government, A.C.A. §14-42-102, and is expected to provide the leadership necessary to keep the city moving in the proper direction. Effective mayors see themselves not only as leaders staking out policy positions, but also as facilitators of effective teamwork.

A mayor has a special set of long-term responsibilities not shared by many others. You are supposed to be a community leader and a political leader. Yet most of the trials and tribulations you will face during your term of office will deal with city housekeeping. These day-to-day activities are of immediate concern to most residents, and sometimes solving the little problems are the most fun.

But you need to find time to deal with the important policy issues and some of the long-term future concerns. This will make your city a better place to live tomorrow, not just today.

If you can leave something of long-term consequence to improve your community, you will at least have the satisfaction of a job well done, and that is the principle reward of public service.

### **The Legal Duties of Mayor in a Mayor-Council, First Class City Form of Government**

The principal officer of all Arkansas cities and towns within the mayor-city council form of government is the mayor. By virtue of this position, the mayor is ex-officio president of the council. It is the mayor's responsibility to keep the city government running properly. This includes enforcing city ordinances and making sure that the residents receive maximum benefits and services for the taxes that they pay.

- In all municipalities in Arkansas, the mayor presides over the meetings of the council in cities and towns with the mayor-council form of government.
- The mayor may vote when the mayor's vote is needed to pass any ordinance, bylaw, resolution or motion. A.C.A. §14-43-501. Mayors in cities of the first class have a vote to establish a quorum. A.C.A. §14-43-501.
- After the passage of an ordinance setting the procedure for special council meetings, the mayor has the authority to call the council into session for a special meeting. A.C.A. § 14-43-502.
- The mayor is required to sign all ordinances, resolutions and city council minutes. A.C.A. §14-55-205.
- If provided by city council rules, the mayor may introduce ordinances and resolutions and recommend policy.

- The mayor in cities and towns with the mayor-council form of government may veto any ordinance, resolution or order adopted by the council. Councils may override the veto by two-thirds ( $\frac{2}{3}$ ) vote of the total membership of the council. A.C.A. §14-43-504.
- The vote to override should occur at the next regular council meeting. A.C.A. §14-43-504.
- Mayors of cities and towns with the mayor/council form of government are required to prepare and submit a budget to the city council for approval on or before December 1 of each year.
- All mayors of cities of the first class must submit to the city council within the first 90 days of each year a complete report on the financial and administrative activities of the city. This is commonly referred to as the State of the City Report. A.C.A. §14-58-302.
- The mayor shall also “keep the governing body advised as to the financial condition and future needs of the city and make such recommendations as to him or her may be desirable.” A.C.A. §14-58-302.
- The mayor oversees the day-to-day activities of the city and supervises department heads.

### **The Mayor’s Duties of Appointment, Nomination and Removal**

Mayors in cities or towns with the mayor/council form of government have the power to appoint and remove all department heads, including police and fire chiefs, unless the city council votes to override the mayor’s action by a two-thirds ( $\frac{2}{3}$ ) majority of all council members. In cities with a civil service commission, the council may, by ordinance, delegate the authority to appoint and remove the police or fire chief to the city’s civil service commission. The mayor may not appoint or remove department heads that are not under the control of the governing body of the city. A.C.A. §14-42-110.

Mayors may also appoint or nominate:

- A building official (A.C.A. §14-56-202(b)).
- A board of library trustees (A.C.A. §13-2-502 [with city council approval]).
- A director of a department of public safety (A.C.A. §14-42-421).
- A health officer, when the position has been created by ordinance (A.C.A. §14-262-103).
- An airport commission (with council approval) (A.C.A. §14-359-105).
- A parks and recreation commission (A.C.A. §§14-269-202 [with council confirmation] and 14-269-302 [with council confirmation]).
- An at-large member of an Advertising and Promotion Commission (with council approval) (A.C.A. §26-75-605).

### **Appointments to Boards and Commissions**

With respect to appointments to boards and commissions, the mayor and council should make every effort to secure the best appointees possible. They can improve this process by:

- Avoiding the selection of citizens simply as a way of repaying someone who has done a favor.
- Selecting persons who will have time and energy to devote to the responsibilities assigned to that board.
- Looking for citizens who have the interest of the entire community as their concern, rather than someone who has a narrow interest or “an axe to grind.”

- Choosing citizens on the basis of whether they have an open mind, are willing to listen and are not afraid to express themselves.
- Avoiding persons who would have immediate conflicts of interest by being appointed to a particular board. This presents some problems because it tends to eliminate those who are most knowledgeable, i.e., realtors from the planning commission or zoning board of adjustments.
- Trying to secure a cross section of the community on each board in terms of occupation, geographic location, age, economic level and ethnic background.

## **Setting Goals**

The role of the city council in cities of all sizes is becoming more demanding and complex. In order to get anything accomplished, elected officials must work together to define and agree upon mutual goals. This is one of the most challenging aspects of being a mayor and working with a city council.

Goal setting provides a framework for city action. By setting short-term and long term goals, and then deciding which are most important, you and the council can define what your city government will try to achieve. Staff then have clear guidelines regarding what you and the council want to accomplish, and you have a way of evaluating your programs and services.

Establishing goals will keep you on track and minimize distraction from the brush fires.

Some cities plan goals through council retreats. Some use outside facilitators to assist with this process.

## **A Simple Goal Setting Process**

The basic idea is to start with the big picture and work to ensure that your day-today tasks relate back to that big picture. Periodically, you'll want to look back at your goals and evaluate what you've accomplished, and decide what changes you want to make, if any.

### **Step 1. Identify issues and needs**

Before you can set goals, you have to come to some agreement on what needs to be done. As a group, come up with an overall list of issues and needs, including council members' ideas and residents' concerns. Narrow down that list to a workable number of problems and needs to be addressed.

### **Step 2. Set goals**

Once you've developed a focused list of needs or problems, describe what you hope to do to eliminate each problem or meet each need. The goals you express may be both community goals and goals for your particular governing body to accomplish.

### **Step 3. Set objectives**

Objectives are the specific short-term strategies to meet your goals. They are statements of accomplishments to reach within a specific time frame. By setting objectives, the council can focus on a series of realistic goals and can then determine the resources needed to accomplish them.

#### **Step 4. Set priorities**

Setting priorities is the most important step in the goal-setting process. Comprehensive goal setting results in more objectives to accomplish than is possible in the time available, so you've got to set priorities. Decide what areas need attention now and which ones can be delayed. A simple rating and ranking exercise can help you determine which areas are of highest concern.

#### **Step 5. Start an action program**

Once you've decided on goal priorities, work with staff to develop specific programs and timelines to meet your goals.

#### **Step 6. Evaluate the results**

You'll want to establish a formal process for evaluating goal progress. Are you reaching them? Are they still appropriate? Do any need to be dropped or altered?

### **Some of The Mayor's Leadership Roles**

#### Ceremonial role

The mayor's participation in local ceremonial events is a never-ending responsibility. On a daily basis, the mayor is expected to cut ribbons at ceremonies to open new businesses, break ground for construction of new city facilities, and regularly appear at fairs, parades, and other community celebrations. The mayor also issues proclamations for a variety of purposes. As featured speaker before professional clubs, school assemblies, and neighborhood groups, the mayor can expect to be interviewed, photographed, and otherwise placed on extensive public display by the media.

#### Intergovernmental relations

Your city does not operate in a vacuum. Cities must work within a complex intergovernmental system. Keep in contact and cooperate with your federal, state, county, and school officials. Get to know the officials of neighboring and similarly sized cities. Mayors take the lead in representing their local government to those from outside the community who are interested in joint ventures – including other local governments, regional organizations, and federal and state government representatives. In this area, mayors promote a favorable image of their local government and pursue resources that will benefit the community.

#### Public relations

Mayors inform the public, the media, and staff about issues affecting the community. This role is critical in building public support and facilitating effective decision-making by the council.

#### Working with Residents

The most important trait a new official can cultivate is the simple ability to listen. You will quickly find that when frustrated city residents call on you to complain, they do not come to listen – they come to talk. So let them.

Make an effort to keep your constituents informed, and encourage participation. Expect and respect complaints. Make sure your city has a way to effectively deal with them.

Sitting in your position of new responsibility does not allow you to forget the people who elected you to office. They expect you to keep them informed and to give them an opportunity to express themselves. If you do this, you will surely increase your chances for success as a public official.

## Dealing with the Media

The media is your best contact with the public – it informs the community about what is happening and why. A good working relationship is mutually beneficial to both you and the media. Through the media, you have the opportunity to comment publicly on local issues and inform residents of city activities. If you work hard to cultivate that relationship, you can ensure that the media have all the facts and provide accurate, fair coverage of city issues.

### **Practical Advice**

#### Leadership...

- **Lead by example.** Be honest, consistent, and flexible. Don't play games.
- **Use common sense.** If your heart, mind, and gut agree, then go for it.
- **Don't get stampeded into action by the strong demands of special interest groups.** Your job is to find the entire community's long-term public interest, and you may be hearing from a vocal minority.
- **Be clear on what you stand for.** List ten things you believe in.
- **A new mayor should have goals.** Make a list of things you want to accomplish. But don't act rashly and assume that only you know the best way to accomplish things. Every issue will benefit from additional discussion. Your perceptions may change.
- **Sometimes we underestimate the potential impact of a mayor's leadership.** Use the dignity of your office to help the community get past contentious issues.
- **There is a tremendous amount of discomfort in making very public decisions.** Sometimes the decisions feel like the end of the earth. It's easy to fear the political consequences. But it is important to look a little more long term in perspective, weigh everything, and reach good decisions.
- **Know that you won't be able to satisfy everyone.** If you try, you won't be able to demonstrate leadership. Listen fairly, listen thoughtfully, and then do what's right.
- **Most of the easy decisions got made a long time ago.** Many decisions that need to be made can be very painful – but you can't solve those big problems without pain.



## **Chapter 5**

### **The Mayor as Chief Executive**

*“Mayors are judged by results.”*  
-Willie Brown

Most people understand that the mayor is the chief executive of the city. When there is a serious emergency, such as a flood, residents properly assume that it is the mayor who has the authority to take charge. Unfortunately, it is also assumed by some mayors that their power is almost supreme, even in the absence of an emergency.

Though the mayor has executive authority in a mayor-council city for of government, that authority is defined by state law and must be exercised in a manner consistent with policy decisions made by the city council. There are statutory limitations both on what you can do and how you can do certain things. This chapter provides an overview of your chief executive responsibilities.

#### **Administrative/Policy Maker Distinction**

Again, it is the council’s role to adopt policies for the city and it is the mayor’s role to administer or carry out those policies. The distinction sounds simple, but it can cause confusion and animosity.

Though a mayor does not set policy, as the elected chief executive it is certainly appropriate for the mayor to bring policy options and recommendations to the council. That is part of the leadership role of the mayor. That leadership role is particularly evident in the budget process, where the mayor submits a preliminary budget to the council as a proposed guideline for city priorities.

#### **Responding to Resident Complaints**

Residents often contact the mayor when they have a problem, whether it involves a land use matter, a barking dog, or a pothole. Work with staff to resolve problems, keeping in mind that you are not the individual with all the answers.

For instance, as land use planning becomes more complex, don’t be tempted to give a quick answer or promise to a landowner before checking with the city’s planning department or reviewing the city’s development regulations. Consider referring callers to the staff person with the expertise, then follow up to make sure the matter has been handled appropriately. If a matter is normally handled by the police department, direct the complainant to the police department.

City staff will appreciate your involvement if you make the proper referrals, and if you are careful to not make promises that are inconsistent with city procedures or policies.

If word gets out that complaining to the mayor gets a more prompt response to minor nuisance problems, you are bound to receive a lot of those calls. Did the people elect you to solve the barking-dog problem, or did they elect you to make sure that city staff properly handle these minor issues?

#### **Relationship with the City Attorney**

City attorneys have a unique role with both the City Council as the legislative body of the city and the Mayor as the executive/administrative branch for the city. The city attorney’s client is

the government of the city as a whole, not an individual city official or officer. The role of the city attorney is to provide legal advice to all branches of city government, both legislative and executive. The city attorney represents the city in all actions brought by and against the city.

In cities of the first class in a mayor-council form of government, the city attorney is elected. In cities of the second class or incorporated towns, the city attorney is appointed and part-time. Regardless of how the position is established, remember that although the mayor typically has more contact with the city attorney than the council members, the city attorney's job is to advise all city officials. Sometimes council members feel that the city attorney is the mayor's attorney, particularly if the city attorney generally supports the mayor's position in situations where the answer is unclear. A mayor cannot prohibit the council from accessing the city attorney for advice.

### **Make Your City Attorney's Job Easier**

Inform the city attorney ahead of time when you see a legal issue brewing. No attorney wants to be asked a complex question at a council meeting without prior warning. Instead of asking the city attorney without warning: "Can we do \_\_\_\_\_?" Give your attorney time to research the issue and ask: "How can we do \_\_\_\_\_?" City attorneys often get frustrated by frequently informing the mayor and council that they cannot do something. They would rather use their creativity to come up with alternate ways to legally accomplish an objective.

The attorneys at AML are another great source of legal expertise. Please keep in mind that their advice is based on the facts you provide. Sometimes there are special factors involved, perhaps unique to your city. That is why AML will sometimes advise you to review an issue with your city attorney instead.

### **Public Records Disclosure**

You are legally obligated to disclose city documents to the public upon request under the Arkansas Freedom of Information Act subject to certain limited specific exemptions. For example, when there is a request from the public to disclose a city document, the city must respond to the disclosure request in writing within three (3) working days.

The short turnaround time requires that city staff have clear guidelines for how to process these requests. Most cities have adopted public disclosure procedures. If your city has not yet adopted public disclosure policies, consider making that recommendation to the council.

Some city records are exempt from disclosure per statutes that prohibit disclosure. Consult with your city attorney in determining whether such records are and are not exempt from disclosure prior to releasing any documents to a public freedom of information request.

### **Personnel Management**

The statutes generally give the mayor, as chief executive, broad authority to hire and fire Department Heads subject to a two-thirds ( $\frac{2}{3}$ ) override of the City Council. The State of Arkansas is an employee at-will state meaning an employee can be fired for no reason at all subject to certain federal or state statutory prohibitions. Realize, however, that employee lawsuits can be one of your largest areas of potential liability. There are legal limitations on the actions you take in hiring, discipline and discharge:

- State and federal laws, court decisions – Laws relating to anti-discrimination, overtime compensation, safety, sexual harassment, and many others.

- The city's personnel policies – Policies passed either as an ordinance or adopted as administrative policies.
- Civil service – Except for very small cities, most police and fire employees are protected by civil service. Some cities also provide civil service coverage for other city employees. Civil service governs hiring processes and provides hearings for disciplinary actions. Your actions may be subject to appeal to the local civil service commission depending on the discipline a civil service employee receives.

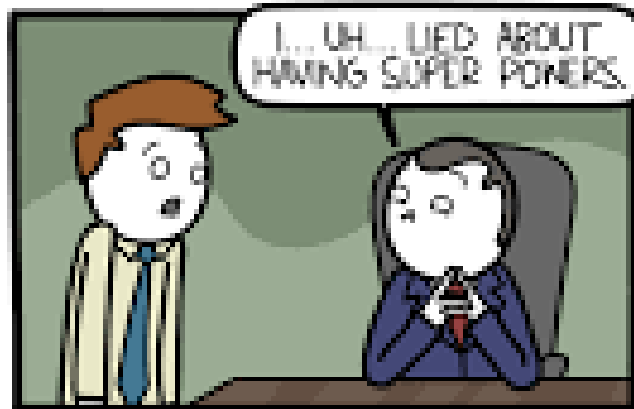
### **Before You Jump...**

Prior to taking any serious disciplinary action, consult with your attorney. Your liability insurance carrier may also provide some preventative legal assistance. Another tip is to have good and consistent personnel policies. Current and clearly written policies help avoid lawsuits, promote consistency, and contribute to employee morale.

### **Practical Advice**

#### Working with staff...

- **Hiring good people is what it's all about.** Get the best that you can. Take your time. It can be incredibly costly to undo a bad hiring decision.
- **Get to know staff.** Learn what they do.
- **Listen to your staff.** Give them as much responsibility as they can handle. Task your employees with the responsibility to create new ideas and better ways to get stuff done.
- **Keep perspective.** The people who helped get you elected may not always be the right people to help you run the city.
- **Say thank you!** Let folks know how much you appreciate them and give credit where credit is due.
- **Treat staff with respect.** They are a very valuable asset.
- **Be consistent.** Treat everyone the same.
- **Formalize your city's personnel rules and regulations.** Make sure the rules are clear.
- **Keep your employees informed.** Stay in touch with decision-makers on the front line and those who are in frequent contact with the people.
- **Budget money for and encourage your staff to attend professional meetings and seminars.** These learning opportunities and the personal contacts can be invaluable to your city.



## **Chapter 6**

### **The Job of a City Council Member**

*“When I grew up, and I think about City Council, I look at the men and women then - these were people who just wanted to be a part of the community and give something back. They weren't necessarily trying to use it as a stepping stone to something else. I looked up to those people.”*

-Brad Wenstrup

#### **Origins and Evolution of the City Council Form of Government**

This is the oldest form of city government in the United States and, until the beginning of this century, was used by nearly all American cities. Its structure is similar to that of the state and national governments, with an elected mayor as chief of the executive branch, and an elected council representing the various neighborhoods forming the legislative branch. Generally speaking, the mayor appoints heads of city departments and other officials, sometimes with the approval of the council. The mayor has the power of veto over city ordinances and frequently is responsible for preparing the city's budget. The council passes ordinances, the laws of the city, sets the tax rate on property and apportions money among the various city departments.

The origins of mayor-council government can be found in the administration of late medieval and early modern English towns. Between 1200 and 1500, some towns obtained municipal charters from English lords or the royal government that granted local elites—exclusively males—the right to elect a mayor and a city council, who were responsible for regulating trade and overseeing local law and order.

In the seventeenth and eighteenth centuries, the British colonial administration established this same system of municipal government in its North American colonies, albeit with at least one (1) notable difference: while colonists elected their own council members, colonial governors reserved the right to appoint mayors.

Following the American Revolution in the late eighteenth century, local governments in the United States maintained the mayor-council system that they inherited from the British, though the responsibility of appointing mayors shifted from colonial governors to the elected members of city councils. Although in most colonial municipal corporations the electorate chose the councilors, in Philadelphia, Pennsylvania, and Norfolk and Williamsburg, Virginia, the life-tenure council members filled any vacancies owing to death or resignation. The citizenry had no voice in the selection process. This practice of cooption, however, did not survive the revolutionary era, and from the 1790s on the enfranchised citizenry elected council members in cities throughout the United States.

Throughout much of the early nineteenth century, most American cities and towns utilized the weak form of mayor-council government described above. The position of mayor was predominantly ceremonial and symbolic, while the councils, on the other hand, wielded considerable legislative, financial and executive power. But, as early as the 1840s and 1850s, some cities were already transitioning toward a strong mayor-council government. The scope of mayoral executive authority was growing and several cities began electing mayors at-large instead of allowing city councils to appoint mayors from their own ranks. By the early 20<sup>th</sup> century, strong mayor-council governments could be found in many of the country's largest cities.

What drove this transformation?

Historians generally cite two (2) different factors that shaped the development of strong mayor-council governments throughout the course of the nineteenth century. One was the influence of

Jacksonian democratic principles, which advocated for a strong executive branch of government. A second was the inefficiency of early weak mayor-council governments and their failure to break the power of the political bosses and machines that dominated early 20<sup>th</sup> century American politics. Many viewed a strong, elected municipal executive as a key to streamlining the legislative process and curbing political corruption.

The rapid rise of strong mayor-council governments, however, was short-lived. At the same time that cities throughout the United States were looking to elect strong executives in order to alleviate the political and legal problems of the early 20<sup>th</sup> century, the commission and council-manager forms of municipal government were also growing in popularity. Consequently, strong mayor-council government was no longer the sole option for reform and many urban reformers began turning to these other new options. To curb the power of the socially undistinguished and sometimes corrupt councils, reformers shifted responsibility for an increasing number of functions to independent commissions. Park boards and library commissions, for example, relieved the city councils of responsibility for recreation and reading.

### **Policymaking**

The principal job of a city or town council is to set policy. A policy is a course of action for a community. Policymaking often takes the form of passing ordinances or resolutions. After policy decisions are made by the legislative body, others perform the administrative task of implementing the policies. The distinction between formulation and implementation may not always be clear, necessitating open communication between legislators and administrators.

Local policy-making is complex, demanding the very best of local officials. It is worth the effort. The destiny of your community – the fulfillment of its dreams and aspirations – flow out of the exercise of policy-making.

The policy-making process weighs and balances public values. Often there is no “right” choice or correct technical answer to the question at hand. That is why policy-making can be an adversarial process, characterized by the clash of competing and conflicting interests and viewpoints rather than an impartial, disinterested or “objective” search for “correct” solutions for policy problems. Because of these value clashes, the policy-making process can get emotional. However, it does not have to be rancorous. As a local official, you will be more effective and productive over the long-term if you respect the viewpoints of others – whether you agree with their position or not. Take time to understand your roles and responsibilities.

### **What is Policy?**

Formally adopted policy generally takes the form of a governing principle, plan, or course of action. In the public sector it generally evolves from a deliberative process, and is adopted by an ordinance or resolution. Legislative bodies such as the City Council make public policy decisions; others like the Mayor and City Departments perform the administrative task of implementing those policies. The decisions could be the adoption of a vision for the community, a comprehensive plan, a budget, or a policy relating to a specific issue, such as expanding or reducing city services. Policy-making requires political wisdom, diplomacy, and prudence to bring diverse community interests together around a shared purpose. Common usage of the term "policy" also includes the wise and expedient conduct of management; thereby blurring the line between policy and administration and causing confusion in the roles of elected legislators.

Public policy is a combination of basic decisions, commitments, and actions made by those who hold authority or affect government decisions. The policy-making process weighs and balances public values. Often there is no "right" choice or correct technical answer to the issue at hand. Policymaking can be an adversarial process, characterized by the clash of competing and conflicting interests and viewpoints rather than an impartial, disinterested, or "objective" search for "correct" solutions for policy issues. The larger and more diverse the constituency, the more difficult policymaking becomes, particularly when addressing regional issues. Democracy is sometimes messy. Since our government is a representative democracy, an effective policy-making process insures that all relevant viewpoints are heard, and that the rights of individuals are protected.

### **Adopting Policy**

The council does not make policy in a vacuum. Councils rely on ideas from many sources, including the City Departments, City Commissions, community groups, advisory committees, Chambers of Commerce, and others. It is the council's responsibility to consider the merits of each idea and then approve, modify, or reject them. In doing so, council members analyze community needs, program alternatives, and available resources. The decision often takes the form of an ordinance or resolution, although it may take the form of a rule, regulation, motion, or order. The budget and comprehensive plan are powerful policy tools that are adopted by resolution and ordinance, respectively.

### **How to Recognize "Good Policy"**

Since there is usually not a "right or wrong" policy, how are good policy decisions recognized? The following qualities may assist in defining "good public policy:"

- **There is public support.** Usually policy adopted by a majority vote of a legislative body is "good" policy. A supermajority vote makes "great" policy. The council does not make policy in a vacuum. Councils rely on ideas from many sources, including staff, citizen's groups, advisory committees, chambers of commerce, and others. Strong council support for a policy is more likely if there is strong support in the community.
- **Policies are just.** Good policy is fair and equitable; it does not impose disproportional impacts on interest groups. Policy decisions should be based upon due process that respects the constitutional rights of individuals. Policy-making is not always about what's popular. Sometimes it means protecting the legitimate interests of minority views too.
- **Sound decisions are backed by solid analysis.** Good policy analysis starts with clear goals and objectives, considers a range of alternatives, expresses evaluation criteria, and assesses the impacts of alternatives with respect to these criteria. Measure the consequences of policy decisions against the community's vision, values, and goals.
- **Policies are relevant.** The decision addresses a problem or issue that is generally perceived as significant to the community.
- **Policy can be implemented.** The decisions are feasible for local government to implement. The adopted policy has a reasonable chance of working. There are clear assignments of responsibilities for implementation.
- **Results are monitored.** There is always a risk that policy decisions have unintended consequences, or simply do not accomplish their goals. During the analysis phase it is useful to think about how a policy choice may fail. Good monitoring systems may provide early warning about policy failures or unintended consequences. This would enable policy-makers to alter the policy to increase effectiveness, or abandon it completely.

## **Limits to Policy Making**

No one said that effective policy-making is easy. It is easier to second guess how something might have been done, than to determine what needs to be done. There are many challenges and hazards along the way. Public policy-making involves multiple interests, complex analysis, conflicting information, and human personalities. Listed below are some factors that make public policy a fascinating, sometimes frustrating, but absolutely essential exercise. These are listed to alert the reader about circumstances where extra care is necessary.

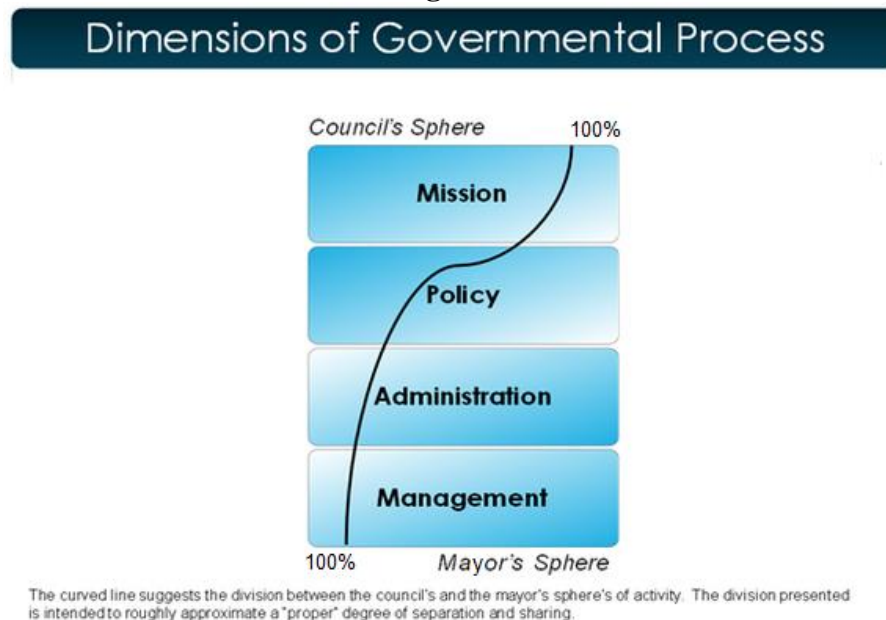
- Legitimate community interests have multiple and often conflicting goals. This is the essence of the policy-making challenge. For example, the business community may be motivated primarily by a profit goal in presenting its position on the comprehensive plan. Other community interests may place a higher priority on a goal of preserving as much of the natural environment as possible. These goals may conflict.
- With multiple interest groups and centers of power, there is a tendency to "take a step in the right direction" rather than commit to significant change. Some participants are frustrated because they believe that the policy-making process should produce more dramatic changes than it usually does. On the other hand, seemingly minor changes in the short-term can have enormous long-term impacts.
- Failure to have the right information can impede decision-making. Elected officials are often faced with information overload. Too much information can create uncertainty and weaken decisiveness. When this occurs, all information becomes diluted in its persuasiveness.
- Decision-makers may then resort to less rationally defensive but more personally satisfying methods of decision-making. Concise, well-organized data and analyses can facilitate the decision-making process.
- Some interest groups may use analysis to rationalize choices they have already made. Research can be politicized. Some people are skilled in using statistics to prove anything. Close inspection of their analysis, however, may reveal serious flaws.
- Many forces that impact local communities are beyond local control. Local governments are subject to federal and state mandates. Income levels of individual jurisdictions depend upon job creation and retention throughout the region. Traffic congestion and air pollution transcend local community borders. Local decision-makers may have limited ability to influence an important community issue.
- It is not always clear or obvious how to implement good policy, even when there is a high level of agreement about a desired direction.
- Resources to implement policy may be limited.
- Mediation may be required to resolve issues where communities are polarized.

## **So, Who Actually Runs the City?**

It is important to recognize that it is not the role of the council member to administer city affairs. The council sets policy, but it is either the mayor (in mayor-council cities), the city manager (in city manager cities) or city administrator (in city administrator cities), who actually implements the policies. This means that it is not the role of the council member to supervise city employees on-the-job or become involved in the day-to-day administration of city affairs. This can be a source of conflict between the administrative and legislative branches of city government. Legislators, for example, are most effective if they focus on policy issues, not administrative matters. And chief executive officers such as mayors are most effective when they recognize and

support the policy-making responsibilities of their local council members. **Figure 3** sets out a visual display between the mayor's and city council's spheres of government work.

**Figure 3**



Councils have the powers to enact laws and policies consistent with state law, usually through the enactment of ordinances and resolutions. The mayor, is the chief executive and administrator in charge of carrying out the policies set by the council and enforcing local laws. They are basically in charge of the day-to-day operation of the city or county, including the supervision of all appointed officers and employees in the performance of their official functions.

For the most part public agencies are administrative; they must follow policies, laws, budgets, and other rules. In order to prevent abuses of power and to provide predictability, administrative functions have limited flexibility or discretion. For example, the enforcement of building and land use codes are generally ministerial in nature. If applicants comply with requirements as set forth in the code, they get their permit. However, there are certain types of decisions, such as rezones, that must go to the legislative body.

On many matters, citizens will no doubt call council members. In these situations, it is best to pass on the complaint (through the mayor or city manager), let staff deal with it, and report back to the council member on its disposition. Give the staff a chance to do their job. Treat citizen comments, complaints, or requests as feedback on basic service delivery systems. These are opportunities for service "tune-ups" as part of a continuous improvement effort.

Individual council members may not give orders to department heads or to other employees.

To do its job, the council needs information on how the city. The chief executive must provide timely, useful information evenly and equally to all councilmembers – either directly or through subordinate officers and employees.

Of course, things do not always run smoothly between the council and the administration, and the line between policy and administration is imprecise in some situations. One area that is a frequent source of conflict is personnel. The council may not like a mayor's appointment to a particular position, or it may be dissatisfied with the performance of certain officers or employees. An

employee may complain to and seek relief from the council about some aspect of employment. On the other hand, the mayor may believe that certain personnel policies interfere with his or her supervision of employees and hiring and firing authority. The mayor may direct that all communications with city staff go through the mayor's office. The council, in response, may feel that the mayor is unlawfully restricting its access to city personnel for information purposes.

The remedy for some of these situations may be to review the respective roles of the mayor and the council and to understand the limitations of their respective authorities. For example, if the council is not happy with a mayoral appointment, there may be nothing the council can do directly within the bounds of its authority. However, if it has the authority to confirm a particular appointment, it can reject the appointee and force the mayor to choose another. If the council does not have confirmation authority, it can express its dissatisfaction to the mayor, but it can do nothing else with respect to that particular appointment. The council may, however, provide for a detailed personnel system establishing specific qualifications for positions, requiring publication and public posting of job opening announcements, and the like.

Similarly, if the City Council feels that an officer or employee is performing poorly and should be disciplined or fired, it can say so to the mayor, but it has no power to do anything else. Although it controls the salaries paid to city officers and employees, it may not lower a salary with the purpose of causing the person holding that position to quit. A rule to follow is that the council and the mayor may not do indirectly what it cannot do directly.

On the issue of communication between the council and city officers and employees, the mayor may not prevent council members from gaining information although he or she could reasonably regulate the inquiry process. If council member inquiries unreasonably take staff away from their duties, the mayor may require those inquiries to be channeled through the mayor or a department head, if it can be done without unduly encumbering council access to information.

Another area that often provides ground for conflict is finances and budgets. For example, the mayor may not take full advantage of the budget authorized by the council. The council may authorize a certain position at a certain salary, and the mayor may decide not to fill the position or may do so at half time and half salary. The mayor may cite financial difficulties, such as revenues falling short of projections, and may conclude that the city cannot afford someone filling this position full-time. The council, on the other hand, may not agree that the conditions warrant such action or may determine that a different cost-saving measure is appropriate and should be instituted.

Resolution of this type of issue may prove particularly tricky. Although the mayor may not pay an employee less than is authorized by the council in the budget or separate salary ordinance, under certain financial circumstances, the mayor may be able to partially fill a position, thus proportionately reducing the salary for the position. Legal authority, however, is hazy on such issues. The best strategy would be for the mayor and the council to work out a mutually agreeable accommodation.

In situations where it is not clear whether the executive or the council has the authority to act, counsel of the city attorney or that of an AML consultant could be sought. Understanding roles is a necessary step in resolving many conflicts. When roles are not clearly defined, compromise may be in order. Statutes and case law may not provide a ready answer. All sides need flexibility to meet the challenges of effective local government that is responsive to public needs. Local government works best when local officials work well together and build relationships based on honesty and trust.

## **Duties of the City Council Members**

City council members are officers and officials of their city. The city council:

- Enacts ordinances and bylaws concerning municipal affairs that are consistent with state law in order to promote the health, safety, and welfare of the public. A.C.A. §§14-55-102; 14-43-602.
- Has the management and control of the city finances and all real and personal property belonging to the city. A.C.A. §14-43-502.
- Adopts a budget by ordinance or resolution for operation of the city or town by February 1 of each year. A.C.A. §14-58-202.
- Sets the procedures by ordinance for making purchases that do not exceed the sum of \$35,000 in cities of the first class, except as provided in A.C.A. §14-58-104. A.C.A. § 14-58-303(b).
- Sets the time and place for regular city council meetings (A.C.A. §14-43-501). All meetings should be open to the public in accord with the state Freedom of Information Act. A.C.A. §25-19-106.
- May override the mayor's appointment and removal of department heads by a two-thirds ( $\frac{2}{3}$ ) vote of the total membership. A.C.A. §14-42-110.
- May override the mayor's veto by a two-thirds ( $\frac{2}{3}$ ) vote. A.C.A. §14-43-504.
- Calls for a special election in cities of the first class to fill the vacancy of the unexpired mayor's term of office, if the unexpired term is for more than one (1) year. A.C.A. §14-43-401(b).
- May fill, by appointment in cities of the first class, the vacancy to the office of mayor if the expired term is less than one (1) year. A.C.A. §14-43-401(b)(1).
- Sets the salaries of the mayor, council and other municipal officials. Salaries of officials may be increased, but not decreased, during the term of office, except that the official receiving the salary may request a decrease. A.C.A. §14-42-113.
- Either establishes a city fire department or, by ordinance, enters into a contract or interlocal agreement for city fire protection with an existing fire department certified by the Arkansas Fire Protection Services Board. The council may promulgate rules to govern a city fire department. A.C.A. §14-53-101.
- Establishes a city police department and organizes it under the general superintendence of the mayor. A.C.A. § 14-52-101. Directs by ordinance the number of subordinate number of officers to be appointed. A.C.A. §14-52-201.
- Sets the rates for city utilities and establishes fees for city services.
- Enacts ordinances establishing sales taxes and referring same to the voters.
- Takes actions leading to annexation of territory to the city.
- Establishes and certifies to the county clerk the amount of property taxes to be levied within the city prior to the regular meeting of the quorum court in November or December of each year. A.C.A. §§26-73-202; 14-14-904.
- May establish (and abolish) various commissions to manage and operate such services as parks, utilities, an airport, advertising and promotion, planning and others, as provided by state law.

## **Types of City Council Meetings**

Newly elected officials should quickly learn that there are four (4) kinds of meetings.

- **Regular Council Meetings:** These meetings handle general and routine business. The place, date and time are usually the same unless a change is required because of special, unforeseen or unique circumstances.

- **Special Meetings:** Business that cannot be postponed, or issues that affect a limited number of citizens, are dealt with at a specially-scheduled meeting. These meetings usually have a more limited agenda than regular meetings but, like regular meetings, they are open to the public. It is important that the time and place of meetings of this sort are announced to the media as required by the Freedom of Information Act. Media that have requested notice must be given at least two (2) hours advance notification. A.C.A. § 25-19-106(b).
- **Public Hearings:** Hearings are a forum for residents to express opinions and for council members to explain their positions to the public. Hearings are most effective when they target only one item per hearing, for example, the budget or a re-zoning request.
- **Work Session:** An informal meeting, generally called for the purpose of conducting an in-depth study on a limited number of topics. Work session meetings encourage exploration of subjects in more detail than is possible in regular meetings because of the time constraints and the pressure of other business that occur in regular council session. These sessions must be open to the public.

Each of these types of meetings offers a way to achieve certain goals. A correct choice of meeting type will enable your city government to do its job effectively.

### **The Arkansas Freedom of Information Act - Open Government Laws**

Strict compliance with public disclosure and open meetings builds trust with your community. The Arkansas Freedom of Information Act is found at A.C.A. §25-19-101 *et seq.* It provides the limited exception to when a council meeting can go into executive session. The Act lists the exceptions for disclosure to public information requests. The Act also directs the City how to provide notice of its regular and special council meetings.

### **Responding to Constituent Complaints**

Residents often contact a council member when they have a problem, whether it involves a land use matter, a barking dog, or a pothole. Don't hesitate to send them to the appropriate city staff person for resolution of their problems. Keep in mind that you, acting alone, lack the authority to take action in administrative matters.

### **Local Laws – Ordinances and Resolutions**

How does the council adopt policy? Typically, a council will adopt policy by passing ordinances and resolutions at council meetings. Those are the two (2) ways the council can take official action. Both actions play important roles in their own way and they share certain similarities. However, there are distinctions between the two and knowing the differences is important.

#### Difference between ordinances and resolutions

#### **Ordinances**

An ordinance is a local law of a municipal corporation, prescribing general rules of conduct. Ordinances are used for a variety of purposes, including administrative actions such as establishing offices and setting salaries, or they may be used for actions that control the conduct of the public. Sometimes state law requires that an ordinance be passed when performing an action, such as rezoning or accepting the dedications within a plat. An ordinance is a legislative enactment, within its sphere, as much as an act of the state General Assembly that usually regulates persons or property and usually relates to a matter of a general or permanent nature. An ordinance is more formal and authoritative than a resolution. Therefore, it is recommended that

your city attorney approve the structure and content of all proposed city ordinances. An ordinance should not conflict with federal or state law. It should also be in harmony with applicable court decisions. There are seven rules to remember about passing an ordinance:

1. Ordinances must be reasonable.
2. They must not be oppressive.
3. They must not be discriminating or partial.
4. They must not unduly restrain lawful trade.
5. They must not violate civil rights.
6. They must not be ambiguous.
7. They must contain only one general subject, clearly stated in its title. A.C.A. §14-55-201.

### **Rules for Adopting Ordinances**

The passage of an ordinance typically involves three (3) steps. The first step is the introduction of the proposed ordinance at a council meeting. The second step is to allow for the City Clerk-Treasurer's or City Attorney's reading of the ordinance; this is followed by allowing the person(s) proposing the ordinance the opportunity to explain its provisions. The state statutory requirements of reading an ordinance on three (3) different days can be suspended by the City Council if two-thirds ( $\frac{2}{3}$ ) of the City Council members vote in favor of suspending the rule. Third, the council debates the ordinance and either defeats, postpones, refers it to a committee for study or approves it. If approved by a majority vote of the council, it is then signed by the mayor and attested to by the city clerk-treasurer. A.C.A. §14-55-201 *et seq.*

Remember that all ordinances of a general or permanent nature must be read fully and distinctly on three (3) different days, unless two-thirds of the members of the council shall suspend the rule. A.C.A. §14-55-202.

If an ordinance is passed with a valid emergency clause, it will take effect immediately. Please note, however, that an emergency clause requires a separate and distinct vote of the council and requires a two-thirds ( $\frac{2}{3}$ ) vote of approval by the council. The mayor may not vote on the emergency clause. Ark. Const. Art. 5 §1.

Without the adoption of the emergency clause, municipal ordinances generally become effective 30 to 90 days after their passage, depending on the city ordinance establishing the deadline to file a referendum on an ordinance. A.C.A. §14-55-203. All ordinances of a general or permanent nature and all those imposing any fine, penalty or forfeiture must be published in a newspaper of general circulation in those municipalities where a newspaper is published. However, the law provides that in municipalities where no newspaper is published, written or printed notice posted in five (5) of the most public places (designated by ordinance or minutes) shall be sufficient publication of any law or ordinance. A.C.A. §14-55-206.

### **Resolutions**

A resolution, on the other hand, is typically an act that is less solemn or formal than an ordinance. A resolution is an official expression of the will of the council. Resolutions can be classified in two (2) types. Type one directs a City action, and type two expresses the City's official opinion on a subject.

Examples of type one resolutions is required to perform a city act such as passing the city budget, accepting a petitioner's annexation request into the city, entering into contracts, approving large purchases or entering into agreements with other governmental units Examples

of type two resolutions are those used to state the City Council's opinion on various matters—for example, supporting or opposing legislation pending in the General Assembly. Resolutions usually affect items of a temporary, special or administrative nature.

A resolution may be adopted by the council at one (1) reading, as long as it is not general or permanent in nature. A.C.A. §14-55-202. All legislation must be enacted via ordinance.

When deciding whether to use an ordinance or a resolution, refer to the state law. Some state statutes clearly define which action is needed, others leave it to the discretion of the council.

### **Relationship with the City Attorney**

In mayor-council cities of a population fewer than 50,000, the city attorney is elected, whether that position is fulltime or part-time per A.C.A. 14-43-315(a). In some cities if there is no resident attorney willing to serve as the city attorney, the mayor and council can arrange for the provision of legal services through a contract under A.C.A. §14-43-215(c). Regardless of how the position is established, remember that although the mayor or city staff typically has more contact with the city attorney than the council members, the city attorney's job is to advise all city officials.

Sometimes council members feel that the city attorney is the mayor's or city staff's attorney, particularly if the city attorney opines that the mayor's or staff's position appear to be legally permissible in situations where the answer is unclear. Neither the mayor nor the city staff can prohibit the council from accessing the city attorney for advice. Some smaller cities try to minimize legal service fees by having the city attorney skip regular council meetings. That can be thrifty, but shortsighted, particularly when the council is dealing with controversial matters such as land development, or complex procedural issues.

### **Personnel Management**

Personnel issues continue to have a growing significance in municipal government. Newly elected officials would be wise to go slow in their direct involvement into personnel matters. Human resource law affecting municipal government is heavily litigated and rapidly changing. ***Many lawsuits defended by the Municipal Legal Defense Program involve the discipline or discharge of city employees.*** The advice of your city attorney and human resources professional should always be solicited when dealing with personnel matters.

A.C.A. §14-42-110 generally gives the Mayor, as chief executive, the authority to hire and fire Department Heads subject to a two-thirds ( $\frac{2}{3}$ ) override by the City Council. The Department Heads manage all of the city employees in their own respective Department.

The City Council must decide the scope of personnel activities that will be conducted as part of the city's ongoing operations. Then all personnel-related tasks must be assigned to specific persons within the city organization. The city council also determines the number of employees that can be hired. They can either assign job duties to a job or delegate the Mayor and Human Resources to draft employees' duties for their job. The council establishes salaries and other forms of compensation paid to city workers. The council may also establish job qualifications.

The other important issue on personnel matters is that all of the city's personnel policies and procedures should be clearly spelled out in writing in easily understood language and distributed or made readily available to all employees that are consistent personnel policies and up to date

with the current employment laws and court decisions. *Clearly written policies help avoid lawsuits, promote consistency, and contribute to employee morale.*

### **Establishing Personnel Policies**

All policy matters are decided by the City Council, which enacts ordinances setting up the personnel system and establishing recruitment standards, pay scales, conditions of employment, and other items. The City Council also approves the rules by which personnel ordinances are implemented and the procedures for handling administrative matters. Additionally, the council's budgetary powers give it continuing control over the number of employees and the general scope of their duties.

The City's personnel policies and practices must conform to federal and state laws. These policies and procedures must be practicable, which means they need to be carefully considered prior to their adoption. Any policy or procedure that fails to accomplish its intended purpose in a simple, direct fashion will multiply, rather than reduce, the city's operating problems.

Assistance in drafting the city's personnel policies and procedural rules should be obtained from an attorney or other specialist skilled in employee relations and from the person to whom the council has assigned the responsibility for implementing the policies.

Upon completion of the drafting process, the proposed policies and rules are presented to the city council for consideration, possible amendments, and final approval. Upon enactment, the policies and rules become binding on both the city and its employees.

### **The Employee Handbook**

All personnel related ordinances and regulations should be compiled into a single document, an employee handbook, for distribution to members of the city council and the entire municipal workforce. Each employee should be required to sign a form acknowledging that he or she received the handbook. City employees should follow the handbook and the city council-approved rules and regulations of their individual departments. Administrative rules need not be made a part of the handbook.

In addition to a personnel policy handbook, all municipalities should have written job descriptions for all employees. A written description is evidence of the essential functions and responsibilities of each job. Job descriptions should be reviewed and updated periodically to ensure that all duties and responsibilities of the position are reflected in the job description.

### **Human Resources**

Human resources, or HR, manages the employee life cycle, including recruiting, hiring, onboarding, training, performance management, administering benefits, compensation and firing. Regardless of a city's size, it needs an effective human resources department to manage workforce labor, company policies and ensure legal compliance.

HR is a department in the City that focuses on a company's most important asset—its employees—to ensure they're satisfied, engaged and have all the resources they require to perform as expected. HR is the department responsible for maintaining the City's personnel, employee relations and workplace culture. HR manages recruiting, hiring, firing, training, skills development, policy implementation, benefits, payroll, government regulation, legal compliance and safety and often moderates and helps resolve conflicts and concerns between employees.

A HR professional helps give the City structure and order and foster productivity and organizational success. HR personnel partner with management to address personnel concerns and provide support and resources where needed so that Department Heads and supervisors can focus on running their department operations.

## Practical advice

### Leadership

- **Lead by example.** Be honest, consistent, flexible. Don't play games.
- **Use common sense.**
- **Don't be stampeded.** You may receive strong demands from special interest groups. Your job is to find the long-term public interest of the entire community.
- **Be clear on what you stand for.** List 10 things you believe in.
- **A new council member should have goals.** These are things you want to accomplish. But don't act rashly and assume that only you know the best way to accomplish things. Every issue will benefit from additional discussion. Your perceptions may change.
- **Use your role as a leader.** The dignity of your office can help the community get past contentious issues.
- **It can be uncomfortable to make very public decisions.** Sometimes the decisions feel like the end of the earth. It's easy to fear the political consequences. But it is important to look a little more long-term in perspective, weigh everything, and reach good decisions.
- **Know that you can't satisfy everyone.** Listen fairly and thoughtfully, and then do what's right.

### Working with City staff...

- **Get to know staff and what they do.**
- **Say thank you!** Let folks know how much you appreciate them and give credit where credit is due.
- **Treat staff with respect** – they are a very valuable asset.
- **Be consistent.** Treat everyone the same.
- **Budget money for and encourage your staff to attend professional meetings and seminars.** These learning opportunities and the personal contacts can be invaluable to your city.

## Strategic Plan



## **Chapter 7**

### **Legislative Advocacy**

*“The mayor has got to work closely with a wide variety of people, his city council, state legislature, governor, business community, labor community, president and the congress in order to be able to do this.”*

-Marc Morial

Many city officials don't realize just how much influence they have to help make changes at the state level. You are one of your legislator's constituents, and the experiences and city stories you share can yield positive results.

Use the time between legislative sessions (interim) to meet with your legislators. During the legislative session, you are lucky to have 15 minutes for a meeting, yet this is when most people try to talk to their legislators. Think differently! Schedule meetings with your legislator throughout the year, particularly during the interim. Once you have a meeting with your legislator, it's important that you make the most of it. Come prepared and consider the following:

- Brief legislators about your challenges and opportunities.
- Ask for monthly meetings or calls with your city, or a group of cities.
- Tell stories about real impacts on your constituents.
- Keep materials clear and concise. Cover 3-5 issues at most.
- Ask for clear commitments to work on your issues.
- Connect with legislative staff. They are often the subject matter experts for legislators.

#### **Develop a Legislative Agenda**

Tell your legislators what you want from them. You can do this simply and effectively by developing and sharing your city's legislative agenda. City councils can vote to take official positions on state issues that affect the city. A legislative agenda is a good way to get your legislator's attention and tell them your priorities.

- Keep it short and simple – one page only.
- Get your city council to adopt it in the fall, before session begins.
- Include capital needs along with policy priorities.
- Incorporate AML's Legislative Priorities into your agenda.
- Make it public. Post it on your city's website, put it in your newsletters, and insert it into utility bills.
- Work with your local media for coverage.

#### **Communicate with your Constituents**

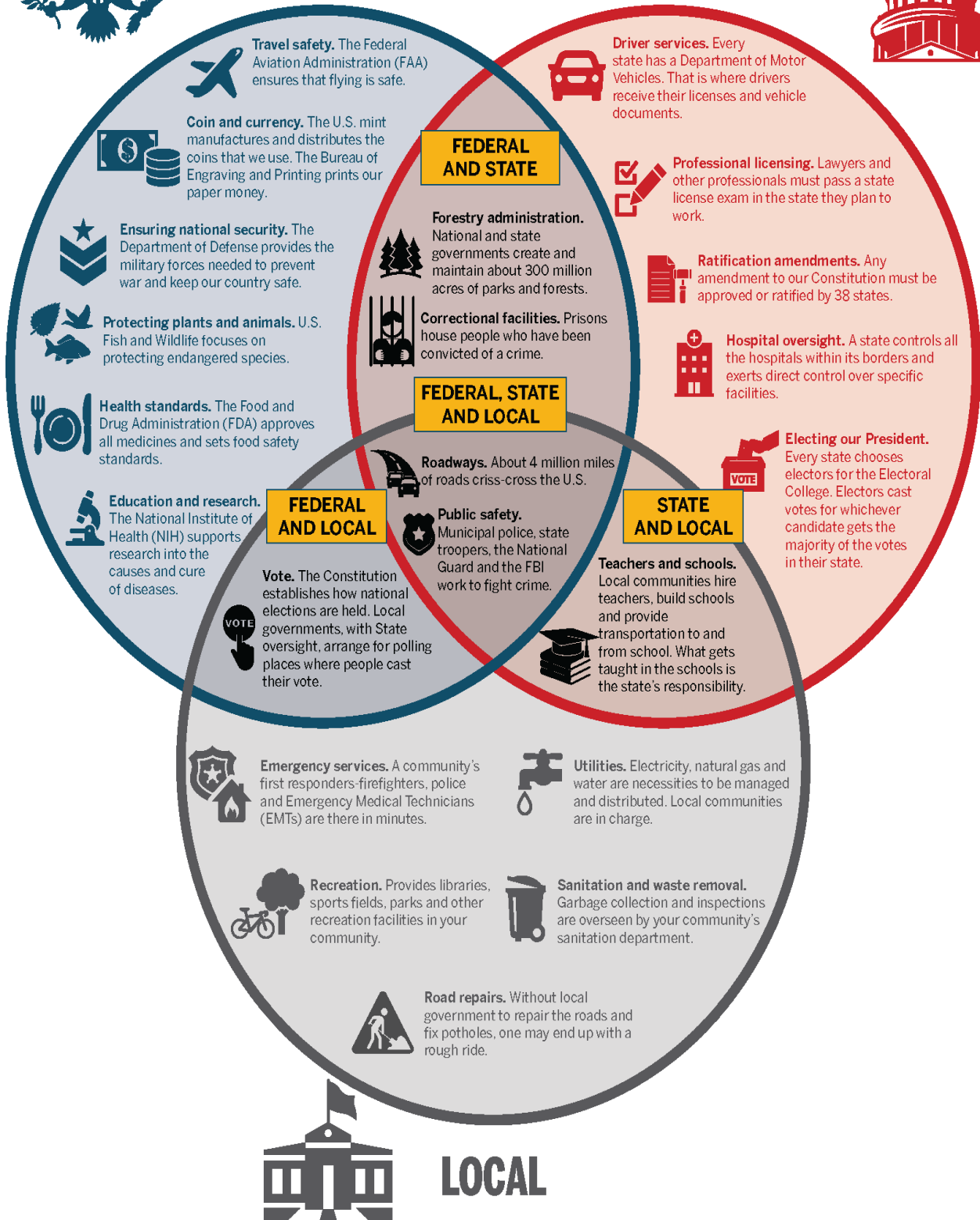
If you aren't communicating with your constituents about how your legislative agenda is faring, then who is? You and your legislators have the same constituents. Make sure your shared constituents know how decisions made in Little Rock affect them at home. This is a powerful way to create legislator accountability.

- It is your responsibility to tell the public how their legislators are supporting your community. No one else will do this.
- Communicate with your constituents through city council meetings, public access TV, social media, radio and newsletters.
- Use your influence with community groups to make sure they know the full story.



# FEDERAL

# STATE



## Chapter 8 Budget Basics

*“The U.S. government uses cash accounting. That is illegal for any enterprise of any size in America except for the U.S. government. Every for-profit business, every not-for-profit business, every state and local government has to use real accounting except for Uncle Sam.”*

-Jim Cooper

### Overview

The operating budget is probably a municipality's most important work product. The budget serves a number of functions. At the most basic level it is a legal document that gives local government officials the authority to incur obligations and pay expenses. It allocates resources among departments, reflecting the legislative body's priorities and policies, and controls how much each department may spend. In most jurisdictions, the budget has evolved to include more than just financial data. Mission statements, goals, and objectives convey how budget decisions relate to a wider vision for the future of the municipality. A budget can also be an evaluation tool, comparing commitments made in the previous year's budget with actual accomplishments.

The professional management of city finances demands high standards of personal responsibility. As a newly-elected city official it is extremely important that you understand the basics of city finance. One noted political analyst suggests two (2) criteria that constituents traditionally use to evaluate the effectiveness of their local government. What does it provide for them and what does it cost? The document that should answer these questions is your annual budget.

The budget is also one of the city's strongest policymaking tools. Spending guidelines reflect numerous policy decisions. The budget message can give a clear view of city policy on many issues. It describes in narrative form significant items in the budget, financial trends, and the policy implications. It should be the mechanism to:

1. Evaluate city services.
2. Measure and compare needs.
3. Set priorities and balance community public service demands against the tax revenues required to furnish them. Therefore, it is important that governing officials participate in the policies and decisions that go into building your municipal budget.

Setting policy through the budget is a continuous, yearlong process. It involves setting goals and establishing priorities. Public participation is critical to the budget process, and is required by law, because of the many policy decisions involved. Once a budget is adopted, the mayor is responsible for carrying out the budget and council members are responsible for monitoring program progress through periodic reports from staff and from the community. If programs are not effectively implementing policy decisions, revisions can be made.

### The Budgeting Process

A budget plans and coordinates revenues and expenditures. Preparation and administration of a city government's budget is one of the most important activities in any municipal operation. Careful planning of revenues and expenditures has become increasingly significant in the face of an uncertain economy, stagnant revenues, and increasing demands for service. Budget preparation should be among the top priorities of departments and divisions. It is essential that departments examine their operations carefully during this process, to ensure that approved funding provides those services most needed and desired by the public, in the most efficient and economical manner possible.

The final budget is designed as a reference and resource tool, not only for internal use, but for use by bond rating agencies, insurance companies, external auditors, and other cities. It contains detailed expenditure information on personnel, supplies, maintenance, other charges, and capital outlays as budgeted for the current fiscal year and the approved budget for the next fiscal year.

Most cities use traditional line item budgeting to determine its operating budget. During the budget process, cities must annually reexamine existing program activities and analyze the effect of reducing or reallocating current levels of resources. Reevaluation of programs allows cities to respond to their changing economic and political environment and the needs of the community, citizens, and their employees. The budget process is designed to identify and plan the functions, activities and accomplishments of cities, as well as plan for their financial needs.

### **The Budget Process: Who Does What**

Budget development, adoption, and execution is not just an annual exercise - it is a year-round cycle that involves the interaction of many individuals. These individuals must work together to identify service needs, design strategies to meet these needs, and develop detailed revenue and expenditure plans to carry out these strategies.

#### Finance Department

- Responsible for the coordination of each step in the budget process including development, adoption and execution.
- Compiles budget requests from all departments into a single city-wide document and creates an initial balanced draft budget.
- Ensures that the budget draft follows all financial, accounting, and legal standards.

#### Department Heads

- Provides departmental level budget requests to the budget officer by a predetermined deadline.
- Must estimate appropriate levels of funding for the department's staffing needs and service provision.
- In some cities, department heads may justify budget requests through demonstrated increases in departmental performance or outputs.

#### Mayor

- Reviews the preliminary draft of the budget.
- Determines adjustments that need to be made based on knowledge of the political goals of the governing body.
- Responsible for presenting a balanced budget to the City Council for their review, feedback, and approval on or before December 1 per A.C.A. §14-58-201.

#### Legislative Role: City Council

- Provide direction on the budgeting process throughout the fiscal year as they establish priorities and goals for the city.
- Review proposed budget and work with the budget officer and city manager to address any concerns or questions that arise from the preliminary budget.
- Vote in a public meeting on the final budget to be adopted for the next fiscal year on or before February 1 by resolution or ordinance.

## **The Types of Budgets:**

*Operating budget* – These funds are for delivering services like police, fire, parks and animal services. The operating budget enables you to set policy. When most people think about their city’s budget, they’re referring to the operating budget. The operating budget is financed from the city’s ongoing general revenue sources such as general city and county sales taxes, franchise fees, grants and court fines.

*Capital budget* – This budget determines what capital improvements will be bought or built over several years, and how they will be financed.

State law governs municipal budgets. In Arkansas, budgets must be balanced – anticipated revenues must equal forecasted expenditures. Unexpected revenues can be appropriated by a supplemental budget modification or can be allocated to reserve funds or to the following year’s beginning balance. Expenditures which exceed revenues can be made only by the council transferring funds from reserve accounts.

## **Important Budget Information**

- State law sets time deadlines for passing a budget for the next year. A.C.A. §14-58-201 requires the mayor of each city with a mayor-council form of government to submit a budget for the forthcoming year on or before December 1 of the current year.
- The same statute also defines the fiscal year for cities as January 1 to December 31.
- The city council must adopt a budget for the year on or before February 1 of that same year per A.C.A. §14-58-202 by either ordinance or resolution.
- Appropriations and amendments to the budget are governed by A.C.A. §14-58-203.
- City councils have the ability to schedule public meetings with department heads and the mayor individually to go over each department, office or administrative budget before ultimately passing a budget.
- Deficit spending is generally prohibited. Cities are not allowed to spend more money than they accrue during a year (Ark. Const. Art. 12 § 4). Exceptions to this rule are made for capital improvement and revenue bonds (Ark. Const. Amend. 62 and 65); energy efficiency bonds (Ark. Const. Amend. 89) and for short term (up to five years) financing for certain purchases. Ark. Const. Amend. 78 § 2.
- All cities and towns must have the financial affairs of the city or town audited annually by a certified public accountant or by the division of the Legislative Audit of the State of Arkansas. A.C.A. §14-58-101.

## **Major Revenue Sources Available**

Revenue sources may differ from city to city. However, listed below are the major revenue sources available to Arkansas cities:

- City and County Local Sales Taxes—Cities and towns share on a population basis most countywide sales taxes for operating purposes. City voters may authorize city sales taxes and county voters may authorize county sales taxes.
- Ad Valorem General Fund Property Tax—set by the governing body, may not exceed five (5) mills. Ark. Const. art. 12, § 4; A.C.A. §26-25-102. Cities share one-half of the three (3) mills of county road tax collected on property within the city. A.C.A. §26-79-104.

- General/Street Fund Turnbacks—this is appropriated from the State Municipal Aid Fund and distributed to cities based on population according to the most recent decennial census.
- Administration of Justice Funds—a cost of living adjustment based on the lesser of the average percentage increase in the Consumer Price Index for All Urban Consumers for the two years immediately preceding or the percentage rate of increase in collections of the State Administration of Justice Fund for the two (2) preceding years is applied to district court generated administration of justice funds. A.C.A. §§16-10-307 and 308.
- Franchise Taxes—Public utility retailers pay a franchise tax to cities for use of public rights of way and streets for the delivery of their services. A.C.A. §14-200-101.
- Solid Waste/Sanitation Fees—Cities may charge a fee for the pick-up and disposal of residential, commercial and industrial solid waste. A.C.A. §8-6-211.
- Fines and Forfeitures—Municipal ordinances may be enforced by the imposition of fines, forfeitures and penalties on violators of city ordinances. A.C.A. §§14-55-501 through 504.
- Permit and Inspection Fees—Cities have the authority to require building permits and safety inspections and to charge accordingly.
- Parks Department Revenue—The city may charge fees for participants of city recreation programs and for concession revenues at the city pool, parks, and community center.
- Occupational Taxes/Privilege License—The city may charge and collect revenue for the privilege of doing business or carrying on any trade profession or vocation within the city limits, unless the business has a license from another city in the state and does not maintain a place of business in more than one city. A.C.A. §26-77-102.

**Note:** Fees must be reasonably related to the city or town’s cost of providing the service and must go towards defraying the cost of the service the fee is charged for.

**Other Income (Miscellaneous Revenues)**

- Sale of equipment or real property
- Animal licenses
- Hotel and motel/Restaurant taxes-A&P Tax
- Interest earned from special accounts

**Putting the Budget Together**

Let’s look at the actual budget process. It is definitely a team effort involving the mayor, council and staff.

*Setting policy*

The council sets public policy in two major ways: by enacting ordinances during the year, and by establishing budgetary (taxing and spending) policies. The city administration influences policy through budget implementation and recommendations to the council as to what is needed.

Step 1: Departmental Budget Request

Months before the beginning of the next fiscal year, the Mayor, through the Finance Department, notifies department heads of all requirements for the upcoming budget process. This can be accomplished through an email, meeting or workshop where the Finance Department provides department heads with:

- Instructions for submitting budget requests for the next fiscal year
- Deadlines for all steps in the budgeting process
- Year to date expenditures for each department

- Departmental budgets from previous years

Departmental budget proposals should include requests for personnel, operations, and capital needs for the upcoming year. Personnel requests include the salaries, benefits, and any other costs related to current or expected new employees. If a department head anticipates hiring for new positions, a justification should be provided for the additional employees and the salary for those positions. Operating expenses are the costs for everyday operations within the department and include all costs related to the provision of service and supplies. Capital outlays include equipment or other tangible property that a department needs to purchase which exceeds a given dollar amount and expected lifetime. These budget requests may be determined using several different methods including:

- An incremental approach based on costs from recent years with small changes
- Yearly adjustments for inflation
- Capital Fund – City predetermines the cost of future Capital expense related purchases and sets aside that money each year for all departments
- Standard Costs – Estimated cost of supplies for one employee multiplied by the number of employees

Some cities, not Russellville, operate with council committees responsible for the oversight of assigned departments within their city. If so, the chair or full committee may be involved with the budget request which they oversee along with the department head.

#### Step 2: Finance Department Review

Once all departments have submitted their budget requests, the Finance Department is responsible for reviewing them. The Finance Department must understand the management and fiscal policies of the city, the financial condition of the city, and the political climate that influences the budget process. The Finance Department creates a single budget spreadsheet based on the requests from departments and the direction given by the governing body. Expenditure details in this spreadsheet will include information on prior-year actual expenditures, budgeted expenditures for the current fiscal year, actual (estimated) expenditures for the current fiscal year, and a recommendation for the new fiscal year. This detail will provide the Mayor and City Council with a snapshot of spending in recent fiscal years and gives some perspective for the budget request.

#### Step 3: Revenue Projection

The Finance Department for the city is responsible for predicting the revenue sources and amounts for the upcoming fiscal year. Cities may rely on several different types of revenue as previously mentioned above in the **Major Revenue Sources Available** section.

Most general fund revenue estimates involve a thorough examination of historical revenue data, taking into account economic and financial conditions in the city, making various assumptions about collections in the upcoming year, and applying good judgment. The best guidance for projecting revenues in any category is to be conservative in making estimates. It is much better to project a revenue number that is too low than one that is too high, which would result in a deficit.

Several different forms of revenue estimation may be needed to accurately predict revenues for up to eighteen (18) months in the future. The following table lists revenue estimation models used by some local governments. Regardless of which model your city uses, it is helpful to know about the techniques available for use in completing this task.

<b>Revenue Estimation Models</b>	
Educated Estimation	An estimation based on recent revenue levels and any changes that would affect the revenue stream, including demographic trends, revisions to tax regulations, changes in tax or fee enforcement, and economic cycles. Forecasters often must make an educated guess with the information they have available.
Deterministic Spreadsheets	Uses equations with known coefficient values, such as the city millage rate, to model the assessment and valuation of a particular tax or fee.
Break-Even Analysis	This model uses the break-even point, the point at which revenue received equals the costs associated with receiving the revenue, to assess the cost-effectiveness of government programs, as well as to structure fees and rate schedules.
Different Forms of Averaging	Revenue estimates are made by averaging data points from a dataset of historical revenue information.
Trending Methods	Estimates future revenue based on a relationship between the actual revenues for past years and their comparable forecast estimates.
Linear Regression Analysis	Uses historical data to form a mathematical relationship between past revenue levels and one or more explanatory factors; this relationship is then used to estimate expected future revenue levels.
Systems and Models of Regression Equations	A complex forecasting technique used to combat the growing size and contribution of revenue sources, whereby several linear regression equations are linked together into a system with a multitude of factors to explain economic conditions.

For the easiest review, revenue and expenditure data should be entered into a computer spreadsheet in a line-item format. A history of prior-year actual revenues should be included in this chart to show the trend in revenues for the previous two or three years compared to the current revenue estimate. Revenues and expenditures are balanced before an executive review of the budget.

To develop a financially sound budget that will withstand economic fluctuations, generally accepted budgeting and finance practices recommend that city officials should attempt to diversify revenue sources so that they do not become overly dependent on one particular revenue source. Cities should also routinely evaluate revenue and fee levels to make sure they are maximizing revenues from all sources. The four basic considerations cities should make when deciding how to pay for city services are:

- Acceptability – city officials should consider how the community as a whole would be impacted by and react to the city’s use of a particular funding source.
- Stability – city officials should attempt to maintain revenue sources that will remain stable regardless of economic fluctuations or political changes.
- Self-Sufficiency – cities should not become overly dependent on state or federal grants to fund services.
- Cost Efficiency – city officials must constantly perform a balancing act with revenues to be sure that the best quality of services is provided most efficiently.

#### Step 4: Review by Mayor

The “first draft” of the budget is reviewed by the Mayor, whose primary goal in the budget review process is to make sure that the policies and priorities set by the Mayor and City Council are met. The Mayor will review recommended departmental budgets to ensure that each one is appropriate and not excessive. Department heads may be asked to sit in on the budget review process at this stage to explain any major increases or decreases in budget requests. The Mayor’s goal is to anticipate any questions the City Council or Finance Committee may have and prepare responses to these questions. Adjustments to the budget are entered by the Finance Department, and the modified budget is prepared for review by the Mayor and City Council. Some cities may use a Finance Committee to review and make budget recommendations before submitting a proposed budget to the City Council.

#### Step 5: Committee Review

If a city has a Finance Committee, then that Committee will usually review the submitted budget with the Mayor and Department Head of the specific department budget the Finance Committee is reviewing. Questions and answers on the specific budget are had at that time and the Finance Committee after debate will then vote its recommendations and forward them to the City Council on the specific budget of each department.

#### Step 6: Legislative Body Review

The Mayor will explain how their and City Council’s priorities are being met through the recommended budget. The presentation should also include an explanation of any changes in the primary or other revenue sources. At this time, the City Council may choose to add or delete items from the budget or make other adjustments. The City Council seeks to adopt a balanced budget that fulfills its established goals.

#### Step 7: Budget Adoption

The City Council may move forward with adopting a balanced governmental fund budget by ordinance or resolution at a public meeting on or before February 1. It is also good practice to post the information on the city’s website. The format of the final budget and ordinance or resolution is up to the discretion of the city, as long as it complies with state law.

#### Step 8: Budget Implementation

Once the budget is adopted and the new fiscal year begins, the plans outlined in the budget may be implemented. Department heads carry out their approved budgets, and appropriations are spent to deliver services. The Mayor or Finance Department is responsible for exercising general fiscal control over the budget, making sure department heads stay within their budgets, providing regular reports on budget activity to departments, and tracking actual revenues against forecasted amounts. Monthly budget reports are also provided to elected officials at the regular City Council meetings.

Budget implementation and monitoring systems vary in complexity among city governments. These systems allow city officials to:

- monitor, adjust, and control spending
- maximize effectiveness and efficiency, and
- develop long-term revenue and expenditure strategies.

Even though budget implementation practices and terminology vary from city to city, they consist of five basic components:

- Authorization – the law which permits spending for a specified purpose.

- Appropriation – the legal authority to spend up to a certain amount during the budget period (in cities, the budget document is the source for most appropriations).
- Allocations – used by the budget officer to provide further detail to the appropriations approved by the city council (e.g., lump-sum appropriations may need to be further divided into allocations for specific programs the department operates).
- Allotments – divide appropriations or allocations (if any) into periods such as quarters or months of the current fiscal year (allotments help assure that money is available to fund operations throughout the year).
- Adjustments – changes to the budget may be necessary as revenues and/or spending varies from the approved budget. Procedures for making adjustments vary from city to city. Unless provided in the city charter or by city ordinance, state law allows some flexibility to make minor changes to the budget while maintaining sufficient control over the use of resources.

#### *Amending the Budget*

A.C.A. §14-58-203(d) states, “The governing body may alter or revise the budget and unpledged funds appropriated by the governing body for any purpose may be subsequently, by action of the governing body, appropriated to another purpose, subject to the following exceptions:

- Funds resulting from taxes levied under statutes or ordinances for specific purposes may not be diverted to another purpose;
- Appropriated funds may not be diverted to another purpose where any creditor of the municipality would be prejudiced thereby.”

#### *Spending Authority*

Every city in Arkansas has its practice for spending funds appropriated in the budget, but generally, the following steps are taken:

- Each department head has the discretion to obligate funds that have been budgeted. Competitive bidding is used to receive quality goods and services at the lowest price.
- Department heads request/initiate a purchase order which identifies the items being purchased, the budget line item the payment will come from, and the name of the vendor who will receive payment.
- Purchase orders are verified by the designated procurement officer to ensure that all applicable protocols and laws are being followed.
- Transactions are recorded according to the city’s accounting system for financial reporting purposes.

#### *Expenditure Controls*

Spending is subject to many limitations and controls beyond the procedures just described. The purpose of using budgeting practices and Generally Accepted Accounting Principles (GAAP) is to control spending and to generate a record of accountability that proves city funds are spent as directed by the Mayor and City Council.

Some of the most commonly used techniques to control expenditures include:

- Line-item appropriations - spending is confined to very specific purposes (category) approved during the budget process. This technique is the most costly and time-consuming control measure, but it is useful if a situation is politically sensitive or there is (actual or perceived) potential for waste, fraud, or abuse.

- Unallocated reserves – the Mayor, acting through the Finance Department, ensures that sufficient funds are set aside and available to meet expenditure demands throughout the year in the event of unforeseen circumstances.
- Encumbrances – funds designated out of appropriations that can only be spent for specific purchases in the future and the funds are no longer available for other uses unless the encumbrance is canceled. A purchase order is the most common encumbrance and guarantees that sufficient funds are available for planned purchases.
- Position control – this technique is used to ensure that all new personnel is hired only for positions that have been authorized and approved in the budget.
- Ceilings and freezes – this technique is the final and most drastic control measure. Ceilings impose an arbitrary limit on expenditures for some or all purposes, while freezes represent a prohibition on further spending for some or all purposes. Usually, these measures are only used during severe fiscal or political crises.

### Step 9: Auditing

The final part of the annual budget cycle is the annual external audit of all city financial records. The audit involves an examination of the city’s accounting systems, procedures, programs, and financial data from a city. Each city is audited by the Legislative Joint Auditing Committee (LJAC) using the Arkansas Legislative Audit (ALA) to conduct the audits. The ALA serves by promoting sound financial management and accountability of public resources entrusted to various governmental entities. To assist the Legislature in oversight of state and local government, ALA is responsible for over 1,000 engagements annually, including audits, internal control and compliance assessments, financial and compliance reports, special reports, and investigative reports. The final product is a report issued by an Arkansas Legislative Audit or other independent auditor describing how well a local government’s financial statements describe its financial condition and the results of its operations as required by A.C.A. §14-58-101.

The auditor reviews financial statements to provide an opinion on the city’s financial condition, its control over financial reporting, and to test for the city’s compliance with provisions and requirements of federal, state, and local laws, regulations, contracts, and procedures.

#### *Performance and Program Audits*

Cities are not required to conduct performance or program audits, although some cities that employ management or financial analysts may choose to conduct them. Performance audits are designed to measure the efficiency of the performance of various activities in each department. Program audits are useful in evaluating the overall effectiveness of city programs. Both program and performance audits help city officials make better decisions about whether services and programs are worth the investment of revenues by the city.

#### *Accounting Systems*

Government officials entrusted with public resources have a responsibility to provide a full accounting of their activities. Accounting systems provide the tools necessary for city officials to assemble, analyze, track, and report financial information so that it can be used for planning, decision making, compliance, and control. The purpose of accounting is to provide financial information that is accurate, complete, timely, and can be understood by users. The four parts of an accounting system include:

- Source documents and forms – include invoices, receipts, time and attendance reports, contracts, and purchase orders which record the details of every financial transaction including authorization for each transaction.

- Journals – summaries of all transactions of a certain type in chronological order (e.g., payroll journals record all payments to employees).
- Ledgers – based on the summary totals in journals, these show the balance in any revenue, expenditure, or other account at any given time.
- Procedures and controls – include forms and instructions for classifying, recording, and reporting financial transactions in source documents, journals, and ledgers.

### **An Inside Look**

Now that you know how the budget works, it is important to understand what the budget is – and what it is not.

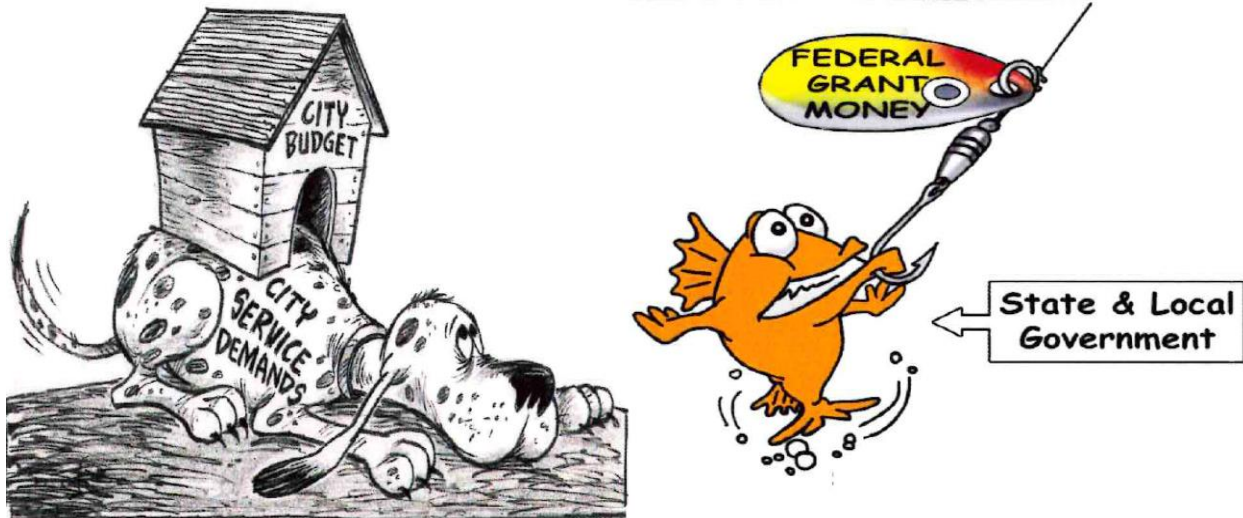
#### The budget:

- Expresses your community’s priorities.
- Works as a plan to identify resources and expenditure flows.
- Operates an annual work program by identifying objectives, guiding program management, and evaluating existing expenditures.
- Responds to change. The budget process is dynamic – it must be flexible to meet public needs, keep up with technology, and adjust to financial circumstances.

#### But the budget can’t do it all. It will not:

- Be precisely accurate. The budget relies on estimates based on forecasts.
- Create efficiency. The budget is a resource allocation plan. It can’t overcome obstacles in your management or staff structure.
- Establish public policy. Public policy is established through careful discussion before the budget is prepared.

Make everyone happy. There will be winners and losers!



## **Chapter 9**

### **Contracting, Purchasing, Bidding and Professional Services**

*“I guess the question I’m asked the most often is: “When you were sitting in that capsule listening to the countdown, how did you feel?” Well, the answer to that one is easy. I felt exactly how you would feel if you were getting ready to launch and knew you were sitting on top of two million parts -- all built by the lowest bidder on a government contract.”*

—John Glenn

#### **Contracting**

All incorporated cities in Arkansas have been granted the authority by the State of Arkansas to contract and be contracted with per A.C.A. §14-54-101(2). Within Chapter 58 of Title 14 of the state Local Government Code, specific purchases and contracts of commodities are addressed in A.C.A. §14-58-104 without the need to solicit bids. These specific non-solicited bids transactions include:

- Perishable foodstuffs for immediate use;
- Unprocessed feed for livestock and poultry;
- Advanced emergency medical services provided by a nonprofit corporation and proprietary medicines if specifically requested by a professional employee;
- Books, manuals, periodicals, films, and copyrighted educational aids for use in libraries and other informational material for institutional purposes;
- Scientific equipment and parts;
- Replacement parts and labor for repairs of machinery and equipment;
- Commodities available only from the United States Government;
- Any commodities needed in instances in which an unforeseen and unavoidable emergency has arisen in which human life, health, or public property is in jeopardy.
  - An emergency purchase under this subdivision of this section shall not be approved unless a statement in writing is attached to the purchase order describing the emergency necessitating the purchase of the commodity without competitive bidding;
- Utility services, purchased at wholesale or the rates for which are subject to regulation by a state agency or a federal regulatory agency;
- Sand, gravel, soil, lumber, used pipe, or used steel;
- Used or secondhand motor vehicles, machinery, or equipment.
- A used or secondhand motor vehicle that has been under lease to a municipality and has fewer than five thousand (5,000) miles of use shall not be purchased except upon competitive bids as provided in the Fiscal Affairs of Cities and Incorporated Towns Chapter;
- Machinery, equipment, facilities, or other personal property purchased or acquired for or in connection with the securing and developing of industry under the Municipalities and Counties Industrial Development Revenue Bond Law, §14-164-201 *et seq.*, or any other provision of law pertaining to the securing and developing of industry;
- Registered livestock to be used for breeding purposes;
- Motor fuels, oil, asphalt, asphalt oil, and natural gas;
- Motor vehicles, equipment, machinery, material, or supplies offered for sale at public auction or through a process requiring sealed bids;

- All goods and services that are regularly provided to state agencies and municipal government by the Division of Correction's various penal industries;
- New motor vehicles purchased from a licensed automobile dealership located in Arkansas for an amount not to exceed the fleet price awarded by the Office of State Procurement and in effect at the time the municipality submits the purchase order for the same make and model motor vehicle.
  - The purchase amount for a new motor vehicle may include additional options up to six hundred dollars (\$600) over the fleet price awarded;
- Renewal or extension of the term of an existing contract;
- Purchase of insurance for municipal employees, including without limitation health insurance, workers' compensation insurance, life insurance, risk management services, or dental insurance;
- Goods or services if the governing body has approved by resolution the purchase of goods or services through competitive bidding or procurement procedures used by:
  - The United States Government or one (1) of its agencies;
  - Another state; or
  - An association of governments or governmental agencies, including associations of governments or governmental agencies below the state level; and
- Goods or services available only from a single source.
  - A purchase under this subdivision shall be supported with:
    - Documentation concerning the exclusivity of the single source; and
    - A written proclamation from the chief executive filed with the clerk or recorder that sets forth the basis for the single source procurement.

All purchases and contracts not specifically covered in A.C.A. §14-58-104 follow the general provisions contained in A.C.A. §14-58-303 which require bidding in excess of \$35,000.00 of value. The guidelines for bidding requirements are set up in the next section below.

### **Purchasing and Bidding**

In all first-class cities with the mayor-city council form of government, the mayor or duly authorized representative has the exclusive power and responsibility to make purchases of all city supplies, equipment and materials necessary to conduct the business of the city. The mayor has the authority to enter into contracts for work or labor on behalf of the city. However, all such expenditures must be authorized by the budget or an appropriation of funds passed by a majority of the council. A.C.A. §§14-55-204 and 14-58-203. In addition, the mayor of a first class city must not expend funds in excess of the amount established by the council pursuant to A.C.A. § 14-58-305, in the absence of council approval.

- The governing body shall set out the procedure for all purchases that do not exceed \$35,000. This can be done by bid or reverse Internet auction. The details for these purchase procedures should be described in each city's purchasing ordinance. A.C.A. § 14-58-303.
- When a purchase exceeds \$35,000 the mayor of a first class city or duly authorized representative should advertise in the local newspaper for competitive bids.
- Bids are to be advertised one (1) time in a newspaper of general city circulation per A.C.A. §16-3-102 unless a specific state statute directs a different amount of times to advertise the bid.

- Bids must be opened on the date and at the exact time and place described in the bid notice published in the newspaper.
- The mayor or duly authorized representative has the exclusive power to award the bid to the lowest responsible bidder.
- In emergency situations where the bidding procedure may not be feasible or practical the governing body, by resolution, may waive the requirements of competitive bidding. A.C.A. §14-58-303.
- Bids may be taken in writing or through electronic media. A.C.A. §14-58-303.

Awarding bids can be controversial. The bidding process is usually highly competitive. Pressure can be exerted on all municipal officials. One of the best ways to avoid controversy is to carefully prepare bid specifications.

Careful bid specification will also increase your chances of getting what you want and within your budget. If you need specific options, accessories or particulars, state them clearly in the bid specification. Under no circumstances should the bids be opened prior to -- or reviewed or discussed until after -- the official bid opening. If provided in the specifications, the city may reject any and all bids.

Cities of the second class and incorporated towns have no requirement for bidding for these kinds of purchases, although a city could pass an ordinance to require it.

Here is an exception to the rule: Cities of the first class, second class and incorporated towns must take bids for any public improvements, which include the major repair or alteration or the erection of buildings or other structures or other permanent improvements, exceeding \$50,000 in costs. The law is found at A.C.A. §22-9-203, which also contains the procedure for taking bids for contracts for public improvements that exceed \$50,000. In order to receive electric media bids under §22-9-203 a municipality must follow the newly enacted procedure contained in Act 1075 of 2019, which include posting notice online and in the local paper simultaneously.

### **Professional Services**

Competitive bids are not allowed when cities seek certain professional services. Professional services are defined as contracts for legal, financial advisory, architectural, engineering services, construction management, and land surveying. A.C.A. §19-11-802. Cities that need professional services should advertise for RFPs (Request for Proposals) or RFQs (Request for Qualifications). The RFP/RFQ should be evaluated considering the qualifications and reputation of each professional firm. Many cities will ask a professional service representative to make an oral presentation to the entire city council prior to its making a selection.

Next, the city selects three qualified firms and then selects the most qualified. A.C.A. §19-11-804. Once a qualified professional firm has been selected, the city may then negotiate a contract for the desired professional service. If a mutually-agreeable contract cannot be negotiated with the first, most qualified firm, then the city may attempt to negotiate an agreement with the second and then the third firms on the list. A.C.A. §19-11-805.

### **Legal Issues to Address in Any Potential City Contract**

#### *Article 12, §5*

Article 12, §5 of the Arkansas Constitution prevents counties and municipal corporations from donating or appropriating money to private corporations, associations, institutions, or

individuals. An expenditure in a contract in violation of Article 12, §5, exposes a city to an illegal exaction lawsuit as authorized by Article 16, §13. Arkansas courts recognize two types of illegal exaction cases can arise under Article 16, §13: (1) “public funds” cases, where the plaintiff contends that public funds generated from tax dollars are being misapplied or illegally spent, and (2) “illegal-tax” cases, where the plaintiff asserts that the tax itself is illegal. A violation of Article 12, §5, falls under the first category. It is usually suggested that Article 12, §5, while prohibiting a donation of funds by a city to a private entity, does not prohibit a contract with such an entity, supported by adequate consideration assuming, of course, the existence of a public purpose. Cities clearly can enter into contracts that are supported by valid consideration. See Ops. Att’y Gen. No. 98-025 and 97-250; A.C.A. §14-54-101(2); *City of Ft. Smith v. Bates*, 260 Ark. 777, 544 S.W.2d 525 (1976); *City of Harrison v. Boone County*, 238 Ark. 113, 378 S.W.2d 665 (1964). Moreover, this authority includes the power to contract with nonprofit organizations. See *Woodruff v. Shockey*, 297 Ark. 595, 764 S.W.2d 431 (1989). Such contracts have been upheld as not being in violation of Article 12, §5. See *Arkansas Uniform & Linen Supply v. Institutional Services Corp.*, 287 Ark. 370, 700 S.W.2d 358 (1985).

#### “Public Purpose”

In order to avoid the prohibition of Article 12, §5, a contract which expends money requires that service or goods received by the city must be for a “public purpose” and be necessary to carry out any work or undertaking of a “public nature.” Although cities have been granted extensive authority over their “municipal affairs” by virtue of the “Home Rule Act” (A.C.A. § 14-43-601—610), their exercise of this authority cannot be contrary to state law or constitutional principles. The broad, but often difficult to define “public purpose” doctrine has not been defined by the Arkansas Supreme Court because “its meaning is not exact, nor is it prone to a static definition.” *City of North Little Rock v. Pulaski County*, 332 Ark. 578, 968 S.W.2d 582 (1998).

It has been stated as regards this doctrine that “[n]o expenditure can be allowed legally except in a clear case where it appears that the welfare of the community and its inhabitants is involved and direct benefit results to the public.” *McQuillin, Municipal Corporations*, §12, 190. A proposed public purpose test previously opined by the Arkansas Attorney General’s Office has stated, “[a] primary factor in determining whether public funds are being used impermissibly appears to be whether those who contributed tax money received the intended benefit therefrom, or whether, by contrast, the benefit was received by a private individual or entity.... A determination of the question of who is receiving the primary benefit of the property will turn upon a consideration of all of the relevant facts....” The determination of whether a particular expenditure is for a “public purpose” is to be made by the legislature. Although ultimately the propriety of a particular expenditure is resolved by the judiciary, great weight must be given legislative declarations of public purposes. *Turner v. Woodruff*, 286 Ark. 66, 698 S.W.2d 527 (1985).

As future stated in an Arkansas Supreme Court case, “No principle of constitutional law is more fundamental or more firmly established than the rule that the State cannot, within the limits of due process, appropriate public funds to a private purpose. A century ago the basic doctrine was simply stated in the leading case of *Brodhead v. City of Milwaukee*, 19 Wis. 624: ‘The legislature cannot create a public debt, or levy a tax, or authorize a municipal corporation to do so, in order to raise funds for a mere private purpose. It cannot in the form of a tax take the money of the citizens and give it to an individual, the public interest or welfare being in no way connected

with the transaction. The objects for which money is raised by taxation must be public, and such as subserve the common interest and well-being of the community required to contribute.” *Chandler v. Board of Trustees of the Teacher*, 236 Ark. 256, 258 (Ark. 1963).

### *Adequate Consideration*

The essential elements of a contract are (1) competent parties, (2) subject matter, (3) legal consideration, (4) mutual agreement, and (5) mutual obligation. *City of Dardanelle v. City of Russellville*, 372 Ark. 486, 490, 277 S.W.3d 562, 565–66 (2008). In a contract, adequate consideration must exist to support the contract. It is axiomatic, as a matter of pure contract law, that a contract is not valid unless supported by adequate consideration. *Minyard v. Daking Mill, Inc.* 269 Ark. 266, 599 S.W.2d 742 (1980). The validity of the consideration, however, does not depend upon the comparative economic value of the consideration and of what is promised in return. See, e.g., 17 *C.J.S. Contracts* §130. It has been held in Arkansas, additionally, with regard to public contracts, that the consideration need not be monetary, and that “public advantage” in some cases will be adequate consideration to support the contract. See, e.g., *Chamber of Commerce v. Pulaski County*, 113 Ark. 438, 170 S.W. 1165 (1914) and *City of Blytheville v. Parks*, 221 Ark. 734, 255 S.W.2d 962 (1953). The fact that a contract is supported by adequate consideration for purposes of contract law is not tantamount, however, to a determination that the contract necessarily fulfills a public purpose. The existence of consideration supporting a public contract will not validate it where it lacks a public purpose. See, e.g., *Needham v. Garner*, 233 Ark. 1006, 350 S.W.2d 194 (1961). This is a separate inquiry and again, its resolution depends upon all the facts surrounding a particular arrangement.

### *Fiduciary Duty*

*“We are the trustees and agents of our fellow citizens.”*

-Grover Cleveland, President of the United States

*“A public office is a public trust.”*

-The rewrite by W.C. Hudson, Cleveland's public relations man

Grover Cleveland's original quotation is but a close paraphrase of Madison in Federalist No. 46: “The Federal and State governments are in fact but different agents and trustees of the people....” The Federalist No. 46, at 294 (James Madison) (Clinton Rossiter ed., 1961).<sup>11</sup> When the public chooses an elected official, the public is putting its trust and confidence in him or her to act in the public’s best interests. The same can be said when one becomes an employee of a public agency. The agency trusts everyone on its team to put the public’s interests first. Indeed, always putting the public’s interests first is the essence of public service ethics.

### What Is a Fiduciary Duty?

A fiduciary duty refers to the relationship between a fiduciary and the principal or beneficiary on whose behalf the fiduciary acts. The fiduciary accepts legal responsibility for duties of care, loyalty, good faith, confidentiality, and more when serving the best interests of a beneficiary. Strict care must be taken to ensure that no conflict of interest arises to jeopardize those interests.

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<sup>11</sup> For additional references, see, for example, The Federalist No. 49, at 316 (James Madison) (Clinton Rossiter ed., 1961) (describing legislators as public trustees and confidential guardians of the people); The Federalist No. 55, at 344 (James Madison) (Clinton Rossiter ed., 1961) (“solemn trust”); The Federalist No. 57, at 350 (James Madison) (Clinton Rossiter ed., 1961) (“public trust”); and The Federalist No. 59, at 366 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (“guardianship” and “trust”).

A fiduciary is also someone who acts for another. That is why trust and confidence are so important. In a representative democracy, the public elects officials to act in their interests. Elected officials make important decisions on behalf of the public, including how to spend taxpayer and other public monies on infrastructure and services.

A public official has a fiduciary duty to protect the financial interest of the municipality for every financial transaction. This is because a public official holds their office as a public trust for the common good, and has a duty to perform their official duties in good faith and with honesty and integrity. The Arkansas Supreme Court has recognized this fiduciary duty owed by public officers, “It is, of course, elementary that a public officer occupies a fiduciary position, and that in disbursing public funds he must be as free from selfish interest, direct or indirect, as any other trustee.” *State ex rel. Atty. General v. Broadaway*, 192 Ark. 634, 93 S.W.2d 1248 (1936). As stated another way, “A public office is a public trust...” 67 C.J.S. Officers § 204, and because the performance of the duties of public office involves a “public trust, the fiduciary obligations of public officials are owed to the public in general or the electorate as well as the government entity public officials are elected to represent. This duty to the public requires public officials to make governmental decisions in the public’s best interest. “[I]n a democracy, citizens elect public officials to act for the common good.” *United States v. DeVegter*, 198 F.3d 1324, 1328 (11th Cir. 1999). This is true even if the public official serves only on a part-time basis and is uncompensated. Black’s Law Dictionary defines the term “fiduciary capacity” as follows:

One is said to act in a “fiduciary capacity” or to receive money or contract a debt in a “fiduciary capacity,” when the business which he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part. The term is nor restricted to technical or express trusts, but includes also such offices or relations as those of an attorney at law, a guardian, executor, or broker, a director of a corporation, and a public officer.

Black’s Law Dictionary (6th ed. 1990) (emphasis added). Black’s further describes a “fiduciary duty” as “the highest standard of duty implied by law.”

This fiduciary duty requires all public officials, when entering a contract or other financial transaction, to act in the best financial manner for the good of the government they represent for the public benefit to all, the “public purpose” as mentioned above, over the private individual or entity or other public entity.

### Types of Fiduciary Duties

Fiduciary duties may differ depending on the type of beneficiary that a fiduciary serves. However, in general, the legal and ethical obligations related to protecting the interests of beneficiaries include the following duties.

- **Duty of Care**

The law speaks in terms of a fiduciary using his or her "best efforts" on behalf of those served. This typically means using all possible skill, care and diligence when acting on behalf of those served. In the case of public servants, the task is for public officials to use their best skills, care and diligence in serving the public. This means it is the responsibility to inform oneself as completely as possible in order to exercise sound judgments that protect a beneficiary's interests.

It can involve the thoughtful consideration of options and sensible decision-making that's based on a careful examination of available information.

- **Duty of Loyalty**

This pertains to acting in the best interest of the beneficiary at all times, putting their well-being first and foremost. It includes the duty of the fiduciary to excuse themselves from taking actions when there's a conflict of interest with the beneficiary's welfare. When you join an organization's governing board, typically your role includes an obligation to act with the organization's best interests in mind. A variation on that theme occurs when what's best for the city or county as a whole conflicts with what your supporters want you to do or what's best for your district. As an ethical matter, when you become a member of a governing board, you take on *the responsibility to do what's generally best for the jurisdiction as a whole*. You can argue for measures that mitigate unfair burdens on sub-areas of the city or county or spread burdens more equitably (since fairness is another ethical value), *but pursuing parochial interests at the expense of the general welfare of the organization as a whole conflicts with your ethical duties to the organization*. A fiduciary is forbidden from acting in any manner adverse or contrary to the interests of those he or she serves. Put another way, as a public servant, your loyalty must be to the entity you serve and the public's interests, not your own interests.

- **Duty of Good Faith**

This duty pertains to always acting within the law to advance the interests of the beneficiary. At no time should the fiduciary take actions that are outside of legal constraints. Further, a fiduciary shall not do anything that will destroy or injure the right of the other party, in this case, the public, to receive the benefits of best actions taken by the City.

- **Duty of Confidentiality**

A fiduciary must maintain the confidentiality of all information relating to the beneficiary. They must not use any form of it, whether written or spoken, for their personal gain.

- **Duty of Prudence**

When the public places power in the hands of its public officials, the public relies on officials to exercise that power prudently. Indeed, the definition of "trust" is to rely on the integrity, strength and ability of a person or thing. Fiduciaries must administer matters and make decisions concerning the interests of beneficiaries with the highest degree of professional skill, caution, and critical awareness of risk.

- **Duty to Disclose**

Fiduciaries must engage in completely forthright behavior, disclosing any and all relevant information that could have an impact on their ability to carry out their duties as fiduciary and/or on the well-being of a beneficiary's interests. A person acting in a fiduciary capacity is held to a high standard of honesty and full disclosure.



“How far can we stretch no money?”

## **Chapter 10**

### **The Arkansas Freedom of Information Act**

*"Politics ought to be the part-time profession of every citizen who would protect the rights and privileges of free men."*

-Dwight D. Eisenhower

The Arkansas Freedom of Information Act (FOIA) (A.C.A. §§25-19-101 – 25-19-107), is a law with which all municipal officials should become familiar. Municipal officials who negligently violate FOIA may be found guilty of Class C Misdemeanor. In addition, citizens may sue for violations of the Act and, if successful, recover their attorneys' fees. The primary categories of attention for municipal officials should be:

- Public Records
- Open Meetings
- Executive Sessions

#### **Public Records**

“Public Records” are documents that are actually kept or are required by law to be kept and maintained and which record the performance, or lack thereof, of official functions. A.C.A. §25-19-103. These include the minutes from city council, planning and zoning, civil service, water and sewer, parks and recreation and any other meetings of a committee or commission established by ordinance or appointed by the mayor or city council. In addition, any public record, unless exempted by law, is subject to FOIA. Any citizen of the State of Arkansas may “inspect, copy, or receive copies of public records.” A.C.A. §25-19-105. Citizens do not have to state a reason or purpose in order to inspect city records.

However, a request to inspect the records should be directed to the “custodian of the records” (usually the city clerk or recorder, though this will depend on the type of record requested). The request does not have to be in writing. However, it is a wise practice to ask (but not require) that anyone requesting to see or copy city records make the request in writing. This will help protect the city and its officials in case a dispute arises over what was requested. If copies of public records are requested and if it is the policy of the city to charge a fee for copies, then the city may charge the actual costs of reproduction, but may not charge for the time of existing employees.

#### **Open Meetings**

All meetings of municipal governing bodies are required to be open to the public. A.C.A. §25-19-106. Because meetings “shall be public,” any person may attend. A quorum of the governing body need not be present for the meeting to be subject to FOIA. For regular city council or other regular city meetings (water and sewer, planning and zoning, parks and recreation and others), notice must be furnished to anyone who requests that information. For emergency or special called meetings, at least two hours' notice must be provided to any news media which have requested to be notified of emergency or special meetings.

#### **Executive Session**

The only time the city council may meet and exclude the media and the public is in executive session. Executive sessions are permitted only for the purpose of considering employment, promotion, demotion, disciplinary action or resignation of any public officer or employee. In

addition, an executive session is authorized for the discussion of public water system security measures in accordance with A.C.A. §§25-19-105(b)(18) and 25-19-106(c)(6).

Actions discussed in executive session become legal only after the city council ratifies the action with a public vote in open session. Meetings for the purpose of executive session still must be announced publicly. For example, “We are going into executive session to discuss the discipline of an employee.” You do not have to state the employee’s name publicly, however.

Unless the city attorney is being considered for employment, appointment, promotion, demotion or disciplinary action, then he/she may not meet in executive session with the mayor and city council. Likewise the city clerk or city clerk-treasurer should not be in executive session.

This is only a brief overview of a complex law. If in doubt on an action, consult with your city attorney or AML.



## Chapter 11

### Police Powers – A Municipality’s Most Important Power to Protect Its Residents

*“It is within the police power of the state to prohibit public use of fighting words that create a danger of breach of the peace, but simply to prohibit public use of fighting words is too broad. Those words may sometimes be used in situations where there is no danger.”*

-Ithiel de Sola Pool

#### Origins of Police Powers

The general police power does not refer to the power of state government to maintain and deploy a police force, though it includes that power. Instead, the police power refers to the broad authority of state government to establish laws that preserve the public health, safety, welfare and morals. This power provides sweeping authority to State government, and it serves as the basis for much of its law making powers. Through the general police power, a state or local government may enact a host of laws regulating the lives of its citizens. Police power is the workhorse of local government—the very enabling power that provides most cities their legal authority to act that is used hundreds, if not thousands, of times a day. The question arises then, “Where did the concept of state police powers originate and how did it become part of our American government?”

While the term “police power” is an American convention, the concept of the police power is purported to have roots in ancient Roman Law and the English Common Law. The term “police” comes from the Latin “politia” meaning the civil administration or government. This became the French term “police” and was adopted into the English language. During the 1700s and 1800s, the term, “police” was used as a synonym of “policy.” Blackstone’s Commentaries on the Laws of England include a discussion of “public police and economy” by which he meant “the due regulation and domestic order of the kingdom, whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, and be decent, industrious and inoffensive in their respective stations.”

With the advent of the American Revolution, the proponents of the rebellion had to wrestle with the ensuing radical change in political structure resulting from the revolt. No longer would sovereignty (power) rest with the king or queen. Rather sovereignty now rested with the people as exercised through a new form of representative democracy in the original thirteen states which, united in purpose, declared their independence from the King. As these thirteen independent “Democratic Republics” saw the value of united action, the advocates for a national government had to figure out what power to give to a national government and what power should remain with the states. Their first attempt, the Articles of Confederation, had certain shortcomings in the minds of many, so the second attempt resulted in the United States

Constitution and the current federalist system of government. Chief Justice John Jay’s 1793 opinion in what is considered the first significant United States Supreme Court decision

*Chisholm v. Georgia*, 2 U.S. 419 (1793) confirming that sovereignty rests with the people when he wrote”

“From the differences existing between feudal sovereignties and Governments founded on compacts, it necessarily follows that their respective prerogatives must differ. Sovereignty is the right to

govern; a nation or State-sovereign is the person or persons in whom that resides. In Europe the sovereignty is generally ascribed to the Prince; here [the United States] it rests with the people...

The first use of the term “police power” in U.S. Supreme Court jurisprudence was Justice John Marshall’s reference in the 1827 case of *Brown v. Maryland*, 25 U.S. 419, 443 (1827), where he remarked that “[t]he power to direct the removal of gunpowder is a branch of the police power, which unquestionably remains, and ought to remain, with the States.” The use of the term grew, in fits and starts, throughout the nineteenth century. Five major developments in the police power concept occurred as it came into popular use in the late nineteenth century as cities increasingly utilized regulations to curb the negative effects of the Industrial Revolution.

### **The Five Major Developments of and in Municipal Police Power**

First, courts came to view the police power as a substitute for two generalized doctrines arising from common law. The first doctrine, *salus populi suprema lex*, derived from Cicero, is typically translated as “let the good of the people be the supreme law.” The second maxim, *sic utere tuo ut alienum non laeda*, is generally translated as “use your own property in such a way that you do not injure other people’s” was first noted in *Slaughter-House Cases*, 83 U.S. 36, 62 (1872), which the Court stated”

“that private interests must be made subservient to the general interests of the community. This is called the police power.”

Second, the U.S. Supreme Court articulated in *Munn v. People of State of Illinois*, the Court announced that the police powers:

“are nothing more or less than the powers of government inherent in every sovereignty, . . . that is to say, . . . the power to govern men and things.”

This second line of support for police powers were further clarified in *Mugler v. Kansas*, when the Court stated:

“It belongs to that [legislative branch of government] to exert what are known as the police powers of the State, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety.”

A third major development in the police power also arose in this time: the Court’s clear exertion of judicial review over the legislative exercise of police power. The Court’s decision was the first to announce some substantive component to the Fourteenth Amendment’s Due Process Clause, and with that decision came the Court’s announcement in *Mugler* that it could review police power enactments and mandate a requirement of reasonableness. The Court more clearly announced this two-part test of Court review of police power in *Lawton v. Steele*, providing that the state had to justify the use of the power by showing:

- (1) “that the interests of the public generally, as distinguished from those of a particular class, require such interference”; and,
- (2) “that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.”

As the *Lawton* Court concluded, “what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.”

A fourth important development as to the extent of the police power also took shape in this era: the relation of the police power to individual rights. On the one hand, the Court announced in *Boston Beer Co. v. State of Massachusetts*:

“All rights are held subject to the police power of the State.”

In other words, a fundamental component of the police power is that it prioritizes public over private interests. On the other hand, the Court held in this era, and in numerous decisions that federal and state constitutionally-protected individual rights form an outer boundary of the police power. Wrestling between these two poles—the police power’s prioritization of community rights and the simultaneous outer reaches of constitutionally protected individual rights is the constant decision making of the U.S. court system.

Fifth, the relationship between the police power of states and the commerce power of the federal government was clarified. In the *License and Passenger Cases*, the primary concern was whether state police power and federal commerce power overlapped, or whether they defined mutually exclusive spheres of authority. The answer, which has been drawn into stark relief in our own time, was that states may act upon matters also regulated by the federal government, but only so long as the federal government has not otherwise preempted state action. For instance, in the *License Cases*, the Court held that:

“State power, and especially police power, may be exercised upon matters within the jurisdiction and under the control of the United States without incompatibility or repugnance. The protection of life, health, and property demand it.”

The only limitation federalism imposed was that such laws’ exercise could not “defeat or subvert the power of the United States,” in which case the law would be viewed as “incompatible or repugnant” of federal supremacy.

In *Berman v. Parker*, in which the U.S. Supreme Court upheld an urban renewal plan to tear down a blighted section of Washington D.C. *Berman* exhibits a profound deference: the legislative act is “well-nigh conclusive” after *Berman*. The *Berman* case will again be discussed later in this Chapter with additional details but the main point of *Berman* is this. After *Berman*, the police power became the de facto authority to justify almost every local governmental action. When local governments act, other authorities may be cited, but the police power is always there, as well.

### **Municipal Use of Police Power Presently**

Today, police power is the term for general governmental power to protect the health, safety, morals, and general welfare of the citizenry. The sovereign power of a state includes protection of safety, health, morals, prosperity, comfort, convenience and welfare of the public. In the U.S., the authority to regulate local matters concerning health, safety, and morality of state residents is reserved to states under the Tenth Amendment to the U.S. Constitution, which states that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” That is, in the United States, the federal government does not hold a general police power but may only act where the Constitution enumerates a power. It is the states, then, who have reserved to themselves and hold, the general

police power. This is a central tenet to the system of federalism, which the U.S. Constitution embodies and allows for the division of police powers to the states and ultimately, to local governments.

The basic right of local governments to make laws and regulations for the benefit of their communities is police powers. Police power is defined as the power of a governmental body to impose laws and regulations which are reasonably related to the protection or promotion of a public good such as health, safety or welfare. Usually states delegate to their political subdivisions the power to enact measures to preserve and protect safety, health, welfare, and morals of the community.

Police power does not specifically refer to the right of state and local governments to create police forces. The exercise of police power can be in the form of making:

- laws, compelling obedience to those laws through physical means with the aim of removing liberty;
- legal sanctions; or,
- other forms of coercion and inducements.

Police powers of a municipality are a major function among various governmental functions. Police power extends to all appropriate ordinances for the protection of peace, safety, health, and welfare of the people. General welfare is a generic term to describe police power.

The primary function of police power is the promotion of public welfare. Coercive measures are adopted in police power to regulate threats to public interest.

#### **Use of Police Power Providing Authority for Ordinances**

Generally, a municipality exercises police power by adopting ordinances. A municipality issues ordinance in order to:

- promote public welfare;
- provide for the safety and comfort of its inhabitants; and,
- declare and prevent nuisances.

#### **Areas of Use of a Municipality's Police Power**

Preservation of public health is one of the significant aims behind exercising a state's police power. A citizen can hold property safely only when municipal corporation exercises police power validly and cautiously.

Police power permits passage of general laws for the entire municipality and special laws applicable to particular localities, highways, rivers, streets, and limits of a territory or a city.

Building regulations issued by a municipality is an exercise of police power.

Abatement of nuisances, as a means to promote the public health, safety, and welfare, is a valid goal of the municipal police power. A municipality has the authority to investigate, declare, and seek the abatement of nuisances

Police power of a municipality includes the power to prevent an anticipation of danger to come. There must be an active and earnest interest to protect the public. In order to provide safety, a municipality is empowered to curb and restrain the individual freedom, any business or activity.

The authority given to a municipality to enact ordinances regulating businesses includes:

- the authority to charge a reasonable regulatory fee to cover the cost of the regulation; or,
- a fee for the cost of a business failure

### **Restrictions on A Municipality's Police Power**

The right to exercise police power is an attribute of sovereignty. Police power is of vast and undefined extent and municipalities have wide discretion while exercising it. However, although broad, police power is subject to restrictions of state and federal constitutions. Police power should not infringe protections contained in the U.S. constitution.

Police power is thus limited by:

- the rights guaranteed by the Constitution;
- the necessity of a legitimate public purpose; and,
- a reasonable exercise of other powers.

### **Regulation of Land Use**

The authority to regulate the use and development of land is derived from the police power of the state. Therefore, zoning is also a police power. In 1954, Berman v. Parker expanded the police powers of zoning to include aesthetics, in addition to “public health, safety and welfare”:

“The legal basis for all land use regulation is the police power of the city to protect the public health, safety, and welfare of its residents. ... The concept of the public welfare is broad and inclusive... The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.”

The Supreme Court in 1894 provided a statement on the limitations of the police power in Lawton v. Steele, 152 U.S. 133, 137 (1894):

“It must appear, first, that the interests of the public . . . require [governmental] interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.”

Land use regulation then, as an exercise of the police power, may be imposed only (1) for valid public purposes, (2) through means reasonably tailored to those purposes, and (3) in a manner that does not impose excessive costs on individuals. Courts traditionally have deferred to the legislature on the reasonableness of a particular form of land use regulation, refusing to second guess the legislature if the question is “fairly debatable.”

Police power belongs to state governments, but all states, except Hawaii, have delegated the power to impose land use regulations to cities and counties. This delegation has been accomplished in two ways: (1) general delegation of police power through constitutional or legislative authority to enact home rule charters; and (2) broad enabling statutes authorizing zoning, subdivision regulations, and other forms of land use control.



## Chapter 12 Zoning

*“In today's society a zoning commissioner or a tax assessor can have far greater impact on personal liberty than a president.”*

-Clint Bolick

Land use law is a relatively new area. With population growth in the 20<sup>th</sup> century and the trend toward urbanization, it became clear that an individual's use of property could have a negative impact on the health, safety, and welfare of the whole community. As in many areas of law, the rights of the individual had to bend for the good of the community. Regulation of the use of real property, land and buildings, now occurs at all levels of government and comes from all three branches.

Land use and zoning laws involve the regulation of the use and development of real estate. The most common form of land-use regulation is zoning. Zoning regulations and restrictions are used by municipalities to control and direct the development of property within their borders. Zoning is the division of a municipality into districts, with different standards for uses, intensity of use, and structures in each. Since New York City adopted the first comprehensive zoning ordinance in 1916, zoning regulations have been adopted by virtually every major urban area in the United States.

### Origins of Zoning in the United States

Los Angeles is generally credited with the first large-scale municipal zoning and land-use regulation in the United States. In 1904, Los Angeles adopted an ordinance that established the nation's first land use restrictions—prohibiting industrial uses in residential districts. On September 14, 1908, the Los Angeles City Council promulgated residential and industrial land use zones. The new ordinance established three residential zones of a single type, where industrial uses were prohibited. The proscriptions included barns, lumber yards, and any industrial land use employing machine-powered equipment. These laws were enforced against industrial properties after the fact. These prohibitions were in addition to existing activities that were already regulated as nuisances. These included explosives warehousing, gas works, oil drilling, slaughterhouses, and tanneries. Los Angeles City Council also designated seven industrial zones within the city. However, between 1908 and 1915, the Los Angeles City Council created various exceptions to the broad proscriptions that applied to these three residential zones, and as a consequence, some industrial uses emerged within them. In 1913 Minnesota and Wisconsin empowered cities to create residence zones similar to those in Los Angeles.

On the other side of the United States in 1912, tragedy struck New York City. The headquarters of the Equitable Life Assurance Society of the United States – an insurance company – burned down on a day so cold, water from the fire trucks froze before it could douse the flames. The entire structure was lost.

Needing a new home, the Equitable's principals made plans to construct a new, 42-story building near the burgeoning Financial District of Lower Manhattan. When completed in 1915, the new building was massive, containing more square footage of office space than any other building in the world. Its presence was unmistakable, and for the people living in adjacent buildings, it was unmistakable for all the wrong reasons.

The new Equitable Building cast a perpetual seven-acre shadow, leaving some tenants in the Singer and City Investing Buildings in permanent shade. At least three other buildings no taller than 21 stories were robbed of sunlight. Not a very equitable situation, people reasoned; and what might New York turn into if more buildings of the Equitable's height and bulk were built?

At the same time, in other parts of town, residents were dealing with another set of land use woes. Warehouses and factories were encroaching into residential areas and hemming ever closer to some of the more fashionable districts in town like the posh 5<sup>th</sup> Avenue. The impacts of these industrial establishments were noticed far beyond property boundaries as the noise, smells, sights and sounds ignored borders. In 1916, the shop merchants in New York City's Fifth Avenue Association expressed their worries about congestion and declining land values affecting their profits. Neighbors began to express concerns that the value of their homes and residences would decline because of the closeness of these noxious uses.

The City's officials realized something had to be done. In response, the city introduced zoning as a legal tool and the answer.

While other American cities had experimented with separating incompatible uses, such as heavy industry from residential neighborhoods, New York became the first city in the country to adopt a comprehensive zoning ordinance in 1916.

Topping out at a whopping 12 pages, the ordinance dealt with the issue presented by the Equitable by requiring new skyscrapers to periodically step back the width and bulk of the building as it rises into the sky. As a result, light and air were better able to penetrate down to ground level. It addressed the issue of incompatible uses by establishing three districts – or zones – wherein certain uses were allowed and others prohibited.

Unknowingly, New York had effectively created the blueprint for early American zoning laws, and many municipalities throughout the States adopted zoning similar to New York's in the following years. In 1924, on the direction of then Secretary of Commerce Herbert Hoover, the first unified zoning guidelines were published, laying the basic foundation for zoning regulations. Today, Houston, Texas remains the last large American city without a comprehensive zoning ordinance.

So, which city was truly the “first” city to pass a zoning ordinance? It depends on what you consider a zoning regulation to be. While Los Angeles passed the first in time what would be considered to be a “zoning” ordinance, there are two differences between the Los Angeles 1908 Residence District Ordinance and later zoning laws in the United States. First, the Los Angeles 1908 laws did not establish a comprehensive zoning map as the 1916 New York City Zoning Ordinance did. Second, the residential zones did not distinguish types of housing; they treated apartments, hotels, and detached-single-family housing equally.

Over time, the land use and development issues zoning ordinances address have expanded far beyond those originally recognized by New York. Many of today's zoning codes – often referred to as “conventional” zoning – share a regulatory system that essentially mandates the creation of low-density, auto-dependent suburban neighborhoods. These regulatory elements and their affects can include:

- Large lot sizes: Requiring new lots to have a minimum square footage, prohibiting creation of smaller lots that would accommodate a wider variety of building types.

- Minimum house sizes: Requiring new houses to contain a minimum square footage, prohibiting creation of smaller homes.
- Highly prescriptive use separation: Requiring that a highly defined and specific set of land uses be segregated, prohibiting even a basic mix of uses like a corner store in a residential neighborhood.
- Deep setbacks: Requiring new structures to be set back a minimum number of feet from streets or sidewalks, prohibiting new structures from framing the public space.
- Minimum parking requirements: Requiring new structures to accommodate on-site parking, challenging developers' ability to effectively utilize site space.
- Building design standards: Requiring certain architectural elements to be included in new buildings. Design standards have received relatively more attention in conventional zoning codes than other elements, and in some cases are quite good. Poorly drafted design standards can result in unattractive building facades and incongruous store fronts.

While alternatives to conventional zoning rules have emerged, it remains the prevailing form of land use and development control in many modern cities. Predictably, application of conventional zoning continues the prevailing pattern of suburban development. It hinders a developer's ability to bring the variety of products to the market that an increasingly diverse market desires.

In 1924, then Secretary of Commerce Herbert Hoover, an enthusiastic technocrat at the time who was out of step with President Calvin Coolidge's laissez-faire philosophy, saw government planning as a clear improvement over free-market urban development. Thus, he convened a panel of zoning experts to write a Standardized State Zoning Enabling Act (SZEA) that states could copy.

Secretary Hoover proudly led the nation's cities and towns toward central planning, announcing that "The importance of this standard State zoning enabling act cannot well be overemphasized." The Government Printing Office published it and sold 55,000 copies (for a nickel each) in the first two years. Nineteen states had used the standard act as a model for their own legislation by 1925.

### **Village of Euclid v. Ambler Realty Co.**

Since such far-reaching land use regulation was not, however, a traditional power of local government, questions arose in state and federal courts. State courts permitted most zoning, but the Supreme Court had not yet ruled on the matter. Questions abounded: How far could localities go? To clarify their newfound powers, several states passed "zoning enabling acts," which explicitly gave broad regulatory powers to their municipalities.

The U.S. Supreme Court's sanction of this exercise of a city's police power over land use came first in Hadacheck v. Sebastian (1915), which involved the Los Angeles ordinance. The constitutionality of zoning ordinances was culminated in the definitive Village of Euclid, Ohio v. Ambler Realty Co., in 1926 when the U.S. Supreme Court upheld the zoning ordinance of Euclid, Ohio. The zoning ordinance of Euclid, Ohio was challenged in court by a local land owner on the basis that restricting use of property violated the Fourteenth Amendment to the United States Constitution. Ambler Realty Company filed suit on November 13, 1922 against the Village of Euclid, Ohio, alleging that the local zoning ordinances effectively diminished its property values. The village had zoned an area of land held by Ambler Realty as a residential neighborhood. Ambler argued that it would lose money because if the land could be leased to

industrial users it would have netted a great deal more money than as a residential area. Ambler Realty claimed these breaches implied an unconstitutional taking of property and denied equal protection under the law.

The trial court originally ruled in Ambler's favor, holding zoning unconstitutional. Among other reasons, the trial court found that zoning was an illegitimate device to facilitate social and economic segregation. Nonetheless, the U.S. Supreme Court reversed that decision, holding that zoning was a nuisance-preventing device, and as such a proper exercise of the state regulatory police power.

By 1926, 68 additional cities had adopted zoning regulations. After the Supreme Court issued a ruling supporting zoning as an expression of police power, 1,246 municipalities, perhaps encouraged by the ruling, adopted zoning in the 10 years between 1926 and 1936.

### **What Exactly Are Zoning Regulations?**

The basic purpose and function of zoning is to divide a municipality into residential, commercial, and industrial districts (or zones), that are for the most part separate from one another, with the use of property within each district being reasonably uniform. Within these three main types of districts there generally will be additional restrictions that can be quite detailed -- including the following:

- Specific requirements as to the type of buildings allowed
- Location of utility lines
- Restrictions on accessory buildings, building setbacks from the streets and other boundaries
- Size and height of buildings
- Number of rooms

These restrictions may also cover:

- frontage of lots;
- minimum lot area;
- front, rear, and side yards;
- off-street parking;
- number of dwelling units.

Regulations may restrict areas to single-family homes or to multi-family dwellings or townhouses. In areas of historic or cultural significance, zoning regulations may require that those features be preserved.

### **Regulation of Development**

Land-use regulation is not restricted to controlling existing buildings and uses; in large part, it is designed to guide future development. Municipalities commonly follow a planning process that ultimately results in a comprehensive or master plan, and in some states the creation of an official map for a municipality. The master plan is then put into effect by ordinances controlling zoning, regulation of subdivision developments, street plans, plans for public facilities, and building regulations. Future developers must plan their subdivisions in accordance with the official map or plan.

In recent years, an increasing emphasis has been placed on regional and statewide planning. Recognizing that the actions of one municipality will strongly affect neighboring cities,

occasionally in conflicting and contradictory ways, these planning initiatives allow the creation of a regional plan that offers one comprehensive vision and one set of regulations.

### **Limits on Zoning Regulation**

Since land-use and zoning regulations restrict the rights of owners to use their property as they otherwise could (and often want to), they are at times controversial. Additionally, the scope and limits of governments' ability to regulate land use is hard to define with specificity. Courts have held that a zoning regulation is permissible if it is reasonable and not arbitrary; if it bears a reasonable and substantial relation to the public health, safety, comfort, morals, and general welfare; and if the means employed are reasonably necessary for the accomplishment of its purpose.

Given the subjective nature of these factors, there is obviously a lot of room for disagreement, and on occasion litigation. One extremely difficult question presented in this area of law is how far land-use regulations may go without running into the constitutional prohibition against taking private property for public use without just compensation.

### **Challenges to Zoning Regulations**

There are numerous other restrictions on the power of government to regulate land use, any of which may provide a basis upon which such regulations can be challenged. Zoning ordinances must be reasonable based on all factors involved, such as the need of the municipality; the purpose of the restriction; the location, size, and physical characteristics of the land; the character of the neighborhood; and its effect on the value of the property involved. The rationale behind zoning is that it promotes the good of the entire community in accordance with a comprehensive plan.

*Spot zoning* of individual parcels of property in a manner different from that of surrounding property, primarily for the private interests of the owner of the property so zoned, is subject to challenge unless there is a reasonable basis for distinguishing the parcel from surrounding parcels. Restrictions based solely on race or occupancy of property are not permitted, and a classification that discriminates against a racial or religious group can only be upheld if the state demonstrates an overwhelming interest that can be served no other way.

In many jurisdictions, statutes have created boards of zoning appeals to handle these issues. These are quasi-judicial bodies that can conduct hearings with sworn testimony by witnesses and whose decisions are subject to court review. Given both the complexity of zoning law and the specialized nature of zoning appeals boards, an owner who contests a zoning requirement is ill-advised to try to argue his or her case without legal assistance.

### **Non-Government Restrictions: Restrictive Covenants and Easements**

Not all land use restrictions are created by governments. Land developers may also incorporate restrictions in their developments, most commonly through the use of restrictive covenants and easements:

Restrictive covenants are provisions in a deed limiting the use of the property and prohibiting certain uses. Restrictive covenants are typically used by land developers to establish minimum house sizes, setback lines, and aesthetic requirements thought to enhance the neighborhood.

Easements are rights to use the property of another for particular purposes. Easements also are now used for public objectives, such as the preservation of open space and conservation. For

example, an easement might preclude someone from building on a parcel of land, which leaves the property open and thereby preserves an open green space for the benefit of the public as a whole.

### **Authorization for Local Zoning Laws**

Zoning laws are almost always enacted and enforced by local, and not statewide or nationwide, authorities. City governments, town governments, village governments and the like are merely functions of the state government. They derive all of their authority from the states in which they reside.

Therefore, for a local government to be able to pass a zoning law, the state government must first give it the power to do so. Generally, the states pass statutes allowing their cities and towns to govern certain aspects of their own land use law. These statutes are known as “enabling acts” because they enable the local governments to pass their own laws. Figure 3 below shows the division of zoning authority between the different local governments in each state.

If a local government passes a law that is beyond the scope of its authority, the law is invalid. This type of law is known as an “ultra vires” local action.

### **Zoning Generally in Arkansas**

More than a century ago, Arkansas granted police power authority to municipal corporations to regulate the construction and repair of buildings primarily for purposes of fire prevention. The authority of the cities with regard to buildings was expanded in 1907, but it was not until 1924 that zoning regulations of more typical and modern vintage were permitted by statute. These early provisions are viewed as superseded in cities establishing planning commissions under the current enabling act. Since it is clear under the current statutes and under case authority that planning and the development of a comprehensive plan must precede the enactment of any valid zoning ordinance in Arkansas, these older statutes are of limited importance today.

The enabling legislation which in general regulates exercise of zoning powers today is Act 186 of 1957 which is codified for cities in Arkansas A.C.A. §14-56-401 *et seq.* Zoning in Arkansas is predicated on the police power and the Arkansas General Assembly has provided that its enabling statute is to be liberally construed per A.C.A §14-56-401<sup>12</sup>. The Act states that cities and incorporated towns are empowered to adopt and enforce plans for the coordinated, adjusted and harmonious development of the municipality and its environs. The plan or plans would provide for the development process and would be intended to serve traditional police power considerations. To carry out the plan, a planning commission would be established. The Commission would prepare plans, make recommendations on development, prepare regulations, prepare ordinances for the city legislative body to pass to implement the plan, and generally advise the city government.

Comprehensive studies, planning area maps, and various types of plans are authorized. All public development would have to be approved by the planning commission. Private developments would have to take place pursuant to and not in violation of the various plans and particularly in accord with the master street plan, although limitations are provided in order to eliminate the possibility that this might constitute a taking. Other provisions call for the carrying on of studies

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<sup>12</sup> “This subchapter shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.”

and the preparation of a land use plan, community facilities plan, a master street plan, and other plans in general. These plans are to be implemented primarily through the zoning ordinance regulating such things as the location, height, bulk, density, and size of buildings, open space, lot coverage, population density, land uses, off-street parking, and the like.

A board of zoning adjustment is given the power to grant variances and hear administrative appeals, although its variance power is limited to area variances and is not extended to use variances. The planning commission is also given extensive power over subdivision development. Procedures are provided for the adoption of plans, ordinances, and regulations, which involve notice and a public hearing.

Once a Zoning Ordinance or Zoning Code is passed by a city with the adoption of a Zoning Text Ordinance and a Zoning Map, all property within that city is zoned a certain district as defined by the Zoning text Ordinance and Zoning Map. Such designation for property stays until it is rezoned by the landowner or city by initiating a zoning change process through a petition to rezone the property.

### **Rezoning and Special Use Permits Requests in the City**

The first step in the rezoning process, which establishes an actual amendment to the Zoning Text Ordinance and Zoning Map, or for a Special Use Permit (“SUP”) is to contact planning staff to discuss the nature of the rezoning or SUP. Staff will explore the feasibility of your request and be reviewed for its compatibility with the existing land uses, adjacent zoning districts and the City Comprehensive Plan.







The second step is the submission of a petition to rezone or SUP. If the application requires the submission of a general site plan which is required of all planned unit developments (“PUD”), the information must be submitted along with the zoning application.

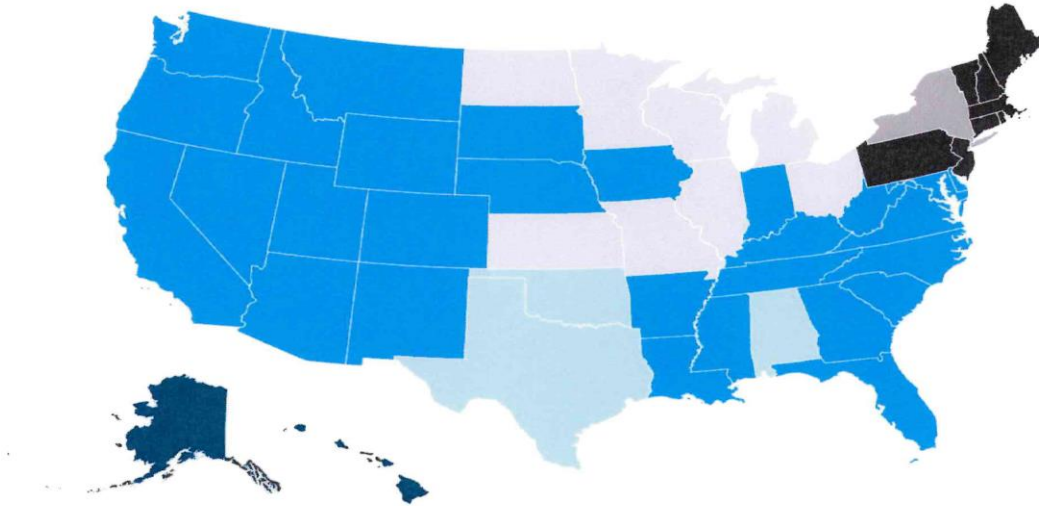
Following application submission, the petition to rezone is heard by the Planning Commission, who will make recommendation regarding the rezoning request to the City Council. The City Council will, in turn, decide the final disposition of the rezoning petition, and, if granted, will pass an ordinance rezoning the property in the petition which will change the Zoning Text Ordinance and Zoning Map of the city.

SUPs, while not zoning districts themselves, are special permits mandated by the Table of Permitted Uses allowing particular use within a standard zoning district under certain conditions and restrictions. Such a special use by permit, is approved by the Planning Commission.

**Figure 3**

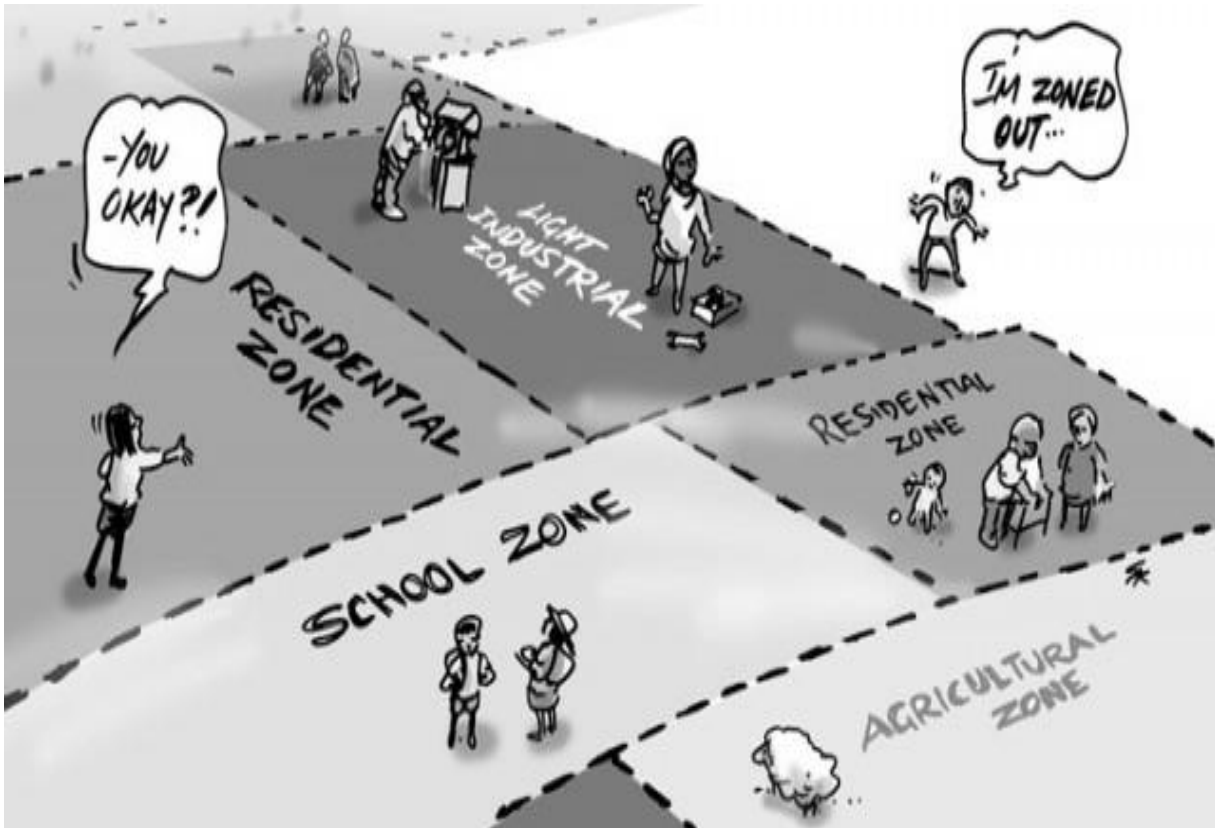
**Zoning Authority Arrangements by State**

- |  |  |
|--|--|
|  Counties or boroughs zone all land unless they cede power to municipalities.               |  Townships (equivalent to municipalities) zone all land. There is no unincorporated land. |
|  Counties zone unincorporated areas. Municipalities zone their own land.                    |  Townships zone all unincorporated land. Municipalities zone their own land.              |
|  Counties can't zone or must meet requirements to zone. Municipalities zone their own land. |  Counties and/or townships zone unincorporated land. Municipalities zone their own land.  |



Source: Author's analysis of state government statutes and secondary research.

Note: Townships are referred to as towns in New York and New England. A township is a jurisdiction smaller than a county that provides general government services for a defined area.



## **Chapter 13**

### **Local Sales & Use Taxes**

*“Our new Constitution is now established, and has an appearance that promises permanency; but in this world nothing can be said to be certain, except death and taxes.”*

-Benjamin Franklin

#### **A Brief History of the Sales Tax in the United States**

The sales tax in its modern form was first adopted by West Virginia in a gross sales tax in 1921. However, many believe what was known as the retail sales tax was first enacted during the Great Depression, with the first broad-based, general sales taxes in the United States were enacted by Kentucky and Mississippi in 1930, although Kentucky repealed its sales tax in 1936. Twenty-two other states began imposing general sales taxes later in the 1930s, followed by six in the 1940s by Florida, Tennessee, Maryland, Connecticut, Rhode Island and the District of Columbia; and in the 1950s by Maine, Pennsylvania, South Carolina, Georgia and Nevada. The general sales tax became the largest single source of tax revenue for states in 1947. Kentucky re-enacted its sales tax law in 1960. Eleven more states enacted sales tax laws during the 1960s, with Vermont as the last in 1969. Five states currently do not have general sales taxes: Alaska, Delaware, Montana, New Hampshire, and Oregon. Across the 45 states with a current retail sales tax, sales tax revenue made up on average 34 percent of all state tax revenues in 2016 – slightly higher than 32 percent in 1970. During World War II a national sales tax was proposed, but no action was taken by Congress. The proposal has been revived periodically, but changes in personal and corporate income taxes have been preferred over a national sales tax. The late Don Zimmerman, long time executive director of the Arkansas Municipal League described the city sales and use tax “the lifeblood” of the city for purposes of city revenue needed for the basic operations of a city since it is the single source of greatest revenue that a city receives.

#### **Authority for Local Sales Tax in Arkansas**

##### City Sales Taxes

###### *First Operating Authority*

May be used for general revenue, special revenue, if ballot limits use, or pledged to bonds if done by separate vote (A.C.A. §§ 26-75-201 *et seq.*).

###### *Second Operating Authority*

May be used for general revenue, special revenue, if ballot limits use, or pledged to bonds if done by separate vote (A.C.A. §§ 26-75-301 *et seq.*).

###### *Changes in Use or Term*

The uncollected use of city sales and use tax monies levied under the two foregoing operating authorities may be changed with voter approval. See §§ 26-75-208(c) and 26-75-308(e). A city may vote to extend the term of an existing tax prior to its expiration. See §§ 26-75-208(b)(3) and 26-75-308(c)(3).

###### *Other City Sales Taxes*

- Capital Improvements (tax dedicated exclusively for bond issue) (A.C.A. § 14-164-301 *et seq.*)
- 24 Months Alternative to Bond Issue (pay as you go) (A.C.A. § 14-164-338)

- 36 Months Alternative to Bond Issue (pay as you go) (for criminal justice purposes only) (A.C.A. § 14-164-340)
- Alternative for Operation or Maintenance (A.C.A. §26-73-113)
- Two-Year Tax for Parks (A.C.A. § 26-75-401 et seq.)

Economic Development Project Sales Tax

The Local Sales and Use Tax Economic Development Project Funding Act authorizes an economic development tax of up to 1% (in 1/8 increments) that must be voter approved with the tax collection delayed until a qualified project is identified (A.C.A. §§ 26-82-101-119). This supplements the authority to dedicate some existing sales tax to economic development under A.C.A. § 14-174-101 *et seq.*

Further Information about Sales Tax Collections

A.C.A. § 26-73-115 allows a mayor to obtain a quarterly report from the Arkansas Department of Finance and Administration listing businesses remitting sales and use taxes in the municipality.

**Procedure for City Sales Tax Election**

Municipalities have the authority to levy sales taxes, which must be adopted by ordinance (A.C.A. §§ 26-75-207(a) and 26-75-307(a)). Such ordinances must be approved by the voters at a special election (A.C.A. § 26-75-208; A.C.A. § 26-75-308). However, a special election may be held at the same time as a general election. See the chart below for days on which a special election may be held.

The following chart provides a timeline of requirements under both Arkansas statutes to levy a sales tax by special election. “T-x” refers to the number of days prior to the election day that deadlines occur. “DFA” refers to the Arkansas Department of Finance and Administration.

Election Requirements	Department of Finance and Administration Requirements
<b>T-120 days+</b>	
<ul style="list-style-type: none"> <li>• Select an election date.               <ul style="list-style-type: none"> <li>◊ The election date must be called for the next special election date under A.C.A. § 7-11-205. See A.C.A. § 26-75-208(a)(2); A.C.A. § 26-75-308(a) (2).</li> <li>◊ The election may be the same date as the next regular election if the next regular election is to be held within the next 120 days (A.C.A. § 26-75-208(a)(3)).</li> <li>◊ Dates available:                   <ul style="list-style-type: none"> <li>▪ Second Tuesday of the month of March, [redacted] or November in a year when a presidential election is held, and [redacted] November of all other years (A.C.A. § 7-11-205(a)(1)(A)(B)).</li> <li>▪ If the second Tuesday of the month is a legal holiday, the election should be held on the third Tuesday of the month (A.C.A. § 7-11-205(a)(1)(2)(A)).</li> </ul> </li> </ul> </li> </ul>	
<b>T-70 days</b>	
<ul style="list-style-type: none"> <li>• For elections held on a date of a preferential primary or general election:               <ul style="list-style-type: none"> <li>◊ File the levying and special election ordinances for the sales tax with the county clerk by this date. Election must be held at least seventy (70) days following this filing (A.C.A. § 7-11-205(b)(1)).</li> </ul> </li> </ul>	

Election Requirements	Department of Finance and Administration Requirements
<b>T-60 days</b>	
<ul style="list-style-type: none"> <li>• For elections <i>not</i> held on a date of a preferential primary, general primary or general election: <ul style="list-style-type: none"> <li>◊ File the levying and special election ordinances for the sales tax with the county clerk by this date. Election must be held at least sixty (60) days following this filing (A.C.A. § 7-11-205(b)(2)).</li> </ul> </li> </ul>	
<b>T-47 days</b>	
<ul style="list-style-type: none"> <li>• County board of election commissioners must prepare the official absentee ballots and deliver them to the county clerk no later than this date (A.C.A. § 7-5-407(a)).</li> </ul>	
<b>T-46 days</b>	
<ul style="list-style-type: none"> <li>• County clerk delivers the absentee ballots to qualified applicants (A.C.A. § 7-5-407(a)).</li> </ul>	
<b>T-45 days</b>	
	<ul style="list-style-type: none"> <li>• Submit the sales tax ordinance to the DFA secretary by this date (A.C.A. § 26-25-107). <i>It is advisable to submit much earlier than this date in order to have time to make any needed corrections.</i></li> <li>• Submit the ordinance to the secretary at:  <b>Department of Finance &amp; Administration</b>  <b>Sales and Use Tax</b>  <b>P.O. Box 1272</b>  <b>Little Rock, AR 72203</b>  <b>501-682-7104</b></li> </ul>
<b>Within 15 days of submission to DFA</b>	
	<ul style="list-style-type: none"> <li>• Ordinance is either approved or rejected by the secretary. If the ordinance is rejected, the secretary will explain the reasons for the ordinance's rejection.</li> <li>• The city is then required to correct the ordinance's defects. If not, the ordinance will be deemed defective and any tax levied under the ordinance will not be collected by the secretary.</li> <li>• If the levy is a result of an initiated measure, the county board of election commissioners must submit the initiated measure to the secretary.</li> <li>• Failure to submit an ordinance to the secretary, or the failure to use a sample form, will not render an ordinance invalid by itself (A.C.A. § 26-25-107(d)).</li> </ul>
<b>T-0 Election Day</b>	

After Election Day

- The mayor of the city is required to issue a proclamation of the results of the election one (1) time in a newspaper of general circulation in the city (A.C.A. §§ 26-75-209(1)(b), 26-75-309(1)(B)).
- The mayor of the city shall notify the secretary of the rate change after publication of the proclamation has occurred and ninety (90) days before the effective date of the tax (A.C.A. §§ 26-75-209(1)(D), 26-75-309 (1)(D)(i)).

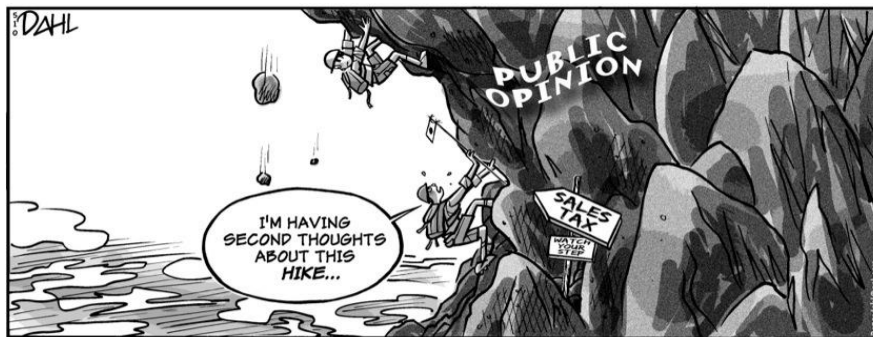
When the New Sales Tax Becomes Effective

- Any legal challenge to a sales tax election must be filed within 30 days after the proclamation has been published (A.C.A. §§ 26-75-209(1)(C), 26-75-309(1)(C)).
- If no legal challenge is presented...
  - Periods that must expire before the effective date of the new tax:
    - 90 days following notice to the DFA secretary after the election (meaning the tax approved in one calendar quarter will not be effective until after the end of the following calendar quarter).
    - 60 days' notice by DFA to collectors of the new tax.

- 30 days following the publication of the proclamation of results and expiration of the legal challenge period (A.C.A. § 26-75-209(1)(D) (ii); 26-75-309(1)(D)(ii)).
- Typically, new sales taxes go in to effect on the first day of the calendar quarter following the expiration of the foregoing statutory time periods (A.C.A. §§ 26-75-209(1)(D)(ii), 26-75-309(1) (D)(ii); A.C.A. § 26-75-411). Calendar quarter is defined as a three-month period beginning on January 1, April 1, July 1 or October 1).
  - However, the effective date may be deferred for up to 36 months if approved by the voters (A.C.A. §§ 26-75-207(d), 26-75-308(d)).
- If a legal challenge is presented...
  - Collection of the tax continues unless enjoined by court order (A.C.A. §§ 26-75-209(2), 26-75-309(2)).

After the New Sales Tax Becomes Effective

- As soon as is practicable, and no later than ten (10) days following each of the events set forth in the ordinance with reference to the procedure for the adoption or abolition of such tax and the effective dates of such action, the city clerk of the city shall notify the DFA secretary of such event.
- Accompanying the first of any such notices, the city clerk shall send to the secretary a map of the city clearly showing the boundaries of the city (A.C.A. §26-75-311(a)).
- Any time the city changes or alters its boundaries, forward to the DFA secretary the following materials at least 90 days before the effective date of the boundary change:
  - Certified copy of the ordinance adding or detaching territory affected by the tax.
  - A map clearly showing territory added or detached (A.C.A. §§ 26-75-211(b)(1); 26-75-311(b)(1)).



**Taxes, after all, are dues that we pay for the privileges of membership in an organized society.**

**- Franklin D. Roosevelt**

**Taxes are what we pay for a civilized society.**

**- Oliver Wendell Holmes Jr.**

## **Chapter 14**

### **Vacating Streets and Alleys in Arkansas**

*“A good neighbor increases the value of your property”*  
-Czech proverb

#### **City Council Authority over Right of Ways**

The City Council is granted the authority by the State of Arkansas over rights-of-way (“ROWs”) within its corporate limits per A.C.A. §14-301-101, which states:

The city council shall:

- (1) Have the care, supervision, and control of all the public highways, bridges, streets, alleys, public squares, and commons within the city; and
- (2) Cause those public highways, bridges, streets, alleys, public squares, and commons to be kept open and in repair, and free from nuisance.

A city over the course of its existence will acquire ROWs through three (3) main methods: by eminent domain, by deed or by dedication. A city have the authority to vacate or abandon ROWs through various state statutes setting out the processes for such vacations. Usually, a vacation of a ROW is petitioner driven, meaning that a person whose owns property adjacent to a ROW which is not being used by the city in any manner, petitions the city to vacate and abandon the ROW. The petitioner’s interest in this abandonment is to increase the size of his property adjacent to the ROW. By operation of law, all abandoned or vacated ROWs revert equally to the adjacent property owners.

#### Arkansas State Statutes Setting Out City Vacating Processes for ROWs

A.C.A. §14-54-104(2) Additional powers of cities of the first class

A.C.A. §14-301-110 Straightening or abandoning streets in cities of over 15,000 inhabitants

A.C.A. §14-301-112 Abandonment of unnecessary alleys in cities of the first class -- Utilities as property owners

A.C.A. §14-301-301 *et seq.*, Power and authority to vacate

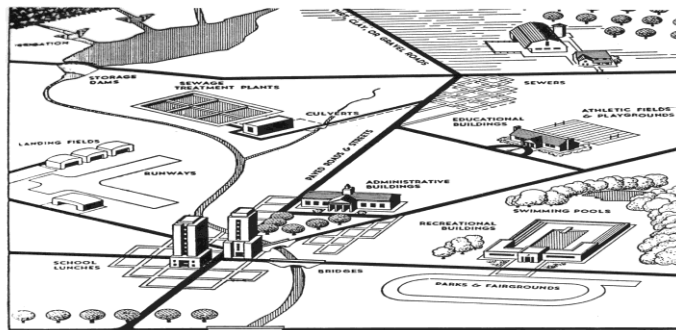
A.C.A. §14-301-401 *et seq.*, Closure of Alleys to Build Schools, Hospitals, Orphanages, or Churches

Almost all cities use either A.C.A. §14-301-301 *et seq.*, or A.C.A. §14-54-104(2) to vacate and abandon a ROW. Vacating a ROW under A.C.A. §14-301-301 *et seq.*, requires notice of the public hearing date will be published once a week for two (2) consecutive weeks in a newspaper having local circulation. To vacate a street or close an alley requires at least two (2) City Council meetings, one to set a public hearing date and another meeting for the public hearing and adoption of the Ordinance if closure is approved. The petition for vacating a street or alley will also be reviewed by the Planning Commission prior to the City Council decision on approval of the Ordinance vacating the street or alley and will provide a recommendation to the City Council or whether to approve or deny the petition.

## Process for Vacating a City ROW

A person interested having a City owned ROW vacated and abandoned should contact the Planning and Development Department and pick up an application packet to start their Petition to Vacate process. It provides greater detail than what is listed here. Generally, the process for a petition driver vacation and abandonment proceeds as follows:

- A petition signed by all property owners through whose property the street or alley extends and/or abuts. The petition shall state the name(s) of the person(s) initiating the petition and shall state the legal description of the street/ alley or portion of street or alley to be vacated. All signatures must be notarized.
- A copy of the plat showing the street/alley.
- Letters from all utility companies approving the request must be received prior to the Ordinance being approved or the Resolution being prepared. All letters must include an accurate legal description of the property.
- Evidence showing that the street/alley or portion requested vacated, shall not have been actually used by the public as a street or alley for a period of five (5) years from the date listed on the petition. Such evidence can include, but is not limited to, items such as Affidavits, etc. It is a requirement to submit sufficient evidence for Council's review and for successful adjudication of the Petition to Vacate.
- Once the completed application petition is submitted and accepted by the Planning and Development Department, it will be submitted to the Planning Commission for review. Once the Planning Commission has reviewed and made a recommendation on the petition, the petition will be placed on the City Council agenda under New Business as a Resolution to be passed setting a public hearing on the matter at the next City Council agenda. The notice of public hearing will need to be published in a newspaper having local general circulation for two consecutive weeks. At the public hearing, the City Council will consider an Ordinance to vacate the alley or street.
- An Ordinance adopting the vacation of street/alley will be prepared by the City Attorney's Office. If the City Council adopts the Ordinance, it will be published in The Courier. There is a charge to publish the Ordinance in The Courier. Petitioner shall bear the responsibility for the charge of publication. If the Petitioner does not pay the charge of publication, the Ordinance will not be published. If the Ordinance is not published, it will not become law and the vacation and abandonment of the street or alley will not occur.
- After the Ordinance has been approved by City Council, it will be filed with the Office of the Pope County Circuit Clerk and can take up to two (2) weeks for the filed copy to be returned back to the City.



## Chapter 15

### Eminent Domain, Inverse Condemnation and Regulatory Takings

*“All private property is held subject to the demands of a public use. The constitutional guarantee of just compensation is not a limitation of the power to take, but only a condition of its exercise.”*

-David J. Brewer, 1837-1910, U. S. Supreme Court Justice, Long Island Water Supply Co. v. Brooklyn, 1896

#### Takings Overview

A taking is when the government seizes private property for public use.

A taking can come in two forms. The taking may be physical, which means that the government literally takes the property from its owner. Or the taking may be constructive (also called a regulatory taking), which means that the government restricts the owner's rights so much that the governmental action becomes the functional equivalent of a physical seizure.

The power of the government through the use of eminent domain, to take private property and convert it into public use, is referred to as a taking. The Fifth Amendment provides that the government may only exercise this power if they provide just compensation to the property owners. A taking may be the actual seizure of property by the government, or the taking may be in the form of a regulatory taking, which occurs when the government restricts a person's use of their property to the point of it constituting a taking.

#### The History of Eminent Domain

Eminent domain, as we know it today, can be traced to the Latin term *Eminenes Dominium*, which referred to a government's power to appropriate private property for the public's use, with or without the property owner's consent. Eminent domain has a fairly simple definition: the power of government (legally known as “the sovereign”) to take property from private individuals, businesses, and non-governmental entities. The taking of property is known in some states as an acquisition, while eminent domain is frequently called condemnation. Although it is sometimes thought that this concept originated with the founding of our country, it actually has existed long before that. Historically, the power of eminent domain was exercised by the ruling class, or royalty, which was known as the sovereign or sovereignty.

The founders were concerned about the potential abuse of eminent domain—an early U.S. Supreme Court decision even refers to it as “the despotic power”—so they limited its use through the “takings clause” of the Fifth Amendment: “[N]or shall private property be taken for public use, without just compensation.” The clause limits eminent domain in two ways: first, the government can only take private property for a “public use” and second, the government must pay just compensation be paid to the former owner in an amount equal to value of the property taken. Both appear to be relatively recent developments, the compensation requirement emerging in Anglo-American jurisprudence in the late seventeenth century and the public use limitation coming largely after American independence from Britain. Eminent domain restrictions are similarly stated in 49 state constitutions. Indiana, the one exception, does not explicitly limit eminent domain in its constitution, but the state's courts have held that it is implied in the Indiana constitution's due process guarantee. Takings clauses vary in length and detail, but all require that the use of eminent domain be for a public use. While the federal constitution only applies to the “taking of property”, many state constitutions expanded owner rights by requiring the payment of just compensation for “damage” to property, as well.

## **How is Just Compensation Defined?**

Typically, a "just compensation" is determined by an appraisal of the property's fair market value. This means that any sentimental or other value held by the owner will not be considered in calculating compensation. Depending on the size and unique nature of the land, calculating the market value of property can be quite complex. Generally, one determines the fair market value by looking at the sales of similar property to that being taken. In many circumstances, there may not be similar sales under current market conditions to compare with. The property may have some complex considerations such as leasing value that must be considered. This all can make the valuations for fair market value challenging. There are, however, exceptions. The government need not compensate a property owner for the portion of the property's value created by that government.

## **Public Use Requirement**

Courts broadly interpret the Fifth Amendment to allow the government to seize property if doing so will increase the general public welfare. In *Kelo v. City of New London*, 545 U.S. 469 (2005), the Supreme Court allowed a taking when the government used eminent domain to seize private property to facilitate a private development. The Court considered the taking to be a public use because the community would enjoy the furthering of economic development. Further, the Kelo court determined that a governmental claim of eminent domain is justified if the seizure is rationally related to a conceivable public purpose.

The *Kelo* decision significantly broadened the government's takings power. This caused significant controversy, and states were quick to act to quell concerns about this expansion of power. In response to *Kelo*, many states have passed laws which have restricted governments' takings abilities (such as implementing a stricter definition of what constitutes a "public use," requiring heightened levels of scrutiny to justify an action categorized as a taking, etc).

The State of Arkansas's eminent domain authority is found in the state's constitution in Article 2, Section 23, along with the authority to tax. Article 2, Section 23, states:

“The State's ancient right of eminent domain and of taxation, is herein fully and expressly conceded; and the General Assembly may delegate the taxing power, with the necessary restriction, to the State's subordinate political and municipal corporations, to the extent of providing for their existence, maintenance and well-being, but no further.”

The Arkansas Constitution also has its just compensation clause for eminent domain one section ahead of the eminent domain section itself in Article 2, Section 22. Article 2, Section 22, states:

“The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.”

The first part of the clause is unique to Arkansas's constitution. No other state in the union has in their state constitution a declaration of the right of property is the highest right in the state.

## **Who Has the Power to Use Eminent Domain?**

Traditionally, federal and state governments have the power of eminent domain through their constitutions. The power of eminent domain can be delegated by the Arkansas General

Assembly to private non-government entities that have a public interest, such as public utilities, subject to these same requirements. Besides public utilities, the power can be delegated to local governments, such as cities and school districts. Examples of projects that require takings are power lines, pipelines, and railroad right of way. This power is typically granted by the state through a statute. It may require a specific application by the utility for each project. Not every such project, though, receives eminent domain power. When this happens, it usually involves projects for pipelines and power lines. In those cases, if the utility cannot negotiate an acquisition from the owners, the utility is forced to alter its route and negotiate with different owners.

The Arkansas Constitution permits the process of eminent domain, which is the taking of private property for public purposes as long as there is just compensation paid to the owner, legal authorization for the taking, and an observance of procedural due process. Eminent domain can be used to obtain property for public purposes such as improvement districts, electric power lines, natural-gas pipelines, irrigation and drainage companies, cemeteries, roadways, bridges, dams, and state colleges and universities.

In 2015, the Arkansas General Assembly restated and revised the requirements for the “procedural due process” part of the eminent domain process by adding a property owner’s “bill of rights.” Among other requirements, the bill of rights requires a condemning authority to notify a property owner when property is being considered for condemnation to estimate the compensation likely to be due for the property. The authority is required to make a good faith offer to an owner before filing suit. The owner can hire an appraiser to assist in negotiations or trial, or the owner may hire a real estate agent, planner, or investor instead. Such experts’ fees may be included in the owner’s cost recovery if it is determined that the owner’s just compensation is in an amount that exceeds by twenty percent the condemning authority’s initial offer. Appraisals are a vital part of the condemnation process, forming the basis for determinations as to whether compensation being paid is “just.” Filing an eminent domain legal action may immediately vest title and possession of property in the condemning authority, generally if it deposits in the court an amount that reflects the fair value of the property taken, based on an appraisal.

The practical results of the 2015 revisions to the statutes will likely be to pressure condemning authorities to negotiate earlier and more specifically in the eminent domain process, making offers they are willing to stand behind early in the process. There is no corresponding duty imposed on owners to make a good faith counter-offer. Further, allowing estimates by non-appraisers may reduce the costs incurred by an owner in countering an offer. The revisions will also expand the pool of potential value witnesses available to an owner, although without addressing the weight of their testimony. The ultimate result, intended or not, of the revisions may be a situation that favors property owners. The bill of rights for property owners is found at A.C.A. §18-15-103.

### **Arkansas Property Owners’ Bill of Rights**

The Arkansas Property Owners Bill of Rights, found at A.C.A. 18-15-103, states the following:

- (a) The principles expressed in subsection (b) of this section shall serve as standards to be followed in any proceeding that involves an entity authorized by law to exercise the power of eminent domain.

(b) An owner of property subject to a proceeding to condemn private property under the right of eminent domain shall have the following bill of rights:

- (1) A property owner is entitled to receive just compensation when private property is taken for a public use;
- (2) Private property may only be taken for public use;
- (3) Private property may only be taken by a governmental entity or a private entity authorized by law to exercise the power of eminent domain;
- (4) A property owner has the right to receive reasonable notification of an entity's interest in taking the property owner's private property;
- (5)(A) A property owner shall receive from the government or private entity an assessment of the just compensation the entity estimates for the property owner's private property before or contemporaneously with a good faith offer of just compensation.  
  
(B) However, when a property owner cannot be located and must be served by warning order, a filing of the assessment with the complaint for condemnation shall be sufficient compliance with subdivision (b)(5)(A) of this section;
- (6) An entity shall make a written good faith offer to buy the property owner's private property before initiating a condemnation proceeding;
- (7) A property owner has the right to hire an appraiser or other independent professional to determine the value of the private property or to assist the property owner in a condemnation proceeding;
- (8) A property owner has the right to hire an attorney to represent the property owner in a condemnation proceeding and negotiate on behalf of the property owner with the entity;
- (9) In a proceeding to condemn private property under the right of eminent domain, the circuit court shall impanel a jury of twelve (12) persons as in civil cases to determine the just compensation the government or private entity owes the property owner;
- (10) Any party has the right to appeal a decision entered by the circuit court under subdivision (b)(9) of this section; and
- (11)(A) Except as provided in subdivision (b)(11)(B) of this section, in a condemnation brought under the laws of this

state, a property owner shall be entitled to an award of the property owner's costs, expenses, and reasonable attorney's fees incurred in preparing and conducting the final hearing and adjudication, including without limitation the cost of appraisals and fees for experts if the compensation ultimately awarded exceeds the condemning entity's written good faith offer required under subdivision (b)(6) of this section by twenty percent (20%) or more.

- (B) An award of costs, expenses, and attorney's fees in a condemnation action brought by a county or municipality is governed by the laws that authorize the condemnation action.

### **State Law Authority for Cities**

The Arkansas state statutes authorizing cities the ability to use eminent domain are found in Title 18, Chapter 15 of the Arkansas Code. The statutes are as follows:

- A.C.A. §18-15-201 Power to condemn for parks, boulevards, and public buildings -- Improvement districts
- A.C.A. § 18-15-301 Municipal corporations -- Power to condemn generally -- for the construction of wharves, levees, parks, squares, market places, or other lawful purposes and for a city's waterworks systems and for a city's electric transmission systems and electric distribution systems
- A.C.A. §18-15-401 Right of a city to acquire property that operates a waterworks system
- A.C.A. §18-15-601 Power of eminent domain for municipal corporations in this state and all corporations, including not-for-profit corporations and water associations
- A.C.A. §18-15-1401 Right of eminent domain to take land for burial purposes for cities of the first class and cities of the second class and incorporated towns, cemetery or burial associations

Included in each subchapter of each statute are procedures the city is to follow to acquire the property to be taken for public use. Generally, a city will get an appraisal from a licensed appraiser providing the city with an opinion as to the value of the taken. The value of the property to be taken by a sovereign such as a city is based on a formula. The formula is that the amount to be paid to the private property owner is based on the difference between the value of the property before the taking and the value of the property after the taking less any improvements the remaining property acquired if the public use of the property taken benefitted the remaining property of the private property owner. The city then can deposit a check into the registry of the circuit court and acquire an immediate order of taking of the property so that progress on the public improvement will be impeded by having a trial over the amount of compensation first. If the amount the city deposits is in dispute, then the private property owner may contest the amount in circuit court in front of a jury who will hear the case and decide a final amount to award the private property owner.

### **What is an Inverse Condemnation?**

Inverse condemnation is a term used in the law to describe a situation in which the government takes private property but fails to pay the compensation required by the 5th Amendment of the

Constitution, so the property's owner has to sue to obtain the required just compensation. In some states the term also includes damaging of property as well as its taking. In inverse condemnation cases the owner is the plaintiff and that is why the action is called inverse – the order of parties is reversed, as compared to the usual procedure in direct condemnation where the government is the plaintiff who sues a defendant-owner to take his or her property.

Inverse condemnation is not addressed in the Constitution, but it is outlined in statutes. The premise of these statutes is to allow an owner the ability to seek just compensation where property is taken from the owner, but the condemning authority refuses to declare a taking and recognize the obligation to pay just compensation to the owner. Inverse condemnation is a cause of action to recover the value of the property which has been taken in fact, although not through eminent domain procedures. In this situation, the owner is required to start a lawsuit against the governmental unit that did the taking. In that lawsuit the owner asks the court to:

- 1) determine that a taking occurred; and,
- 2) order the governmental unit to pay just compensation.

If the owner is successful in obtaining a court order that a taking did occur, many states require the governmental unit to pay the owner the costs and fees that the owner incurred to obtain the order.

The classic inverse condemnation occurs when a governmental unit physically invades private property. This invasion does not need to be intentional. A rare example is the construction of a local road where no taking is declared. Another example is the diversion of water onto private property that would not have occurred but for actions or a project undertaken by the governmental unit. Courts have held that the invasion of property does not need to be permanent. Even a temporary invasion will be recognized by the courts as a taking which gives rise to the obligation to pay just compensation.

The basis of an inverse condemnation lawsuit against a city in Arkansas is in the Arkansas Constitution, Article 2, Section 22. The Arkansas Supreme Court stated in *Robinson v. City of Ashdown*, 301 Ark. 226, 783 S.W.2d 53 (1990), that:

“Article 2, Section 22 of the Arkansas Constitution provides that ‘[t]he right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.’ We have interpreted this provision to require compensation for a taking when a municipality acts in a manner which substantially diminishes the value of a landowner's land, and its actions are shown to be intentional.”

And,

“As originally conceived and developed, the concept of inverse condemnation was a remedy for physical taking of private property without following eminent domain procedures. “Fault” has nothing to do with eminent domain, and it is not bare trespass or negligence which results in inverse condemnation but something which amounts to a de facto or common law “taking.” J. Sackman & P. Rohan, Nichols on Eminent Domain, 8.1[4] (Rev.3d ed.1985,

Supp.1987). Inverse condemnation is thus a cause of action against a governmental defendant to recover the value of property which has been taken in fact by a governmental entity although not through eminent domain procedures.”

The following elements must be proven in Arkansas for an inverse condemnation claim to be successful against a city:

- The value of the property taken must not be through eminent-domain procedures
- Fault has nothing to do with eminent domain
- Trespass or negligence alone will not result in inverse condemnation but something which amounts to a de facto or common law “taking.”

When a municipality acts in a manner that substantially diminishes the value of a landowner’s land, and its actions are shown to be intentional, it cannot escape its constitutional obligation to compensate for a taking of property by inverse condemnation.

### **What is a Regulatory Taking?**

Another category of inverse condemnation, called a regulatory taking, appeared more recently in the history of eminent domain law during the latter part of the twentieth century. A regulatory taking occurs when a governmental unit enacts a regulation that is unduly burdensome on a property. If the regulation is so burdensome that all use of the property is lost, the result is a total regulatory taking. This is called a *Lucas* taking after the Supreme Court decision by that name which enunciated this rule. Where the regulation reduces the value of the property, but does not take all of the value, the result is a partial regulatory taking. This is called a *Penn Central* taking after the Supreme Court decision of that name which enunciated that rule.

Since it is rare that a regulation destroys all value in a property, *Lucas* takings do not occur very often. *Penn Central* takings are more frequent, albeit rare, but they are difficult to prove. Although the affected property can retain some value, Court decisions have shown that the value after the regulation should be no more than 30% of the pre-regulation value, and, more likely, no more than 10% of the pre-regulation value. The reason for the uncertainty is the refusal by courts to set a bright line for the amount of reduction that is needed. Each case is evaluated independently, where two other factors are also considered.

As noted, above, physical invasions can be either permanent takings or temporary. The same holds true for regulatory takings, however, the law surrounding temporary regulatory takings is very recent and not very well developed. That is one of the “frontiers” of eminent domain law.

The Arkansas General Assembly in 2015 addressed regulatory takings when it passed the Private Property Protection Act found at A.C.A. §18-15-1701 *et seq.* Four requirements set out for a landowner to meet. They are:

- (1) An owner of real property asserting a taking shall bring a cause of action in circuit court claiming that a regulatory program by a governmental unit has permanently reduced by at least twenty percent (20%) the fair market value of the real property;
- (2) The reduction shall be determined by comparing the fair market value of the real property as if the regulatory program is not in

- effect and the fair market value of the real property determined as if the regulatory program is in effect;
- (3) To assert that a taking has occurred, the regulatory program must have been implemented at the time the owner acquired title or after April 2, 2015, whichever is later; and,
  - (4) Upon a preponderance of the evidence, the real property shall be deemed to have been taken for the use of the public.

### **When is a Regulation a Taking?**

In the late nineteenth century, the U.S. Supreme Court refused to treat a regulation as a taking even where it rendered a private landowner's property nearly useless. *Mugler v. Kansas*, 8 S.Ct. 273 (1887). Yet, by 1922, federal constitutional law on regulatory takings began to change. The concept that there can be a regulatory taking—that a land use regulation can be so restrictive as to constitute a taking of private property— was first mentioned in a landmark U.S. Supreme Court case where the Court held that “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” *Pennsylvania Coal v. Mahon*, 43 S.Ct. 158, 160 (1922). Since 1922, the scope of regulatory takings that require compensation by the government has grown to include varied circumstances.

While often takings are obvious, some types of government regulations may be hard to classify as a taking or not. For example, if the government required a farmer to kill off its corn due to a spreading disease amongst corn, this arguably could be a taking of property through regulation. Sometimes, a government regulation infringes upon private property ownership to such an extent that the regulation can be considered a taking, thus requiring just compensation. The Supreme Court, over a series of regulatory takings cases, has developed a 4-part test to determine whether a regulation is considered to be a taking.

- Is the regulation a taking under *Loretto v. Teleprompter Manhattan CATV Corporation*?
  - A government regulation is a taking when the government authorizes a permanent physical occupation of real/personal property.
- Is the regulation a taking under *Lucas v. South Carolina Coastal Council*?
  - The regulation is a taking when the regulation causes the loss of all economically beneficial/productive uses of the land, unless the regulation is justified by background principles of property law/nuisance law.
  - With total regulatory takings, a given set of regulations have deprived a property of all economic value, leaving it useless for productive means. Property owners who have experienced a total regulatory taking must file an inverse condemnation lawsuit against the entity imposing the regulation to seek to recover the pre-taking fair market value of the property.
- Is the regulation a taking under *Nollan v. California Coastal Commission*, *Dolan v. City of Tigard* and *Koontz v. St. Johns Water Management District*?
  - The regulation is a taking if the government demands an exaction that lacks a nexus with a legitimate state interest or lacks proportionality to project's impacts
    - Exaction – a requirement that the developer provides specified land, improvements, payments, or other benefits to the public to help offset the project's impacts.

- Is the regulation a taking under the *Penn Central Transportation Co. v. New York City* balancing test?
  - Here a court will look at three (3) factors in a partial regulatory taking:
    - The character of the governmental action involved in the regulation. Here, the court balances the liberty interest of said property against the government’s need to protect or advance the interests of the public. This assessment includes determinations about the social value and location of the activity being limited, as well as numerous other factors related to the prohibited activity—i.e. the degree of harm created by said activity, the ease by which harm may be prevented, whether regulations target an individual, and the extent to which the regulation is retroactive.
      - If the government's action is a physical action, rather than a “regulatory invasion,” then the action is almost certainly a taking.
    - The extent to which the regulation has interfered with the owner’s reasonable investment-backed expectations for the parcel as a whole. The measure is the economic input factor, comparing the value that has been taken and the value which remains post-regulatory taking.
    - The regulation’s economic impact on the affected prop owner—the extent to which the regulation interferes with distinct, investment-backed expectations. Was the conditions of the land or property-owner were foreseeable?

### **Noxious Use**

Even if a government regulation is deemed a taking, it still may be viewed as justified, as long as it meets the noxious use test, also known as the *Mugler-Hadacheck* test. Under this test, a regulation adopted under the police power to protect the public health, safety, or welfare is not a taking, even if the taking reduces the value of property.

### **Pro Tanto Takings**

*Pro tanto* is Latin phrase meaning “to that extent” or “for so much,” and it often refers to a partial satisfaction of a debt or claim. In an eminent domain case, *pro tanto* describes the partial payment made by the government for the taking of land. This payment is given without prejudice, and the petitioner can maintain an action for the full amount of the land. What industry-people call a *pro tanto* taking, or a “substantial interference” taking, relates to a fundamental property interest tied up in the ‘bundle of sticks’ of property rights a landowner once held, which are (in essence) being ‘taken’ away.

In simple terms, *pro tanto* takings involve a court’s assessment of how a public project has interfered with the economic success or accessibility aims of a nearby property or business.

A classic example comes from the Supreme Court where a property was at grade with an abutting road, up until the time when the government elevated the road to build an overpass over nearby railroad tracks. As a result, the property lost its at-grade access, and instead faced a 30-foot retaining wall. Because the owner’s fundamental right of access to an abutting road was ‘substantially interfered’ with, the Supreme Court named the case a *Pro Tanto* taking.



"Eminent domain?! What happened to huffing and puffing?"

## **Chapter 16**

### **Types of Immunity for Municipalities and Municipal Officers**

*“An immunity is a freedom from suit or liability.”*

-W. Page Keeton et al., Prosser and Keeton on Torts § 131 (5th ed. 1984)

#### **What is a Tort? An Overview on Its History**

A tort is a civil wrong that causes a claimant to suffer loss or harm, resulting in legal liability for the person who commits the tortious act. Tort law can be contrasted with criminal law, which deals with criminal wrongs that are punishable by the state. While criminal law aims to punish individuals who commit crimes, tort law aims to compensate individuals who suffer harm as a result of the actions of others. Some wrongful acts, such as assault and battery, can result in both a civil lawsuit and a criminal prosecution in countries where the civil and criminal legal systems are separate. Tort law may also be contrasted with contract law, which provides civil remedies after breach of a duty that arises from a contract. Obligations in both tort and criminal law are more fundamental and are imposed regardless of whether the parties have a contract.

While tort law in civil law jurisdictions largely derives from Roman law, common law jurisdictions derive their tort law from customary English tort law. In civil law jurisdictions based on civil codes, both contractual and tortious or delictual liability is typically outlined in a civil code based on Roman Law principles. Tort law is referred to as the law of delict in Scots and Roman Dutch law, and resembles tort law in common law jurisdictions in that rules regarding civil liability are established primarily by precedent and theory rather than an exhaustive code. However, like other civil law jurisdictions, the underlying principles are drawn from Roman law. A handful of jurisdictions have codified a mixture of common and civil law jurisprudence either due to their colonial past or due to influence from multiple legal traditions when their civil codes were drafted. Furthermore, Israel essentially codifies common law provisions on tort.

#### **History and Overview in Arkansas**

Although governmental entities bear some responsibilities for wrongs to individuals harmed by their negligence, such entities must be protected from exposure to high judgments which would destroy them. Arkansas' earliest tort immunity derived from the reception statute, which incorporated the common law of England as long as that law was consistent with the Constitution and the laws of Arkansas.

The present Arkansas Constitution, adopted in 1874, provides in article 5, section 20 that “the State of Arkansas shall never be made defendant in any of her courts.” This immunity does not extend to municipalities, however. Nevertheless, the courts historically held under the common law that municipal governments were immune from liability in their “governmental” capacities, but were liable for wrongs committed in their “proprietary” capacities.

In June 1968, in the case of *Parish v. Pitts*, the Arkansas Supreme Court overruled 150 years of common law tort immunity for municipalities operating in their “governmental” capacity. Before this ruling, the courts had supported tort immunity on the ground that lawsuits against municipalities would likely bankrupt the vast majority of Arkansas' cities. However, the

Parish court ruled that this potential financial burden was speculative, at best, and insufficient to justify municipal immunity. Further, the court held that, because municipalities were separate entities and not “the state,” they should not be entitled to governmental sovereign immunity.

Within five months of the *Parish* decision, the 1969 session of the Arkansas General Assembly overturned *Parish v. Pitts* and replaced the former common law immunity with statutory tort immunity by the passage of Arkansas Act 165, effective on March 5, 1969, which, as amended, is codified by A.C.A. §§ 21-9-301 through 21-9-303.

### **The Arkansas Tort Immunity Statute**

The law for tort immunity is found here:

#### A.C.A. § 21-9-301. Tort Liability – Immunity Declared

- (a) It is declared to be the public policy of the State of Arkansas that all counties, municipal corporations, school districts, public charter schools, special improvement districts, and all other political subdivisions of the state and any of their boards, commissions, agencies, authorities, or other governing bodies shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.
- (b) No tort action shall lie against any such political subdivision because of the acts of its agents and employees.

#### A.C.A. § 21-9-302. Tort Liability – Settlement of Claims

Each county, municipal corporation, school district, special improvement district, or any other political subdivision of the state is authorized to provide for hearing and settling tort claims against it.

#### A.C.A. § 21-9-303. Motor Vehicle Liability Insurance Requirement

- (a) All political subdivisions shall carry liability insurance on their motor vehicles or shall become self-insurers, individually or collectively, for their vehicles, or both, in the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act, A.C.A. § 27-19-101 *et seq.*
- (b) The combined maximum liability of local government employees, volunteers, and the local government employer in any action involving the use of a motor vehicle within the scope of their employment shall be the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act, A.C.A. § 27-19-101 *et seq.*, unless the political subdivision has purchased insurance coverage or participates in a self-insurance pool providing for an amount of coverage in excess of the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act, A.C.A. § 27-19-101 *et seq.*, in which event the maximum liability of the insurer or pool shall be the limits of the coverage provided for in the policy or agreement.
- (c)(1) Any person who suffers injury or damage to person or property caused by a motor vehicle operated by an employee, agent, or

volunteer of a local government covered by this section shall have a direct cause of action against the insurer if insured, or the governmental entity if uninsured, or the trustee or chief administrative officer of any self-insured or self-insurance pool.

- (2) Any judgment against a trustee or administrator of a self-insurance pool shall be paid from pool assets up to the maximum limit of liability as provided in this section.

A.C.A. § 21-9-304. State Indemnification; Certain Actions

- (a) When any city of the first class, city of the second class, incorporated town, county, and its employees are called upon to assist the state and its employees and, as a result, are sued for their actions performed under the supervision of a state official or employee, the Attorney General shall defend the city of the first class, city of the second class, incorporated town, county, and its employees.
- (b) Should a judgment be rendered against the city of the first class, city of the second class, incorporated town, county, or its employees, the state shall pay actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in performance of his or her official duties.
- (c)(1) When cities of the first class, cities of the second class, incorporated towns, counties, and their employees are covered by any contract of insurance providing for legal defense, the cities of the first class, cities of the second class, incorporated towns, counties, their employees, and their insurers are not entitled to legal defense by the Attorney General.
- (2) Any judgment rendered against the cities of the first class, cities of the second class, incorporated towns, counties, their employees, or their insurers shall be paid by the state only to the extent that the judgment amount exceeds the limits of liability established in the contract of insurance

**Application of Immunity to Negligence v. Intentional Torts**

The Arkansas Supreme Court has repeatedly stated that A.C.A. § 21-9-301 extends immunity only for acts of negligence, but not for intentional torts. The court has interpreted § 21-9-301 in this manner despite statutory language and policy goals to the contrary. A.C.A. § 21-9-301 speaks only of immunity for torts in general rather than a reference to negligence.

Additionally, in *Thompson v. Sanford*, the court recognized that the legislative purpose of § 21-9-301 centered on the need to protect governmental entities “from exposure to high judgments which would destroy them.” Intentional tort claims may place cities under the burden of high judgments just as actions based on negligence may. Furthermore, the court applied the “negligence only” rule inconsistently. In *Loren D. Buttolph Trust v. Jarnagan*, for example, the court, without discussion of the “negligence only” rule, held that a mayor/waterworks manager

was immune under § 21-9-301 for “arbitrarily” refusing to extend water service to the plaintiff trust until the previous landowners’ delinquent water bill was paid in full.

In *Autry v. Lawrence*, the Arkansas Supreme Court, while reciting that the intent of the legislature was “to grant immunity to municipal agents and employees for acts of negligence committed in their official capacities,” extended immunity to actions against a police officer for the tort of malicious prosecution. In *Harrington v. City of Greenbrier*, the court held that a claim of “deliberate fraud,” which the court characterized as the tort of deceit, would be immunized under the statute. In another case, the Arkansas Court of Appeals stated that actions for trespass, an intentional tort, would be immunized under § 21-9-301. Finally, the court’s use of § 21-9-301 as a source for qualified immunity from civil rights actions further erodes its announced negligence limitation. Conversely, however, in *Doe v. Baum*, the Arkansas Supreme Court appeared to infer that § 21-9-301 immunity would not extend to acts of gross negligence or reckless indifference.<sup>38</sup> In *City of Farmington v. Smith*, the court said it has consistently “held that section 21-9-301 provides city employees with immunity from civil liability for negligent acts, but not for intentional acts.”

In another decision, the Arkansas Supreme Court declined to address the issue of whether intentional torts are covered by §21-9-301. Noting that it had consistently held that the statute grants immunity for negligent acts but not intentional ones, the court declined to consider the argument that intentional acts actually are covered. Nevertheless, the court held that, notwithstanding the intentional nature of the claims of false arrest and false imprisonment, the record did not establish that the defendant law enforcement officer’s actions constituted anything more than mere negligence. Accordingly, the court reversed the trial court’s denial of summary judgment to the officer. This signals the court’s willingness to look beyond the pleadings and, on a motion for summary judgment, grant immunity when the plaintiff is unable to demonstrate a genuine issue of material facts as to whether the officer’s conduct was intentional in nature.

In *Harris v. Beth*, the Arkansas Court of Appeals affirmed the trial court’s ruling that a police officer was not acting in his official capacity when his K-9 partner escaped his yard and bit a neighbor. The court disposed of the case by holding that the officer failed to prove a prima facie entitlement to summary judgment that the trial court did not err when denying him summary judgment, and that, therefore, the officer was not entitled to immunity. While the case was ultimately decided on procedural grounds, it provides an additional wrinkle in that the Arkansas Supreme Court has definitively said that §21-9-301 does provide immunity for municipalities from negligence claims, has declined to extend the immunity to intentional torts (but has inconsistently applied it to cover intentional torts in some cases) and has not addressed the issue of strict liability claims at all.

*Williams v. Mannis* reiterated the ruling in *Trammell* as applied to a state law outrage claim. Since the evidence failed to show the requisite intent to satisfy the elements of the claim, the defendant city employee was entitled to immunity.

In *Morley v. Medic One, LLC*, the court extended the application of the tort immunity statute to a volunteer fire department and a volunteer EMT in that department, holding that “[t]his public entity is immune from suit for the alleged negligence of the department’s firefighters and EMTs except to the extent insurance coverage exists,” and capped the plaintiff’s recovery at \$300,000, the amount of insurance coverage for the department.

Federal courts applying Arkansas state law consistently say that it is clear that §21-9-301 only applies to negligent conduct and that municipalities would not be immune from intentional tortious conduct. However, it should be emphasized that due to the Arkansas Supreme Court's inconsistent holdings when applying the statute, as discussed above, this is less clear than it seems.

### **Qualified Immunity under the Arkansas Civil Rights Act**

The Arkansas Civil Rights Act of 1993 (ACRA) provides plaintiffs with a cause of action for constitutional violations committed by persons acting on behalf of “political subdivisions.” It also provides for the payment of an injured plaintiff's litigation costs and attorney's fees. The ACRA further directs Arkansas courts to refer to state and federal case law interpreting the federal Civil Rights Act of 1871 for guidance and persuasive authority. Arkansas courts have thus far addressed qualified immunity for municipal officials in a variety of situations under the ACRA.

Qualified immunity exists to “protect officials from the disruptions of going to trial as well as from liability for money damages.” As such, “it is effectively lost if a case is erroneously permitted to go to trial.” Suits filed against employees in their individual capacities are filed against the public employee acting under the color of law. “In order to sue a public official in his or her individual capacity, a plaintiff must expressly and unambiguously state so in the pleadings, otherwise, it will be assumed that the defendant is sued only in his or her official capacity.” Conversely, suits brought against individuals in their official capacities are suits against the governmental entity that employs the individual, not the individual personally.

### **Individual Capacity**

The Arkansas Supreme Court, in *Smith v. Brt*, ruled that §21-9-301, which addresses tort immunity, provides municipal officials with immunity from civil rights claims if certain factors are met. The court addressed the qualified immunity of Mayor Brt who was sued by a former police chief under the ACRA for allegations of “retaliatory discharge in violation of his right to freedom of speech under the Arkansas Constitution.” The circuit court analyzed Brt's immunity under A.C.A. §19-10-305, which provides immunity for state officers and employees. The Arkansas Supreme Court attempted to correct this error but rather than look to state and federal case law as the source for municipal officials' qualified immunity, the court held that qualified immunity for municipal employees stemmed from §21-9-301. The court then proceeded to analyze the qualified immunity of Mayor Brt under a similar rubric as it would a state employee under §19-10-305. Accordingly, the court applied a two-part conjunctive test asking first whether there was a constitutional violation and second whether the constitutional right was clearly established. The court went on to hold that, although the former chief alleged a violation of a clearly established constitutional right, the plaintiff could not survive a summary judgment motion without showing the violation was one of which a reasonable person would have knowledge.

A year later, the court again addressed the issue of qualified immunity for municipal employees in *City of Farmington v. Smith*. There, the court denied qualified immunity to police officers and the mayor of Farmington when police engaged in a warrantless search of a home without informing the homeowners of their right to deny the officers access. The court stated that the right was well established by prior precedent two years earlier. The court further held that a

reasonable officer should have known of the existence of the earlier announced right and modified his conduct accordingly. As such, the court denied qualified immunity to the officers.

The Arkansas Supreme Court further defined immunity for municipal employees when it distinguished the immunity analysis for municipal employees under A.C.A. §21-9-301 from the immunity analysis for state employees under A.C.A. §19-10-305 in *City of Fayetteville v. Romine*. If malice is present, A.C.A. §19-10-305 bars the court from granting qualified immunity to state employees. In *City of Fayetteville*, the court held that despite the similar model of analysis under the two statutes, the presence or absence of malice is irrelevant in issues of qualified immunity against municipal officials under the ACRA.

Recently, the Arkansas Supreme Court has addressed qualified immunity in an action alleging violation of article 2, section 4 of the Arkansas Constitution, by and through the ACRA in *Graham v. Cawthorn*. Iris Cawthorn alleged that Elmer Graham, an officer of the Des Arc Police Department, arrested her in violation of her right to remonstrate in petitioning the police department. Officer Elmer lawfully arrested Cawthorn's son for an outstanding warrant. Cawthorn then arrived at the sheriff's office where her son was taken. Cawthorn then proceeded to the lobby area where she began loudly objecting to her son's arrest and disrupting dispatchers. After multiple warnings, Elmer placed Cawthorn under arrest for disorderly conduct. Cawthorn later filed suit against Graham in his individual and official capacity under the ACRA for an alleged violation of her right to petition the government.

The court then addressed Graham's immunity under A.C.A. §21-9-301, applying the same analysis used when addressing the issue of qualified immunity for state employees under A.C.A. §19-10-305. As directed by the ACRA, when analyzing qualified immunity statutes, the court looked to U.S. Supreme Court decisions addressing qualified immunity in federal civil rights cases. Applying that framework, a qualified immunity defense under the ACRA is barred only when the plaintiff has claimed a violation of a constitutional right and shown that the constitutional right was clearly established at the time of the incident.

The U.S. Supreme Court, prior to *Graham*, clarified the two-part test adopted by the Arkansas Supreme Court in *Smith v. Brt*, supra, by stating that "courts may grant qualified immunity on the ground that a purported right was not 'clearly established' by prior case law, without resolving the often more difficult question whether the purported right exists at all." To be "clearly established," a right must be "sufficiently clear that a reasonable official would understand that what he is doing violates that right." "A Government official's conduct violates clearly established law when, at the time of the challenged conduct . . . existing precedent [has] placed the statutory or constitutional question beyond debate."

The Arkansas Supreme Court in *Graham*, following the reasoning of the U.S. Supreme Court, explicitly declined to analyze the first prong of the qualified immunity test. The court stated that the lack of precedent in Arkansas on the right of remonstrance claim alone failed the "clearly established" prong, and thus would control the court's decision to grant qualified immunity to Officer Graham. The second prong of the test could not be satisfied, and thus the court declined to address the question of whether a constitutional violation existed at all under the first prong.

### **Official Capacity**

As discussed above, an "official capacity" suit is in reality a suit against the municipality. The Arkansas Supreme Court has rarely had the occasion to address claims against municipal entities

under the ACRA. In *Deitsch v. Tillery*, the court addressed the issue of official capacity against a school district in a pre-ACRA claim made under 42 U.S.C. §1983. There, the court stated “local governments can be sued directly under §1983 if the alleged unconstitutional action implements or executes a ‘policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers.’” Additionally, a municipality’s informal customs may form the basis of a constitutional violation.

Although the “custom and policy” requirement is not cast in terms of an immunity as such, it does serve as a powerful defense against many claims against municipalities. Defense counsel are often successful in securing dismissal of such claims at the summary judgment stage when the plaintiff fails to offer sufficient facts to establish the existence of a custom or policy. A policy for the purposes of claiming a constitutional violation by a municipality has been held by the Eighth Circuit to be “an official policy, a deliberate choice of a guiding principle or procedure made by the municipal official who has final authority regarding such matters.” Additionally, “a municipality may not be held vicariously liable for the unconstitutional acts of employees” but “may be held liable for the unconstitutional acts of its officials or employees when those acts implement or execute an unconstitutional municipal policy or custom.”

The more taxing standard needed to prove an unconstitutional custom, as distinct from a mandated policy, requires three elements: “(1) The existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity’s employees; (2) [d]eliberate indifference to or tacit authorization of such conduct by the governmental entity’s policymaking officials after notice to the officials of that misconduct; and (3) the claimant must have been injured by an action resulting from the government entity’s custom.”

### **Pleading and Proof of Immunity**

In *Vent v. Johnson*, the Arkansas Supreme Court held that the immunity provided by A.C.A. §21-9-301 is an affirmative defense that must be asserted and proven by the defendant. An important aspect of *Helena-West Helena School District v. Monday* was that the court stated that the school district may be immune from liability, but, because it had the burden to make its insurance policy a part of the record, and failed to do so, the court could not make that determination. In the past, this burden has been on the plaintiff and not on the district.

Thus, without further clarification by the court, who holds the burden is left ambiguous. Possibly, the court in its decision meant that since the district was attempting to overturn the lower court’s decision, it was incumbent on the district to show that the trial court’s decision was incorrect. However, any such clarification is absent from the court’s opinion and it is foreseeable that plaintiffs might use that language to attempt to shift the burden to defendants in future cases. So, the bottom line is this: When pleading tort immunity, always attach coverage documents if you want to successfully argue that the city’s insurance does not cover the claim and thus the city is immune from liability.

### **Repeated Negligence**

Although a city may initially act negligently and cause injury to a plaintiff, a failure to correct that negligence may be construed as intentional. In *Robinson v. City of Ashdown*, the court found that the city’s negligent operation of the sewer plant, which over a nine-year period caused sewage to flood a house, amounted to an inverse condemnation. Even though the city initially had statutory tort immunity, the overflow continued long after the city was on notice. The court

held that a taking occurred because the public benefitted from the use of the home as an overflow dump for sewage.

The court based its holding on article 2, section 22 of the Arkansas Constitution, which provides that “[t]he right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation.” Thus, the court stated that “[w]hen a municipality acts in a manner which substantially diminishes the value of a landowner’s land, and its actions are shown to be intentional, it cannot escape its constitutional obligation to compensate for the taking of property on the basis of its immunity from tort action.”

Recently, the Arkansas Supreme Court addressed a similar issue in *City of Malvern v. Jenkins*. There, the plaintiff stated claims for negligence and inverse condemnation arising from the city’s installation of a sewer line across the Jenkins’ property. The plaintiffs claimed that this installation damaged the drainage culvert on their property, which led to three instances of flooding over a seven-month period.

The court held that even if the flooding was a proximate result of the city damaging the culvert, the plaintiff’s suit was a negligence claim barred by A.C.A. §21-9-301. Without expressly addressing the inverse condemnation claim, the court ruled for the city in granting statutory tort immunity.

### **Insurance**

A.C.A. §21-9-301 bestows immunity on municipalities except to the extent that they may be covered by insurance. The purchase of liability insurance even in instances where it is not subject to tort liability is authorized under A.C.A. §23-79-210. While this provision “does not require a municipality...to carry liability insurance, the statute does authorize and provide for a direct action against the insurer by the injured person in the event the municipality carries such insurance.”

However, where a municipality operates a common carrier service, insurance may be required. In *Salley v. Central Arkansas Transit Authority*, the Arkansas Supreme Court held that the city bus is a common carrier, and, thus, has a duty to either carry uninsured motorist liability insurance or become a self-insurer under A.C.A. § 23-16-302. In *Helena-West Helena School District v. Monday*, supra, Rose Monday sued the Helena-West Helena School District for slip-and-fall injuries sustained by her son, Elijah Monday, when he slipped on ice that had accumulated on the steps of the school bus. The court held that, subject to the insurance exception recognized in *Carter v. Bush*, the defendants could not be sued for negligence, and only the insurance exception was germane to the issue of the district’s immunity.

### **Motor Vehicles**

Pursuant to A.C.A. §21-9-301, cities enjoy immunity from liability and from suits for damages except to the extent that they are covered by liability insurance. With this basic principle in mind, we can look to A.C.A. §21-9-303 for guidance on maintaining liability insurance in Arkansas’ municipalities. The language of this statute states that cities, municipalities, and all other political subdivisions of Arkansas must carry liability insurance on their motor vehicles, or assume statutory responsibility as self-insured. Two questions arise from this statement: (1) What is a motor vehicle, and (2) how much insurance is needed on such a vehicle?

## What is a Motor Vehicle?

A.C.A. §21-9-303(a) states that “all political subdivisions shall carry liability insurance on their motor vehicles” but does not provide a definition of “motor vehicle.” However, the Arkansas Supreme Court has held that an analysis of A.C.A. §21-9-303(a) shall begin with the definition of “motor vehicle” contained in §27-19-206. This section defines a “motor vehicle” as “every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.” Such a definition “is a broad declaration that every self-propelled vehicle that does not operate on rails is a ‘motor vehicle.’”

However, an analysis of the definition of a motor vehicle does not end with A.C.A. §27-19-206. Instead, the court has looked to complete the analysis of A.C.A. §21-9-303(a) by employing the Motor Vehicle Safety Responsibility Act (MVSRA), codified at A.C.A. §§27-19-101 *et seq.* The court further held that the General Assembly did not intend the provisions of the MVSRA to require political subdivisions to purchase motor vehicle liability insurance for non-registered vehicles.

With this in mind, the court determined that if a vehicle is exempt from registration under the MVSRA, then that vehicle is not required to comply with the security deposit or liability insurance provisions required under the MVSRA. Consequently, if the vehicle is exempt, it is not a “motor vehicle” for the purposes of either §21-9-303(a) or tort liability. In *Cousins*, a student was injured by a bush hog mower being pulled by a tractor. The injured student argued that the tractor was a motor vehicle pursuant to §21-9-303. The court reasoned that if A.C.A. §21-9-303(a) required “political subdivisions” to be subject to the MVSRA provision that requires minimal insurance on all motor vehicles, then the political subdivisions should also be subject to all provisions of the MVSRA.

In applying the registration laws of the MVSRA, the court found that vehicles not designed for transportation purposes are to be designated as special mobile equipment and exempt from registration.<sup>118</sup> Thus, since they are exempt from registration, self-propelled motors and other equipment not designed or intended for transportation purposes are not required to comply with the liability insurance or security deposit provisions required under A.C.A. §21-9-303(a).

Further, under Arkansas’ motor vehicle registration laws, particularly A.C.A. §27-14-703(3), an implement of husbandry is not required to be registered. Since Arkansas law defines an implement of husbandry to be all vehicles “designed and adapted exclusively for... agricultural, horticultural, or livestock raising operations, or for lifting or carrying an implement of husbandry,” the bush hog mower in *Cousins* was not subject to registration. As a result, it was not subject to the liability insurance requirements of A.C.A. §21-9-303(a).

As noted above, some vehicles are exempt from registration because they are defined as “special mobile equipment.” In *Spears v. City of Fordyce*, the court considered whether the city’s front-end loader was a “motor vehicle.” The trial court determined that the loader was exempt from registration as “special mobile equipment” under the definition in A.C.A. §27-14-211. However, the injured party and the owner raised a genuine issue of material fact as to whether the operation of the loader on public roads was merely incidental, so as to fall within the definition of special mobile equipment, or frequent and regular. Until this factual question was resolved, it was impossible to determine whether the loader was exempt from the statutory definition of a “motor vehicle” in A.C.A. §27-19-206.

The “special mobile equipment” argument was furthered on appeal in *Southern Farm Bureau Casualty Insurance Company v. Spears*, where the court addressed the question of whether the front-end loader was special mobile equipment. A.C.A. §27-14-211 provides, in part:

“Special mobile equipment” means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus, and concrete mixers.

The court looked to the definition of “auto,” as set out in the insurance policy: This was “a motor vehicle, semi-trailer or trailer designed primarily to be used on public roads.” The court reasoned that “a vehicle could be designed primarily to be used on public roads, even though it is not designed or used primarily for the transportation of persons or property over the highways.” Therefore, the court rejected the appellant’s argument that, as a matter of law, the front-end loader could not be both “special mobile equipment” under Arkansas’ statutory laws and an “auto” under the terms of an insurance policy.

After determining that the front-end loader could be both “special mobile equipment” under A.C.A. §27-14-211, and an “auto” under the terms of an insurance policy, the court continued its analysis by explaining that Spears had the burden of proving that the front-end loader was an uninsured “auto” under the insurance policy. However, the court held “the evidence presented at trial failed to prove that the front-end loader was ‘designed primarily to be used on public roads’ and, thus, an ‘auto’ as defined in the insurance policy.” Moreover, “[s]ince Spears failed to present sufficient evidence to prove that the front-end loader was an uninsured auto under the insurance policy,” the court concluded that there was not “substantial evidence to support the jury’s verdict in favor of Spears.”

### **How Much Insurance is Needed?**

Once an object has been ascertained to be a motor vehicle, then the city, municipality or political subdivision must determine how much insurance is needed for that vehicle. The solution to this question comes from Arkansas’ Transportation Statutes and the Motor Vehicle Safety Responsibility Act, particularly A.C.A. §§27-19-605(a) and 27-19-713. The essential portions of these statutes provide that no policy or bond shall be effective unless the policy or bond is subject to not less than twenty-five thousand dollars (\$25,000) in personal liability per death and another twenty-five thousand dollars (\$25,000) in liability for property damages.

These standards are summarized by A.C.A. §27-22-104(b), which reads:

The policy shall provide as a minimum the following coverage: (1) Not less than twenty-five thousand dollars (\$25,000) for bodily injury or death of one (1) person in any one (1) accident; (2) Not less than fifty thousand dollars (\$50,000) for bodily injury or death of two (2) or more persons in any one (1) accident; and (3) If the accident results in damage to or destruction of property, not less than twenty-five thousand dollars (\$25,000) for the damage to or destruction of property of others in any one (1) accident.

Arkansas courts have continuously held that A.C.A. §21-9-303(a) requires insurance on motor vehicles in the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act.

This holding is based on the reasoning that, by referring to § 27-19-101 *et seq.*, the General Assembly obviously intended that the insurance coverage required of political subdivisions under A.C.A. §21-9-303(a) be subject to all of the provisions of the Motor Vehicle Safety responsibility Act. In this respect, the court stated that A.C.A. §§27-19-605 (amended by Act 910 of 2019) and 27-19-713 provided “the minimum amounts of liability insurance coverage for a security deposit or proof of further financial responsibility required under the Act.”

The court continued by stating that a city, municipality or political subdivision becomes a self-insurer, if found liable, in an amount not to exceed those minimum amounts; which, subject to certain exceptions, “apply to the driver and owner of any vehicle of a type subject to registration under the motor vehicle laws of [Arkansas] and to persons who have been convicted

of or forfeited bail or who have failed to pay judgments upon causes of action arising out of ownership, maintenance, or use of vehicles of a type subject to registration under the laws of [Arkansas].” Thus, a municipality that fails to carry liability insurance for operation of its motor vehicles as required by statute would be liable in tort, up to an amount equivalent to the required policy limits, for injuries resulting from negligent operation of its vehicles, notwithstanding statutory governmental tort immunity.

Obtaining the required amounts of motor vehicle liability insurance under A.C.A. §21-9-303 will limit a city’s liability to the insurance policy’s stated maximums. In *Fritzingler*, the plaintiff’s motorcycle struck a stop sign allegedly as the result of a city employee’s negligent operation of a city-owned garbage truck. On appeal, the court affirmed the circuit court’s reduction of the judgment against the city from \$92,500 to its insurance policy maximum of \$25,000. In so ruling, the court found that A.C.A. §21-9-303 clearly limits a city’s maximum liability to \$25,000, and that to hold otherwise would be a miscarriage of justice. Moreover, *Fritzingler* also prohibits direct action against a city’s insurer unless the insurer may be liable for an amount in excess of \$25,000.

On the other hand, a city’s failure to maintain the requisite insurance essentially relegates the city to the status of a self-insurer. However, the court has distinguished the failure to maintain proper insurance from insolvency unknown to the city. This issue was discussed in *Taylor v. City of North Little Rock*, where the appellant was struck by a vehicle driven by an employee of the City of North Little Rock. At the time of the accident, the city vehicle was insured by Reliance Insurance Company. During the lawsuit, the city’s insurance carrier, Reliance, was declared insolvent. The court found that, because coverage was in effect when the accident occurred, there was no evidence that the city should have anticipated its insurance carrier would become insolvent. Given that the city could not buy insurance for an accident that had already happened, the city should not have been relegated to the status of a self-insurer.

Recovery under vehicular liability insurance is not available to an injured party who has workers’ compensation as a remedy available to them. In *Helms v. Southern Farm Bureau Casualty Insurance Company*, the court held that teachers acting within the scope of their employment at the time of a school bus accident were not entitled to the school district’s insurance proceeds but were limited to the exclusive remedy provided by the workers’ compensation statutes.

## Emergency Vehicles

How do emergency vehicles differ from other municipal vehicles? In *City of Little Rock v. Weber*, the appellee was injured when a Little Rock police officer, driving a city police car with the lights flashing and siren running, ran a red light and struck her vehicle. The city argued that it was absolutely immune from tort liability arising out of a city policeman's negligent operation of an authorized emergency vehicle. The court rejected the city's reliance on earlier cases which held that immunity could be broached only when the public employee breached a duty imposed on him by law in common with all other people, as opposed to a situation in which the negligent conduct arose out of a duty peculiar to his or her employment. As the *Weber* court explained, "[W]e see no reason why a person injured by an emergency vehicle should be left without a remedy while persons may seek redress against a municipality for its employees' negligence in the operation of all other vehicles."

The court noted that the officer made the decision to turn on his lights and siren prior to his collision, and that decision involved an exercise of discretion, and any actions taken subsequent to the decision were required by law to be taken with ordinary care.

Prior to 2002, the court had only addressed the liability of a municipality when the driver of a municipal vehicle directly caused the injuries giving rise to the litigation. This changed with *City of Caddo Valley v. George*. In *Caddo Valley*, the Arkadelphia Police Department set up a road block to stop a fleeing car thief whom the Caddo Valley Police Department was chasing. A third party, George, was caught between the road block and the fleeing suspect. Bringing suit, George alleged negligence on the parts of the pursuing officers, claiming the officers should have known that their high speed pursuit was likely to injure innocent victims. Further, George claimed the officers should have disengaged "from the pursuit when they knew, or should have known, that the Arkadelphia police were setting up a roadblock; and that they failed to end the pursuit when they knew, or should have known, it was no longer prudent to chase Sherman under the conditions."

In response to these allegations, the Caddo Valley officers argued they were immune from liability or damages because they were acting in their official capacities as employees of Caddo Valley. They further argued that their conduct was not the proximate cause of George's injuries, on account of the intervening conduct of the suspect being pursued.

The Arkansas Supreme Court rejected both of these arguments and held the city jointly and severally liable for judgment rendered against it and against the suspect to the extent of the city's liability insurance limits. This was held even though the suspect was found to be ninety percent at fault and each officer was found to be only five percent at fault. Further, the court held that the driver was entitled to recover up to the limits of liability insurance on each of the two city vehicles involved, rather than only one vehicle, even though the plaintiff's injuries arose from only one incident, inasmuch as the city was required by the statute to obtain insurance on each vehicle.

## Indemnification

In contrast with tort claims against political subdivisions, the courts do hear cases alleging contractual liabilities of municipalities and other subdivisions. These cases involve issues of void or voidable contracts, ultra vires or intra vires contracts, mandatory or directory statutory provisions, executed or executor contracts, ratification, and estoppels. Often, the power is

expressly granted by the legislature. For example, cities and incorporated towns, as well as school districts, have the power to enter into contracts and to sue and be sued.

The theory of unjust enrichment may also be appropriate for a party which has dealt with a government but cannot proceed on a contractual basis. For example, although a contract with a city for construction of a sewer may be unenforceable for failure to comply with government contract requirements, the contractor may recover on an unjust enrichment basis for the value of the benefit received by the city.

“Indemnity” arises by virtue of a contract and holds one liable for the acts or omissions of another over whom they have no control (or it allows someone to recover from a third party the whole amount which they themselves are liable to pay). Contracts of indemnity are construed in accordance with the rules for the construction of contracts, generally. The first rule of interpretation is to give the language employed by the parties the meaning they intended. Given the nature of indemnification, our courts have held that the language imposing indemnity must be clear, unequivocal and certain, and indemnity agreements are to be construed strictly against the party seeking indemnification.

In *Cherry v. Tanda*, the City of Fort Smith entered into a contract for the construction of a sanitary landfill. The contract included a provision whereby the construction company would indemnify the city for all claims and damages arising out of the performance of the contract. In addition, Tanda agreed to carry liability insurance, which it obtained through Transcontinental. When the landfill walls collapsed and killed Mr. Cherry, his estate sued Tanda and Transcontinental. The court held, inter alia, that the contract between Tanda and the city did not transform Tanda’s insurance policy with Transcontinental into the city’s liability policy which could be the basis for suit pursuant to A.C.A. §23-79-210.184 Accordingly, the employee was found to be suing in tort, not contract, and, thus, was barred by the exclusivity provision of workers’ compensation.

As stated above, although municipalities generally have the power to enter into contracts, an agreement by the municipality to indemnify a private party is likely in conflict with several provisions of Arkansas law. Specifically, the Arkansas Constitution prevents municipalities from donating or appropriating money to private individuals or associations. Further, Arkansas courts have developed the broad public purpose doctrine stating that monies may only be spent on items that benefit the entire public. Generally speaking, “a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all, or at least a substantial part of, the inhabitants or residents.” The Arkansas Court of Appeals has held that indemnification of a private party is not an expenditure for the public welfare. Although the state’s appellate courts have not squarely addressed the question with respect to cities and towns, it appears likely that municipalities would be precluded from contractually indemnifying or assuming the liability of a private party.

### **Legislative Immunity**

Legislators enjoy the broadest generally available immunity of all: An absolute immunity not only from damages but also from declaratory and injunctive relief. This immunity extends to state, regional and local legislators. As with the absolute immunity of judges and prosecutors, this immunity shields only the “legislative functions” of legislators or, occasionally, others. The Supreme Court has ruled that voting for proposed legislation, investigating committee topics, preparing committee reports and speaking before a legislative assembly are all legislative

functions. Activities outside the scope of legislative functions are the taking of bribes and disseminating press releases to the public.

The function of such immunity is “to insure that the legislative function may be performed independently without fear of outside interference.” Legislative immunity applies to local legislators as well as to their state and federal counterparts, and it applies when these officials act “in a field where legislators traditionally have power to act.” The administrative or executive actions of legislators are not entitled to protection. “[I]mmunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches.” An official’s improper motivation, or “unworthy purpose,” does not affect the immunity privilege so long as the actions fall within the ambit of protected legislative activity.

In *Massongill v. County of Scott*, the Arkansas Supreme Court acknowledged legislative immunity as a “long-recognized principle in American law that legislators are absolutely immune from personal liability for their official and legislative activities.” In conflict with this principle, a recent Arkansas Court of Appeals decision purported to find a lack of legislative immunity for local lawmakers. *Robertson v. Daniel* involved a defamation suit against two members of the City of Hot Springs Board of Directors. The suit arose from the directors’ allegedly defamatory statements rather than their legislative actions. In addition, had the suit been based on a legislative action, the *Robertson* court’s failure to cite *Massongill* as controlling would have been troublesome. Thus, the discussion of legislative immunity in *Robertson* should not be viewed as controlling on the subject in future Arkansas cases.

### **Good Faith Immunity**

In *Gibbs v. Mahone*, the Arkansas Supreme Court held that an officer who acts in unchallenged good faith in making an arrest, who takes bills that were used in a pre-arranged buy, and who repays the person who furnished the money used in the buy, cannot be held personally liable for a tortious conversion of the bills if the arrested person proves to be innocent. The court stated that the general rule that “public officers are immune from liability for acts within the scope of their official authority and made this observation with respect to police officers.” Moreover:

“The duties of law enforcement officers require action immediately and directly inimical to the self-interest of individuals, which is often of the same nature as action inspired by malice, and to permit inquiry into the officers’ motives in every case would inject chaos into law enforcement. . . . Those principles are controlling here. The trial judge was right in observing that Gibbs’s remedy is to apply to the State Claims Commission.”

State officers and employees are immune from civil liability for acts or omissions, other than malicious acts or omissions, occurring within the course and scope of their employment. In *Carter v. Bush*, police officers were inspecting trucks along a highway. While they stopped a truck in the northbound lane, a truck in the southbound lane stopped on its own. A third vehicle collided with the rear of the southbound truck, and the driver died from his injuries. The widow filed a wrongful death action against the police officers. The court held that the officers were immune from civil liability because their acts were neither malicious nor done in bad faith.

### **Other Sources of Immunity**

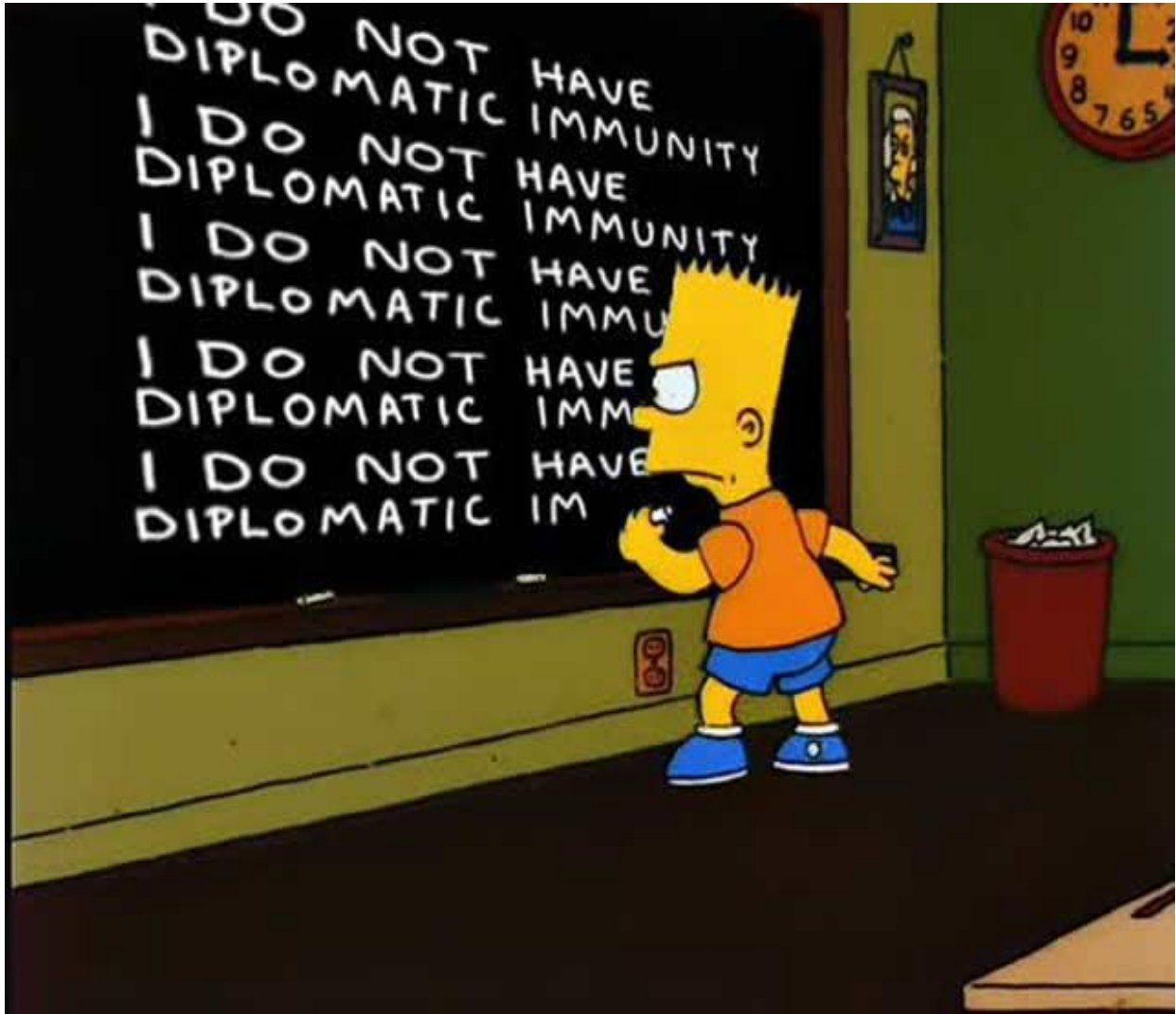
Other Arkansas statutes providing varying degrees of governmental or official immunity include but most likely are not limited to:

- A.C.A. §6-19-103 (school district directors);
- A.C.A. §6-17-107 (teachers immune for reporting drug abuse by students);
- A.C.A. §6-41-216 (hearing officers in status change hearings for children with disabilities);
- A.C.A. §14-334-104 (public transit systems);
- A.C.A. §14-362-104 (regional airport authorities);
- A.C.A. §16-10-406 (Judicial Discipline and Disability Commission);
- A.C.A. §16-93-1209 (agencies using offenders in community punishment programs);
- A.C.A. §16-66-119 (law enforcement officers serving and executing writs of execution);
- A.C.A. §16-120-702 (charitable immunity);
- A.C.A. §19-10-305 (state officers and employees); and,
- A.C.A. §20-22-808 (fire departments)

### **Summary Judgment**

As a general rule, the denial of a motion for summary judgment is neither reviewable nor appealable, and without the ability to appeal, the right of immunity from suit would be lost if the case were permitted to go to trial. This reasoning is based on Ark. R. App. P., Civ. R. 2, which provides that “[a]n appeal may be taken from a circuit, chancery, or probate court to the Arkansas Supreme Court from . . . [a]n order which in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action.”

Thus, when the principle defense is that the appellants are entitled to immunity from suit, there would be no further proceedings if the appellants were entitled to the claimed immunity, and the refusal to grant the motion would amount to a denial of the appellants’ claimed defense, which, if allowed, would discontinue the action. “The qualified immunity claim is a claim of right which is separable from, and collateral to, the rights asserted in the complaint.” Moreover, “the refusal to grant a summary-judgment motion has the effect of determining that the appellants are not entitled to immunity from suit, as the right of immunity from suit is effectively lost if a case is permitted to go to trial.” Thus, such appeals concerning the denial of a motion for summary judgment based on a claim of immunity from liability are allowed.



## Chapter 17

### Resolving and Preventing Mayor-Council Conflict

*“When you find yourself stuck in an oversimplified polarized conflict, a useful first step is to try to become more aware of the system as a whole: to provide more context to your understanding of the terrain in which the stakeholders are embedded, whether they are disputants, mediators, negotiators, lawyers, or other third parties. This can help you to see the forest and the trees; it is a critical step toward regaining some sense of accuracy, agency, possibility, and control in the situation.”*

–Peter T. Coleman

It is essential that mayors and council members understand their roles and how they relate to each other and staff. Many conflicts in city governments happen due to role confusion, resulting in overstepping the boundaries between the respective roles.

Although the boundaries are not always clear, the basic roles of the mayor and council are derived from the basic structure of city government, whether yours is the mayor-council, city manager or city administrator form. There is some variation in the powers and duties of mayors and councils between classes of cities, so be aware of the specific rules applicable to your class of city.

#### **Separation of Powers**

In Arkansas at the municipal level, the separation of powers is not absolute between the Mayor representing the executive branch of government and the City Council representing the legislative branch of government. The duties of a city are often as much in the executive field as the legislative. The powers of a City Council are not limited to legislative functions. It has many duties which are administrative and ministerial. Laman v. McCord, 245 Ark. 401, 408-409, 432 S.W.2d 753, 757 (Ark. 1968).

The doctrine of separation of powers applied at the state level is not usually applied to municipal corporations and has never been regarded as fully appropriate in the performance of municipal functions. McQuillin, Municipal Corporation, §§ 9.20, 10.3; 16 C.J.S., Constitutional Law § 106, p. 489. It has not been the practice in Arkansas to separate these powers to any great degree. Laman v. McCord, 245 Ark. 401, 408-409, 432 S.W.2d 753, 757 (Ark. 1968).

#### **The Mayor’s Authority**

As the chief executive and administrative officer of the city, the mayor is in charge of carrying out the policies set by the council and seeing that local laws are enforced. The mayor is basically in charge of the day-to-day operation of the city, including the supervision of all appointed officials and employees. The mayor oversees the hiring and firing of all appointed officers and employees, subject to civil laws, where applicable. Except for those in towns, councils have the authority to override of the appointment or hiring of department heads and the building official under A.C.A. §§14-42-110 and 14-56-202(b). In general, the mayor also has the authority to:

- Enforce contracts.
- Bring lawsuits, with council approval.
- Preside over council meetings and exercise some voting authority with respect to council votes when the Mayor’s vote can pass an ordinance resolution or motion.
- Veto any ordinance, resolution or order unless such action is prohibited by state law.

- Call special meetings of the council.
- Prepare a proposed budget.
- Report to the council on the financial and other affairs and needs of the city.
- Purchase, lease, sale or dispose of real or personal property with council approval
- Perform as ceremonial head of the city.

Consistent with the A.C.A. §14-42-102, the Council is vested with corporate authority only when gathered and acting as an assembly. Each council member by themselves is not authorized to give orders to department heads or to other city employees. To do its job, however, the Council needs information on how the City is operating. The Mayor, either directly or through other city staff, should provide that information and should do so in a timely and useful fashion.

### **Council Powers**

In general, it is the City Council's role to adopt policies for the City and it is the Mayor's role to administer or carry out those policies. The Council, being legislative, has the power to enact laws and policies, consistent with state law, usually through the enactment of ordinances and resolutions. The council also has specific authority to:

- Enact a city budget.
- Define the powers, functions, and duties of city officers and employees.
- Fix the compensation of officers, officials and employees.
- Establish the working conditions of officers and employees.
- Impose fines and penalties for violation of city ordinances.
- Enter into contracts.
- Regulate the acquisition, sale, ownership, and other disposition of real and personal property.
- Provide governmental, recreational, educational, cultural, and social services.
- Impose certain taxes authorized by state law.
- Cause the city to own and operate utilities.
- Approve claims against the city.
- Grant franchises for the use of public ways.
- License or permit, for the purpose of regulation, most any type of business.

In addition, the council is authorized to enact rules governing its procedures, including for public meetings and hearings.

### **The Blurred Line Between Policy and Administration**

Of course, things do not always run smoothly between the council and the city administration, and the line between policy and administration is sometimes not very clear.

One frequent source of conflict is personnel matters. The council may not like a mayor's appointment to a particular position, or it may be dissatisfied with the performance of certain officers or employees. An employee may complain to and seek relief from the council about some aspect of employment. On the other hand, the executive may believe that certain personnel policies interfere with his or her supervision of employees and hiring and firing authority.

The mayor may direct that all communications with city staff go through the mayor's office. The council, in response, may feel that the mayor is unlawfully restricting its access to city personnel for information purposes.

### **Whose Role Is It?**

The remedy for some of these situations may be to review the respective roles of the mayor and the council and to understand the limitations of their respective authorities. For example, if the council is not happy with a mayoral appointment, there may be nothing the council can do directly within the bounds of its authority.

However, if it has the authority to confirm a particular appointment, it can reject the appointee and force the mayor to choose another. If the council does not have confirmation authority, it can express its dissatisfaction to the mayor, but it can do nothing else with respect to that particular appointment.

The council may, however, provide for a detailed personnel system that establishes specific qualifications for positions, requiring publication and public posting of job opening announcements. The council can form a Personnel Committee to make recommendations on ordinances and resolutions to the City Council which can govern job openings, qualifications and announcements.

Similarly, if the council feels that an officer or employee is performing poorly and should be disciplined or fired, it can say so to the mayor in executive session, but it has no power to do anything else. Although it controls the salaries paid to city officers and employees, it may not lower a salary with the purpose of causing the person holding that position to quit.

A general rule to follow is that the council and the mayor may not do indirectly what it cannot do directly.

### **Council and Staff Communication**

The Council has established liaisons with all of the City departments. These liaisons are a great tool to aid the Council with each council member communicating with the department head to gather information about the department's needs, goals, direction, accomplishments and progress on certain tasks and report back to the rest of the Council with that information. On the issue of communication between the council and city officers and employees, the mayor may not prevent council members from communicating with city officers or employees. If council member inquiries of city employees are interpreted as harassing or unreasonable and may take them away from their duties, it may be necessary for the mayor to require those inquiries to be channeled through the mayor's or a department head's office, if that can be done without unduly encumbering council access to information.

### **Conflict in the Finance Arena**

Finances and budgets are another fertile area for conflict. For example, the mayor may decide not to take full advantage of the budget authorized by the council. The council may authorize a certain position at a certain salary, and the executive may decide either not to fill the position or may do so at half time and half salary. The mayor may cite financial emergencies, such as revenues falling short of projections, and may conclude that the city cannot afford someone filling this position full time. The council, on the other hand, may not agree that the conditions

warrant such action or may determine that a different cost-saving measure is appropriate and should be instituted.

Resolution of this type of issue may prove particularly tricky. Although the mayor may not pay an employee less than is authorized by the council in the budget or in a separate salary ordinance, under certain financial circumstances, they may be able to partially fill a position, proportionately reducing the salary for the position. Legal authority, however, is hazy on such issues. The best strategy would be for the mayor or city manager and the council to work out a mutually agreeable accommodation.

### **Resolving Conflicts**

There are other issues that will likely arise (and that have arisen in other cities) where it is not clear who has the ultimate authority to act, the mayor or council. In these situations, the council and the city administration could draw their respective battle swords and charge; or, one or both sides could first analyze the issue, perhaps seeking counsel of the city attorney or the consultants at AML. Some cities have also brought in an outside facilitator to help them resolve their conflicts.

When the roles are not clearly defined in a particular situation, and the law is not clear, compromise may be in order. All sides need flexibility to meet the challenges of a well-functioning city government. If the focus is on providing good government rather than on turf wars, council members, mayors, and staff can better fulfill their roles as public servants.

### **Practical Advice**

#### Relationships within council:

- Appreciate each councilmember's special skills. Get to know them personally. Find out what they think is important. Ask for their opinion.
- Keep disagreements from getting too personal. As one councilmember said, "If we can't sit up here and argue and then go out with the same people and have a cup of coffee, then we have no business being on the council."
- Always be courteous to other councilmembers. This includes new council members who come on board with an agenda. Keep that door open.
- A mayor needs to be open and honest. Give councilmembers all the background information they need on issues. Don't do things behind people's backs. Keep everyone informed.
- Address conflict head-on.
- Give the council enough information to make a knowledgeable decision. But don't overdo it so much that they feel compelled to "micromanage."
- Laugh together. Share thoughts and dreams, and tell stories about yourself. Bring donuts!



"First, the Rules of Engagement for this meeting ..."

## **Chapter 18**

### **City Council Meetings**

*“On local city councils being effective: The job of the council is to get together and debate and discuss. But you do it in a way that preserves the relationships so that we can get together next week and do it again.”*

-Thomas L. Friedman

#### **The Mayor’s Role in the Council Meeting**

The mayor, as presiding officer, holds the key to an effective council meeting that runs smoothly and produces results. He or she not only participates in the meeting but also manages the process, the agenda items and the people involved.

#### **Will the Meeting Come to Order?**

As presiding officer, the duties of the mayor are to:

- Open the meeting on time and call the meeting to order.
- Announce business on the agenda in the proper sequence.
- Recognize members for motions and statements, and allow audience participation at the appropriate times.
- State and vote on all legitimate questions that arise during the meeting. If a motion is out of order, the chair should rule it out of order.
- Protect the council from frivolous or delaying motions by refusing to recognize them.
- Enforce the rules regarding debate, make sure that speakers limit their remarks to the item being considered, and keep order at the meeting.
- Expedite business in a way compatible with the rights of the members.
- Decide all questions of order.
- Respond to inquiries of members.
- Declare the meeting adjourned.

#### **Legal Requirements for Meetings**

The mayor should become familiar with legal meeting requirements imposed by state law. This includes knowing what actions are required on ordinances and resolutions, when executive sessions are appropriate, and what is involved in a quasi-judicial hearing.

The city attorney can help with these matters, but if the mayor knows the basics, they can save time and avoid illegal or incomplete actions. The City’s Rules of Procedure and Standing Rules with its Appendices provides an excellent source of procedural rules that the City Council must follow as well as guidance for the City Council for certain procedural problems should they arrive during a meeting.

#### **City Council Rules of Procedure**

It is up to every city council to establish rules for the conduct of their meetings per state law, A.C.A. §14-43-501. Some councils adopt standard rules, such as Robert’s Rules of Order or some other parliamentary procedure; and others develop their own customized rules or procedure and standing rules which govern how council meetings proceed. Local rules are valid as long as they don’t infringe on constitutional rights or conflict with state law. The City’s current Rules of Procedure and Standing Rules are a simple, easy to use, less formal and cumbersome than

Robert's Rules of Order yet have more substance, explanation and fills in gaps not addressed in the AML's Procedural Rules for Municipal Officials.

### **What is Parliamentary Procedure and Why Should You Use It?**

Parliamentary procedure is designed to ensure that the will of the majority prevails and that the right of the minority to be heard is protected. In the hands of the presiding officer it should be a tool, not a bludgeon. Not only the mayor, but all members of the council should be familiar with the rudiments of parliamentary procedure so that decorum is preserved, business is expedited and citizen respect is maintained. But remember, the best parliamentary guide still is respect for one's fellow members and preservation of the majority rule.

Parliamentary procedure is the set of rules or customs that regulates the procedure of legislative bodies. It governs how to make, amend and approve or defeat a motion. There is no need to be intimidated – a mayor or council member need not become a certified parliamentarian to effectively use the basic rules of procedure. Observing parliamentary procedure makes council meetings more efficient and reduces the chances of council actions being declared illegal or challenged for procedural deficiencies. The main goal of procedural rules are to provide order on conducting the business of the deliberative body to address all business on the body's agenda efficiently without the body's meetings becoming prolonged due to excessive debate without formal city business being decided on at the meetings. The City's Rules of Procedure limit the time of remarks of council members and also limit the topic of discussion to the matter at hand. Round table discussions of philosophy of government are very interesting and can be informative, but they do not belong in a council meeting. The exception to this rule might be in letting the public know why an action is being taken.

Another object of parliamentary rules is to preserve decorum at the meetings. They also assist council members by confining the debate and discussion to one question at a time. When in doubt about parliamentary law, a chair should simply strive to keep order and follow the wishes of the majority. The breaking of parliamentary rules of order often does not invalidate an action of the council, but it can disrupt it.

### **Motions**

Business is brought before the council by motions, a formal procedure for taking actions. To make a motion, a member must first be recognized by the presiding officer, the Mayor. After the member makes a motion (and after the motion is seconded if required), the chair must then restate it or rule it out of order, then call for discussion. Most motions require a second, although there are some exceptions:

- Points of information;
- Points of order;
- Questions of privilege; and sometimes
- Withdrawing a Motion

### **Voting and Vetoes**

The mayor's ability to vote on motions is allowed if it is needed to pass any ordinance, resolution, order or motion per A.C.A. §14-43-501(b)(1)(B). The Mayor may veto any ordinance, resolution or order within five (5) days, Sundays excepted, after passage by the City Council and file with the City Clerk-Treasurer before the next regular City Council meeting the

reasons for the veto. The City Council may override the veto by two-thirds ( $\frac{2}{3}$ ) vote of all council members elected thereto. The Mayor cannot veto actions voted on by the Council under A.C.A. §§14-43-411(a) and 14-43-501(a).

### **Whose Meeting is it Anyway?**

In general, mayors should remember that the council meeting is just that – it's the council's meeting, not the mayor's meeting. The council sets its own rules and has ultimate control over the agenda. The mayor's role is to chair the meeting.

The mayor must balance being strong enough with being democratic enough to involve all members in the meeting. To be effective, the mayor needs the support of the council members. Trust is built by evenhandedness and fairness to all participants. Trust also requires that the chairperson not use the powers of the chair unfairly to win a point or argument.

In addition to maintaining order and decorum at council meetings, the mayor must ensure that all motions are properly dealt with as they arise.

The mayor's refusal to allow a motion to be considered is subject to appeal, as are all of the mayor's decisions regarding procedures.

A simple majority vote is all that is required to overrule the mayor's decision on procedural issues, including adjournment. If the decision of the Chair is sustained, no further action is taken; but if the decision of the Chair is overruled by the council, the council goes forward with the discussion of the motion or other matter before it.

### **The Mayor as Meeting Participant**

The mayor chairs all council meetings and, in some circumstances, is allowed to vote. The mayor might also wish to join the council in its discussions and deliberations. When the mayor chooses to participate, they have two competing goals - as moderator, to make sure that the group achieves its goal and, as an elected official, to both participate in the debate and help determine policies. Participation requires a balancing act between the traditional moderator role and that of active engagement in debate. When the mayor decides to participate, they should exercise restraint. Too forceful participation can dampen council discussions and result in some council members deferring to the mayor's comments, simply due to the perceived role as the mayor as boss.

### **The Council Meeting Agenda**

There is no required format or particular order for the council meeting agenda. However, a typical agenda for a city council meeting looks like this:

- Call to Order
- Roll Call
- Prayer
- Pledge of Allegiance
- Approval of the Minutes
- Mayor's Report
- Finance Director's Report
- Committees Reports
- Special Business

- Unfinished Business
- New Business
- Appropriations and Line Item Transfers
- Late Agenda Items (if any)
- Late Agenda Appropriations and Line Item Transfers (if any)
- Adjournment

### **The Council’s Role in the Council Meeting**

A city council meeting is the place to get the critical job of decision-making accomplished. A smoothly managed and productive council meeting does not necessarily guarantee good results, but it certainly helps.

In general, mayors should remember that the council meeting is just that – it’s the council’s meeting, not the mayor’s meeting. The council sets its own rules and has ultimate control over the agenda. The Mayor’s role is to chair the meeting. As moderator, the Mayor should facilitate the meeting while allowing full council participation, maintain order and decorum, and see that all motions are properly dealt with as they arise.

### **The Agenda**

Perhaps one of the most crucial tools for orderly meetings is a well-organized and well-prepared agenda. The agenda must be handled so that council members receive adequate information in advance on items for consideration.

While it is not mandatory at a city council meeting, the council should provide the opportunity for appropriate public participation. State law requires each city to notify the public of the agenda for upcoming regular council meetings when requested for the information. Items on the agenda should be prioritized and organized as efficiently as possible, allocating enough time for major issues and minimizing time spent on trivial, noncontroversial issues. City residents should also get the opportunity to address the council on other subjects of interest.

### **Who determines the agenda content?**

Although the council has ultimate control over the agenda, typically it’s left to the mayor and city clerk-treasurer to draw up the agenda, based on council input. Cities can also assign this task to an agenda committee or to one (1) council member who assists the mayor. The council can change its order of business or a council member can propose an additional new item of business at the City Council’s Agenda Meeting held nine (9) days before the regular City Council meeting.

### **Minutes**

Council meeting minutes are required by law, A.C.A. §14-43-501(a)(2)(C), to be kept. The minutes may one day be read in court to support or defend some claim against the city or town. Therefore, an accurate record of what the substance of all matters proposed, discussed or decided is essential for potential legal action in the future.

It is the duty of the city clerk-treasurer to take the minutes at a city council meeting per A.C.A. §14-43-506. This can be done by hand or use of a recording device for later transcription, especially now since A.C.A. §25-19-106 requires all open public meetings to be recorded for the capture of sound and retained for one (1) year. The clerk will later prepare the minutes of each

meeting (regular, special, work session or public hearing). The minutes should be prepared as soon as is practical after each meeting.

### **Correction of Minutes**

The council may amend the minutes prior to approval. The amendment should be made in the form of a motion that clearly states the correction to be made. The amendment should be included in the meeting minutes. The city clerk-treasurer will make the correction to the minutes as approved by the council and then file in the minutes book. The correction to the minutes shall be by lining through deletions by strikeout font. The correction, amendment, or addition shall be by underlined font in the minutes. Do not erase the original minute entry.

### **Streamlining Council Meetings**

Even the best planned council meetings can deteriorate into endurance contests. These are not always the most productive meetings – exhausted people don't always make the best decisions. Here are some tips on things you can do to “shorten meetings.”

### **Regulating Talk**

Too much talking is the most common cause of lengthy meetings. If persons addressing the council ramble, the mayor might tell them to confine their remarks to the subject at hand and conclude as quickly as possible. Many council procedures limit public comment to 3-5 minutes, and limit the number of speakers on any one topic. Another idea is to include an approximate starting time by each major agenda item. This information also is useful to city residents attending the meeting.

If the problem is created by a talkative council member, a simple statement such as “it's getting late and we must move along” usually will work, though a private conversation later on may be needed to handle chronic talkers.

### **Shortening the Agenda**

An important consideration to make the agenda manageable is to keep things off of it that don't belong there. The formal council agenda is the place for formal actions on the part of the governing body. In general, every regular meeting agenda item should include an instrument for council action. Items that are solely for the information and advice of the council should be provided outside the formal agenda process.

### **“Consent” Agendas**

The consent agenda is a tool used to streamline council meetings. Routine, non-controversial items are listed collectively on the agenda and are passed with a single motion and vote. In some cities, the actual items placed on each consent agenda are selected at a monthly city department heads' meeting. In others, an agenda committee chooses the consent items.

- Commonly, there is no debate allowed on the consent agenda or on any item included in it. The motion for adoption must receive unanimous approval.
- Consent items may be read by title only.
- Any councilmember can have an item removed from the consent agenda for separate consideration. In addition, some cities allow any person attending the regular council meeting to request that an item be voted on independently. The remainder of the consent agenda can be voted on, omitting the challenged items.

Setting up a consent agenda system usually requires preliminary action by the council in the form of adopting an ordinance or resolution.

### **Conduct of Meetings**

It should be the objective of a presiding officer to avoid too much informality, because it can result in confusion and leave the impression that the city's business is not being handled with efficiency and effectiveness. Since municipal government is about the only level of government with which many citizens ever come in direct contact, they may develop a negative impression of government if meetings are not conducted professionally.

A council member should remember that he is on public display during the meeting. A first impression may be a lasting one in the mind of the visitor. Thus, the physical arrangement of the council chambers is important. The council members should be set apart from the rest of the room, whether grouped on a raised dais with individual desks and microphones or simply seated at one end of a large table. All members should be visible to the public. No council member should sit with his back to visitors, even in the smallest board room.

There should be chairs available to visitors and room for them to enter and to leave the chambers without disrupting the meeting. Council chambers must be accessible to those with disabilities. Special provision for a table and chairs for the press may also be provided. If possible, copies of the meeting's agenda should be available in an easy-to-reach location.

There should be a place where a person addressing the council can stand. In some places visitors are allowed to rise in their place to address the council, and in others, they must come forward before the council. In either event, a visitor should be able to see all the council members they are addressing

### **Council Meeting Packets**

Council packets are assembled and delivered no later than the weekend prior to the regular council meeting. This allows the mayor and council time to review the agenda and the supporting documents prior to the meeting and to make sure the packet includes all the supporting information the council needs to make an informed decision on the items on the agenda.

The city clerk-treasurer usually delivers the packets by email or other electronic form or they are picked up by the mayor and council members in their city hall mailboxes. Contents of the council packets are public information. If the press or a citizen requests a copy of the information in the council packet, copies of the packet are to be made for them.

### **Staff Reports at Council and Committee Meetings**

Staff reports serve four (4) main functions:

1. Help the mayor and council define projects, understand complex problems, consider alternative solutions and determine courses of action.
2. Forward recommendations involving public assets and assure that decision processes are managed in a fair and open manner.
3. Serve as a resource for the public to understand and participate in the decision-making process of the government.
4. Provide a structure to ensure city/town council members have all relevant information.

## **Council Work Sessions**

Informal council work sessions may be needed occasionally to study certain matters in detail. These are most often held in conjunction with budget review. Work sessions also are useful when major policy questions must be decided, or when a complicated ordinance, such as a building code, comes before the council. A council work session is considered an open meeting to the public under the Arkansas FOIA and subject to the requirements of A.C.A. §25-19-106 which requires all open public meetings to be recorded for the capture of sound and retained for one (1) year.

## **Public Hearing Meetings**

A public hearing is a formally designated time for discussion of a specific topic. Some public hearings are required by law before an ordinance or resolution can be enacted on a particular subject or an action taken on a matter. Other times, the city council may want public input on a particular subject before they take any action on a subject. Either way, a public hearing is considered an open meeting to the public under the Arkansas FOIA and subject to the requirements of A.C.A. §25-19-106 which requires all open public meetings to be recorded for the capture of sound and retained for one (1) year.

At the start of any public hearing the Chair should state the topic for consideration.

If, for instance, it is a vacation of a street public hearing, there should be an explanation of what is what the public hearing is for.

The council usually sets the date, time and place for a public hearing. The city clerk-treasurer prepares the notice that must be published, posted, or mailed depending upon the legal requirements for the notice. The notice includes:

- Heading - “Notice of Public Hearing”
- Purpose of the hearing
- Time, date and location of the hearing
- Statement to the effect that oral and written testimony for and against the subject of the public hearing will be heard by the council or that all persons desiring to have public input on the matter of the public hearing may do so at the aforementioned time, date and location
- Contact for more information—name, phone number, address
- Clerk’s name and title (can also use mayor’s name and title)

The public hearing notice should be published in a newspaper of general city circulation according to the specific state law public notice requirement. If there is no specific publishing requirement in the specific state law requiring the public notice, then the general state law on publishing a public notice is to publish it one (1) time in a newspaper of city general circulation per A.C.A. §16-3-102(a).

One cardinal rule to remember is *numbers don’t always count*. There are some topics that naturally draw large, highly partisan crowds. Very vocal minorities may try to swamp a public hearing to show their side is right. Such items as little league ballparks, school crosswalks, street improvement districts, water rates or any tax matter will attract great numbers of visitors. *The size of the crowd does not indicate whether their cause is just*. The council is elected to serve all

the citizens, and a council member must look at the overall picture, not just at the picture presented by a partisan group.

The purpose of a public hearing is to present evidence on both sides of a question. The council is charged with the responsibility of weighing the evidence, and after due consideration, reaching a decision. No council decision can be made during a public hearing; such decisions are made after the close of the hearing. Further, the decisions may be put off until the following meeting or later if more time or information is needed. In fairness to those who have taken the time to attend, it might be wise if the Chair could give an indication as to when such a decision will be reached. If it is obvious that council will be able to come to a conclusion with a minimum of discussion, the decision may be made immediately after the hearing and the result announced. Otherwise, the Chair should state the reason no decision will be made at that time and give a probable time for the announcement of the result.

On any subject that is controversial the following procedure should be followed: 1) proponents' presentation; 2) opponents' presentation; 3) proponents' rebuttal; 4) opponents' rebuttal. Questions from the council may be asked at any time during this process once recognized by the Chair. If it simply is a hearing for the purpose of obtaining public opinion, such as on the the renewal of a city sales and use tax, citizens should be allowed to speak in the order they request recognition. It always is the Chair's right to determine the order of speakers.

### **Public Hearing Minutes**

A complete audio recording should be made of the entire public hearing A.C.A. §25-19-106 requires all open public meetings to be recorded for the capture of sound and retained for one (1) year. However, it isn't necessary for the city clerk-treasurer to prepare a verbatim paper transcript of the recording unless required for a trial. The minutes of a public hearing should include:

- Written evidence produced at hearing: Make appropriate reference to any written evidence in the form of statements, affidavits, reports, photographs, maps, correspondence, or other objects filed with the clerk prior to the hearing or at the hearing, and included as part of the record. Place the written evidence in the corresponding public hearing file.
- Oral testimony: Identify by name all persons who testify and whether testimony was FOR or AGAINST the hearing subject.
- Arguments and debates: Briefly note arguments and debates.

### **The Committee**

Many elected bodies divide into committees to study specific issues. Elected bodies may have both standing and select committees. Committees can either facilitate the decision-making process or consume unwarranted amounts of time and effort. Here are some pointers on the use of subcommittees:

1. Clearly define the mission before creating a committee.
2. Set deadlines for reports.
3. Monitor assignments to check on progress.
4. Establish expiration provisions and enforce them.
5. Rotate membership periodically.
6. Keep nonmembers informed of meetings and actions.

7. Monitor the amount of staff effort required.
8. Review the list of committees annually and delete those that are no longer necessary.

### **Meeting Diagnosis**

- Meetings start on time.
- Meetings end at a reasonable hour.
- The council sticks to the agenda.
- The public is encouraged to participate.
- The council does not attempt to engineer “how-to” details at the meeting.
- No one tends to dominate the discussion.
- All members participate.
- Members do not engage in side conversations during the meeting.
- Members actively listen to each other.
- Members do their homework.
- Unnecessary meetings are not called.
- Packed audiences do not unduly sway the council.

### **Voting Guide**

#### **Quorum**

The general rule governing the transaction of council business is that a majority of the whole number of council members must be present at the meeting to constitute a quorum. This means five (5) council members of an eight (8) council member council for regular or special meeting per A.C.A. §14-43-501(a)(2)(A). However, the mayor may court toward a quorum at a regular or special city council meeting under A.C.A. §14-43-501(b)(1)(B).

#### **Abstentions**

In the absence of a local statute to the contrary, council members are free to abstain from voting on any issue before the council. Some cities have adopted local rules of procedure allowing abstentions only when the councilmember states his or her reason for abstaining. Other cities require council members to vote on all matters before the council unless a conflict of interest exists. When a conflict of interest exists, a council member should refrain from voting. Generally, however, other council members cannot restrain a councilmember from voting due to a conflict of interest or for any other reason.

All ordinances, resolutions and orders require a majority vote of a while number of council members. Abstentions do not reduce the total number of council members voting. So in an eight (8) member council, a vote to adopt an ordinance still requires five (5) affirmative votes no matter if one (1) or more council members abstain from voting per A.C.A. §14-55-203.

Abstentions do reduce the total number of those council members voting on motions which do not adopt ordinances, resolutions, orders or motions to suspend the rules which follows basic parliamentary law of present and voting.

## **Voting by Proxy**

Voting by proxy is not allowed under state law. Each council member must be present at a council meeting in order to cast their vote. The only exception is when the Governor has declared a state emergency.

## **The Mayor Pro Tempore**

On occasion, a council member may find him or herself in the role of mayor. The mayor pro tempore (also called the mayor pro tem) is appointed by the council to serve in the absence of the mayor. The mayor pro tempore presides at meetings of the council, administers oaths, and signs instruments in the absence of the mayor. A council member acting as mayor pro tempore generally retains his or her council member vote. The mayor pro tempore generally serves only when the mayor's absence is temporary. When a vacancy occurs in the office of mayor, a new mayor is appointed by the council.

## **Mayor's Veto Power in Different Forms of City Government**

- In first class mayor-city council cities, the mayor may veto an ordinance, resolution or order but the mayor's veto can be overruled by two-thirds ( $\frac{2}{3}$ ) of the members of the council
- In council-city manager cities, the mayor votes as a board of directors' member but has no veto power.
- In mayor-city administrator cities, the mayor cannot vote on anything before the board of directors but the mayor may veto an ordinance. The mayor's veto can be overruled by a vote of five (5) board members.

## **Practical Advice**

### **Presiding Over Meetings**

- **Work at running an efficient meeting.** Even if you live in a small town, it's important to run your meetings professionally and act professionally.
- **It is very important to have formal meetings and know your council's rule of procedure and any state law procedural requirements.** One of the mistakes (particularly in small cities) is trying to be very informal. Recognize "Councilmember Smith" rather than "George." This also helps keep the debate from getting too personal.
- **Be careful with executive sessions.** Only use executive sessions for issues that are specifically allowed.
- **Bring some humor to the council meetings.** Keep your cool!
- **Insist upon decorum in council meetings.** Be courteous to members of the public and let them know you appreciate their comments.
- **Don't spring surprises on your councilmembers or city staff, especially at public meetings.** If a matter is worth discussing, it is worth putting on the agenda. Surprises may get you publicity, but they may embarrass others and tend to erode the "team" approach to governance.
- **Have your city attorney attend your council meetings,** but don't expect the attorney to know all the answers right on the spot. Give the attorney time to research issues.



**“Just make it up as you go along, like everybody else!”**



## **Chapter 19**

### **Community Participation at Council Meetings**

*“Your projects can often demonstrate new and innovative approaches that can be supported and eventually replicated with greater support from the public sector. Showing up and speaking up at city council and state legislature hearings are essential, but so is the project work.”*

-Mark Winne

The public evaluates the performance of its elected officials to a great extent by what happens at meetings. Many residents form their total opinions of the city government on the basis of having attended just one council meeting. This is the time to impress your community favorably, and show them that the council is capable of doing its job.

The city resident comment period is a time slot set aside on the agenda for city residents to address the council on any subject. It is not to be confused with a public hearing, which is a formal proceeding conducted for the purpose of discussing a specific topic, such as the vacating a portion of a city street or certifying a lien to the county tax collector's office. Local practices vary considerably with respect to reserving a place on the agenda for community participation. Although not required by state law, councils will often provide an opportunity for members of the public to address the council.

Visitors should be informed of the place on the agenda where they will be recognized to speak. If an exceptionally controversial item draws a large crowd, it is generally wise to state the approximate time the item will come up for discussion. When a visitor is addressing the council, all members should be attentive and listen politely. If the speaker goes over their allotted time, drifting from the subject or is personally abusing council members, the Chair should be the person to cut off the speech. Even though one must be polite, it is not necessary to be intimidated by a rude speaker. A rude speaker often irritates everyone else in the room as much as the council and should be cut off as quickly and painlessly as possible.

#### **Move the Agenda Along**

To move the agenda along, some councils limit the length of time any person may speak from three (3) to five (5) minutes, and permit this to be extended only by a two thirds ( $\frac{2}{3}$ ) vote of the council.

Don't allow verbal exchanges to drag on between residents and council members, especially if they concern administrative problems that can be solved by the staff during regular city hall hours. As mentioned above, if speakers take too much time or engage in personal attacks on council members, it may be necessary for the Chair to cut them short. Council members are expected to be polite to residents appearing before them, but there is no requirement that they subject themselves to intimidation by rude speakers.

#### **Dealing with Critics and Pressure Groups**

Criticism of government and a lack of confidence in our country's elected leaders is rampant these days, even at the local level. External conflict, while stressful, can help frame the issues and provide other perspectives. Most important, it often shows that people feel left out and alienated from the governing body.

Providing a fair hearing of issues at council meetings assures that the needs of pressure groups are appropriately balanced with the organization's mission and the greater needs of the

community. How the governing body reacts will determine whether the conflict is contained or spills over to other issues.

### **How to Deal with Criticism:**

- The governing body should listen actively to its critics – listen to learn and understand, not to argue, dispute or to silence those critics. Attempt to find some area of agreement by sorting out the issues into those that can be dealt with and those that are outside the scope of authority or the range of possibility to be resolved.
- The council should express regret that the problem has arisen. It is helpful to state that you understand how the person or group feels. Perhaps you might even restate their concerns. If you feel personally attacked, it is OK to say that you feel hurt by the comments.
- At some point, the council's action must be defended. Try to help people understand the factors that influenced the council, or discuss the parameters that will influence an impending decision which is under attack.
- When attacked, think carefully before responding. Know your facts. Be truthful. Credibility is your most important asset in dealing with your critics.
- Don't belittle small but vocal sources of opposition. Don't label people.
- Remember that groups which are fostering a narrow self-interest will self-destruct through an inability to gain mainstream support. Don't overreact.
- Keep in mind that anger is directed at your role, not at you as an individual.
- Last but not least, while remaining respectful, keep a sense of humor.

### **The Mayor's Role in Managing Difficult Meetings**

From time to time, elected bodies are faced with conducting highly charged, controversial meetings, full of aggression and hostility. Such meetings really test the elected body and staff. Here are some ideas on handling those difficult meetings:

#### Before the meeting

- Try to get the participants to designate a spokesperson.
- Make agendas and back-up reports easily available to participants.
- Make sure adequate seating is available. Consider moving to larger quarters if necessary.
- Make sure sound and recording equipment is adequate and operational.

#### During the meeting

- Explain the issues, the possible actions and the procedures that will be followed at the meeting.
- Don't waste time or try the patience of participants at the beginning of the meeting on routine items such as correcting the minutes.
- Have speakers address the elected body and not the audience. Some speakers are very adept at inciting audiences, especially if they are permitted to face the audience.
- Explain at the beginning why clapping, shouting and other such demonstrations are counterproductive and stop such actions as soon as they occur.
- Use recesses to help diffuse hostility or aggressiveness.
- Consider limiting speakers to a set time such as three to five minutes. If such a procedure is used, make sure it's applied consistently.

- Consider using speaker cards that are filled out and turned in at the beginning of the meeting. The cards can help identify how many people wish to speak and whether they support or contest an issue. They are also invaluable in recording the names and addresses of speakers. Recognize, however, that persons not wishing to fill out a card may still have the legal right to speak.
- Make sure elected members address colleagues and not the audience. Directly addressing the audience can result in loss of control of the meeting.
- Immediately continue items that cannot be decided at the meeting. This does not preclude the elected body from allowing anyone who wishes to speak on the issue to do so.

### Meeting Tips

#### Meeting Savvy

Consider these pieces of advice when preparing for a meeting:

- **Give colleagues time to assimilate things.** You'll notice that an idea rejected one day may be presented by the one who opposed it earlier.
- **Don't try to please everyone.** This simply does not work and makes you look weak and indecisive.
- **Confront meeting disrupters immediately.** Don't let them take control of the meeting or set its tone.
- **"We've always done it this way."** Don't become so enamored with precedent that it keeps the group from moving forward.
- **Don't waste quality meeting time dealing with routine complaints that can be resolved by staff outside the meeting.**
- **Apply rules equally with all participants.** Don't strictly enforce a time limit for one person and be lax with another.
- **Be careful about using first names of audience members you know and last names of those you don't.** It may be interpreted as bias.
- **Alert staff before the meeting if you intend to bring up an important issue.** This simple courtesy will help staff prepare background information and avoid embarrassment.
- **Be sensitive to audience perceptions regarding your neutrality during a recess, especially during hot meetings.** If you meet with one group and not with another, you may be perceived as favoring that group.
- **If you disagree with a significant statement or proposal made by a colleague or staff member at a meeting, express that disagreement.** Silence may be interpreted by staff as agreement and they may take action based upon that assumption.

#### Chairperson Faux Pas

Acting as the Chair for a group is a demanding task. Here are some common mistakes:

- Failing to remain impartial during a heated discussion.
- Forgetting to relinquish the gavel when the chair becomes emotionally involved in an issue.
- Treating members unevenly.
- Cutting off discussion before members are ready.
- Failing to close discussion in a timely manner.

- Failing to establish or follow the agenda.
- Allowing the meeting to become too informal; letting the meeting drift.
- Neglecting to explain the process being followed.
- Failing to restate audience questions so all in the audience can hear.
- Failing to recognize and deal with council member objections to procedure or process.
- Failing to protect members and staff from verbal attack.
- Losing track of amendments to motions.
- Failing to restate motions before they are voted upon.
- Forgetting to call recesses during long meetings.
- Neglecting to reconvene the meeting at the specified time after a recess.

Resist the temptation to be a dictator at council meetings.

Remember: it's the council's meeting, not the mayor's meeting.

### **The Art of Asking Questions: How to Aid Discussion by Asking the Right Questions**

Questions are one of the most important tools you can use to obtain information, focus the group and facilitate decision making. Here are some samples:

#### **Asking of Colleagues**

- How do you feel about this item?
- What do you think the proposed action will accomplish?
- Would you please elaborate on your position?
- What results are we looking for?

#### **Asking of Staff**

- What other alternatives did you consider?
- Why has this item come to be on our agenda?
- What are we trying to accomplish with this law/policy?
- What are the benefits and drawbacks?
- Will you please explain the process?
- Have we ever made an exception to this policy?
- What would it take for you to support this?
- What type of feedback have you received from the residents?

#### **Asking of the Public**

- How will this proposal affect you?
- What do you think about the proposed action?
- What are your concerns?
- What other ways can you suggest for solving the problem?

#### **To Broaden Participation**

- We've heard from some of you. Would others who have not yet spoken like to add their ideas?
- How do the ideas presented thus far sound to those of you who have been thinking about them?

- What other issues related to this problem should we discuss?

### **To Limit Participation**

- We appreciate your contributions. However, it might be well to hear from some of the others.
- You have made several good statements, and I am wondering if someone else might like to ask a question or make a statement.
- Since all of the group has not yet had an opportunity to speak, I wonder if you could hold your comments until a little later?

### **To Focus Discussion**

- Where are we now in relation to the decision we need to make?
- Would you like to have me review my understanding of what's been said and where we are?
- Your comment is interesting. However, I wonder if it relates to the problem before us?
- As I understand it, this is the problem...Are there additional comments before we come to a decision?

### **To Help the Group Move Along**

- I wonder if we've spent enough time on this and are ready to move along to . . .?
- Have we gone into this part of the problem far enough so that we can shift our attention to...?
- In view of the remaining agenda items, would it be well to go to the next question before us?

### **To Help the Group Reach a Decision**

- Do I sense an agreement on these points. . .?
- What have we accomplished up to this point?
- Should we look at our original objective and see how close we are to it?
- Would someone care to sum up our discussion on this issue?

### **To Lend Continuity**

- At our last meeting we discussed this issue. Anyone care to review what we covered?
- Since we cannot reach a decision at this meeting, what issues should we take up at the next meeting?
- Are there points that need further study before we convene again?



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## **Chapter 20**

### **Public Participation: Tips for Talking with the City Council**

*“Who can fathom the danger and pain of a visit to the City Council?”*

-Joseph Fink

The following is a suggestive guide to the public on how they can provide input at council meetings.

- The city council welcomes participation in all public meetings.
- When you feel strongly about a public issue or a local concern, the council encourages you to share your information and thoughts with them. If you are unable to attend a meeting or would rather not give testimony at the meeting, you are encouraged to send/fax a letter which would be made a part of the official record.
- To speak during the public comment period, you have to sign up before the meeting and state which agenda item you speak to address.
- If you want to speak on the topic at a public hearing scheduled for that evening, you must comment during the public hearing portion of the meeting, however, you need not sign up in advance.
- When you talk with the council, step up to one of the microphones and identify yourself by stating your name so the council will know who you are. Be sure your microphone is on and speak into it clearly.
- During the public comment period, your comments are limited to three (3) minutes. These are guidelines to help council members hear as many different viewpoints as possible in the limited time available. If you are speaking for a group, you should give the council some background how the group developed the position that you are presenting.
- If previous speakers have already made the comments you wish to make, feel free simply to identify yourself and indicate your agreement with what has already been said.

#### **Public hearings**

Formal public hearings are part of the vocabulary of public process in America. While it is necessary to conduct public hearings to meet certain legal requirements, these hearings should by no means be the only opportunity for citizen involvement on important policy issues. A public hearing offers you a formal opportunity to give your views to the Council on the subject of the hearing.

- To give testimony, step up to one of the microphones and identify yourself by stating your name and address for the record. When you talk to the council during a public hearing, council members, staff and the audience will remain silent. After the last person has spoken, the hearing will be closed. The city council will then discuss and will often decide on the issue.
- The audience may not comment during council’s deliberations unless a council member requests more information from a speaker.
- Again, you are also encouraged to submit your written comments on the subject to the Mayor’s Office or City Clerk-Treasurer before the meeting so they can be included in the record and distributed to the council.

## **Suggested presentation model for precise, well organized proposals**

- **Point.** What is the idea you wish to present? Begin with an “I statement” outlining your idea, such as, “I am here to (support/oppose)...”
- **Reason.** Why you are making this point. This is an important step so the listener does not make assumptions about your motives.
- **Example.** Brief and relevant example to clarify and make your point concrete.
- **Summary.** What condition will be changed or improved if your point is adopted?
- **Action.** (If appropriate, depending on the situation) What needs to be done and who will do it.

## **Informal Public “Town Hall Meetings”**

There are drawbacks to formal public hearings. Formal public hearing setting can create a theater atmosphere, especially if the session is videotaped for community broadcast. Legislators and interest group representatives make speeches to the camera for the benefit of those watching at home. Formal hearings often bring out the most extreme positions. Interest group leaders often feel that they need to present a harder position than they might actually be willing to accept. They have to look like strong leaders, and their "opponents" will be making equally strong statements for contrary positions.

At a hearing, there is usually little, if any room for reasonable discussion, give or take, or response to prior testimony. Usually there is a parade of speakers who come to read their prepared statements. Interest groups often feel that it is necessary to pack the place with supporters of their positions to influence legislators politically.

On important public issues, there has to be solid public process before a hearing is scheduled, if there is to be any hope of reaching a solution that has a high level of community support. There are a number of techniques that can be helpful. Newsletters and other mailings can inform the community about issues, options, and the process of decision-making. Surveys can be used to assess community views and opinions about important issues. Community meetings, such as informal public “town hall meetings” can be structured to maximize opportunities for dialogue on important matters.

There is no one right method or one single set of techniques that guarantee success. A genuine willingness to be open, to listen, and to explore options and issues identified by the community will instill faith in the process. Citizens can sense very quickly whether their participation is really welcome. It is also important to structure and facilitate community “town hall” meetings in a way that truly permits participation of interested parties.

Conducting an effective public participation process is hard work. And it can be frustrating, especially if you think you already have all the analysis and information you need to make a decision. There can be tension between the goals of democracy and the desire to make decisions quickly and efficiently. However, a truly participatory process can be very rewarding. Decisions are far more likely to be supported, even by those who might prefer a different outcome. Good will generated by the process can provide momentum to implement a difficult decision. Your community will gain experience, knowledge, and skill at working together to create the future.

## Communication Barriers in Meetings

Effective communications among individuals with diverse backgrounds and interests can be difficult. The following are some factors that can create barriers to effective communications. They are listed here primarily to assist in heightening awareness of possible barriers to effective communications during the policy-making and public participation processes.

- **Power needs.** Legislators and interest group representatives need to show that they are doing a good job for their constituents. They have a need to forcefully represent their members and to receive credit for accomplishments. Sharing credit is one of the most important things elected officials can do to win support for their proposals. Big problems occur when the process is structured to produce solutions where one side "wins" and the other side "loses." If at all possible, insure that an influential interest group does not lose on all of its issues. Sometimes it may be necessary to broaden the scope of the overall effort in order to find a "win" for an important interest.
- **“Political irrationality” vs. “Technical rigidity.”** Some technical staff may see political behavior as irrational. Elected officials may see staff as inflexible because they appear to hide behind the technical standards of their professions. It helps to understand the needs of the other parties to carry out an effective dialogue.
- **Different perspectives.** We see problems differently, experience the same event differently, hold different values, use different approaches to solve problems, and have different communication styles. In short, we are diverse. Any of these differences can get in the way of effective communications. Try to understand where other parties are coming from and to see things in their terms. Stephen Covey has written some excellent material on empathic communications in *The 7 Habits of Highly Effective People*. Habit 5 is "seek first to understand, then to be understood."
- **Part time vs. Full time.** Most city and town elected officials are part-timers who make their living in a non-governmental occupation or profession. Part-time officials have limited time available to spend on issues that staff may be paid to address. Some elected officials have much more time available than others to spend on their mayoral or councilmember roles. Those who have less time to spend on an issue may feel at a disadvantage.
- **Technical expert vs. citizen.** Some experts may see citizens as lacking the knowledge and skills to participate effectively. This is unfortunate since value choice is at the root of the public policy-making process. Conversely, some citizens may feel that technical experts are suspect, especially if they work for government. They may be seen as part of the established order that wants to protect the status quo. This too is unfortunate since experts who understand their role can assist the identification of "win-win" solutions.
- **Public apathy and feelings of powerlessness.** Some officials believe that the majority of citizens are distrustful and apathetic about the functions of government. That may leave them wondering about how representative the participants are. Richard Nixon had his "silent majority," whom he believed supported his policies. On the other hand, there are citizens who feel powerless to influence government; they assume that "officials won't listen" and "you can't fight city hall." The reality of the policy-making and public participation processes are that those who put in thoughtful time and effort have more influence on the outcome.

- **Formal proceedings.** Rules of order are needed, although formality can get in the way of open communications. Council chambers are formal and often place legislators on a podium above citizens. This does not create an impression that a citizen can really have an influence. Public process can be designed in ways to encourage, not inhibit, participation.



**Everyday Democracy - At least *eighty percent* is showing up!**

## Appendix A

### 50 Survival Tips for Newly Elected Municipal Officials

*“[T]he individuals themselves, each in his own personal and sovereign right, entered into a compact with each other to produce a government: and this is the only mode in which governments have a right to arise, and the only principle on which they have a right to exist.”*

-Thomas Paine

Congratulations! The voters have spoken and you’re the candidate they’ve elected to meet the challenges facing the city and its citizens. You may find your new position to be worlds apart from what you had imagined. Maybe you hadn’t considered the amount of time your “part-time” position would take, or you hadn’t anticipated that your residents would expect you to solve all their problems, which may include personal issues. Whatever your feelings are, you can rest assured that in time, you will become more knowledgeable regarding the fundamentals of your local government.

Your ability to assist in the operations of your local government will only improve over time. The Arkansas Municipal League, along with other organizations, is available in helping you become a more effective leader. Many newly elected municipal officials are often apprehensive about their recently acquired responsibilities as public servants. As a practical tool, the following 50 Survival Tips are meant to assist you in understanding your role.

**1. Know what you are getting into.** Becoming an effective municipal elected official will require much time and effort on your part. Most elected officials, regardless of their form of government, will find they are a public servant full time. Expect to spend a significant portion of your time attending to your duties – attending city council meetings and other meetings, reviewing reports and other materials, meeting with constituents, and attending various functions in your official capacity as mayor or council member.

As an elected official, you can expect to be contacted at all hours by citizens – making complaints, seeking assistance, and seeking personal favors. Additionally, as an elected official, you can plan to give up certain aspects of your privacy. The elected official truly lives in a fishbowl. Accordingly, your actions, however uneventful they may seem, may be subjected to close public scrutiny. Remember that anything you say or do may appear in the newspaper, the evening news, or on the Internet.

**2. Understand your role as a municipal elected official.** It is very important that all municipal officials, both elected and appointed, understand their roles in the city’s organization. You should clearly understand the roles, lines of authority, and limitations of the following city officials:

- The mayor
- The city council
- The city manager or administrator, if any
- The city clerk-treasurer
- The city attorney
- The city’s department heads

**3. Do your homework.** Follow the Scouting motto, “Be prepared.” Read your city’s charter and code of ordinances, along with any reports that your city manager, city clerk, and/or department

heads may provide. In other words, be prepared and informed before making statements, asking questions, or voting on an issue.

If your city manager or city clerk prepares an agenda packet or staff report for your review prior to each council meeting, be sure to read it carefully. Such reports generally contain background information on items that are scheduled for consideration at the next council meeting. Becoming familiar with this information prior to the council meeting should assist you in making more informed decisions at the meeting. If your city manager or city clerk does not prepare an agenda packet or staff report prior to each council meeting, you might want to ask that one be developed.

**4. Familiarize yourself with your city's operations.** Learn as much as possible about your city's operations. For example, find out why the city's sanitation charges are so high, why the city's recycling participation rates are so low, and/or how much it costs to repair a sidewalk or a pothole. What about wastewater? Do you know what happens to wastewater when someone flushes a toilet in your city? Is your city's wastewater treatment plant in compliance with applicable regulations?

An examination of the city's budget will identify the city's major sources of expenditures and revenues. The city manager, as well as the city's department heads, can provide valuable information concerning the city's operations.

Finally, learn as much as you can about the important issues that presently affect your community and surrounding areas. Are there problems with crime, traffic, or water supply?

**5. Use your perspective.** Once you have become acquainted with your new responsibilities, it is imperative that you utilize your new perspective to better communicate issues with your constituency. Being a newly elected official, you may have a better understanding of the citizen's needs and concerns and may be better able to express them to your more "seasoned" colleagues.

**6. Ask questions. Don't be afraid to ask questions.** The adage that you learned in first grade, "the only dumb question is the one not asked," is true. Remember that some elected officials may have more experience and might not ask as many questions. Also, other elected officials may have the same questions as you but may not be willing to ask them. Don't let the fear of asking a "dumb" question deter you in your efforts to become a more informed and a more effective elective official.

**7. Don't make promises you can't keep.** Since legislative decisions require the approval of a majority of the city council, it may be difficult to sell your plan to the numbers of council members needed for passage. For example, making a promise during the campaign that you will reduce the city's water rates or fire the police chief might help you win the election. However, without the support and affirmative vote of a majority on the city council, such promises may never come to fruition.

**8. Don't try to please everyone.** It is impossible to please everyone. Accept this fact and move on to more important issues.

**9. Learn Your Alphabet.** Public hearings on such controversial issues as land use or zoning changes will sometimes fill the council chambers with fearful or angry residents who are opposed to the issue under consideration. Some of these residents may be better characterized by an alphabet soup of acronyms, including the following:

- NIMBYs – Not in My Back Yard
- CAVEs – Citizens Against Virtually Everything
- BANANAs – Build Absolutely Nothing Anywhere, Near Anything

Please note that the NIMBYs, CAVEs, and BANANAs can offer valid concerns, and they can also conduct research and provide valuable information that can assist elected officials with their decision-making processes. With a little effort, you should be able to recognize the difference between legitimate concerns and irrational fears. Remember that your job as an elected official is to represent the entire community, not just a particular block or subdivision.

**10. Try to be as consistent as possible in making decisions.** Consistency is the best policy when making decisions. Be wary of setting precedents and rely strictly on policy.

**11. Don't be afraid to say, "I don't know."** Even if you "do your homework" and become familiar with your city's operations, as recommended above, it is impossible to know everything about a city's operations, employees, and finances. If a constituent (or anyone else, for that matter) asks you a question and you don't know the answer, have the courage to say so – but offer to find out the answer.

**12. Pace yourself.** It is impossible for you to learn the workings of your government overnight. You may find it difficult to juggle the multiple tasks you have recently inherited, but it is crucial that you allot time in your schedule for studying the issues.

**13. Ask for opinions and listen.** Listen to everyone, including your adversaries and those having opinions that differ from yours. Be open to new ideas and suggestions.

**14. Draw the line.** Never let differences of political opinions cross over into personal attacks. Respect the seats that your colleagues occupy, and remember that, like yourself, they were elected by the citizens.

**15. Adhere to your city's form of government.** Don't bypass the system. Know the laws under which your city operates under. They are the city's fundamental laws, much like the national or state constitution.

In Arkansas, most municipalities have one of the three forms of government: a mayor-council form, a council-manager form, or a council-administrator form. Reading and understanding state laws affecting city elected officials will help you in determining your role as an elected official.

If your city's ordinances do not provide an administrative role for you in the city's operations, don't meddle in the day-to-day administration of the city.

If your role is strictly a legislative one, concentrate on setting policy to the best of your ability, and let your appointed administrative staff perform the jobs that the city is paying them to do – and then hold them accountable.

**16. Insist that others adhere to your city's form of government.** Don't let others – elected officials, city employees, citizens, etc. - bypass the system. Insist that they adhere to your city's established procedures (regarding complaints, personnel issues, etc.). Additionally, insist that vendors, applicants for employment, etc., adhere to the city's established procedures.

**17. Recognize the value of teamwork and consensus building.** City councils whose members work together as a team, respect everyone's right to have a different opinion, and "agree to disagree," are probably more effective and can probably accomplish much more than councils

whose members spend the majority of their time engaged in grandstanding, fighting, and backstabbing. Remember, you are only but one vote; everything depends on teamwork. An annual planning retreat provides an excellent opportunity for the mayor and council to get to know each other better and, hopefully, build an effective working team. At this time, you can get to know what types of personalities you are surrounded by, extroverts or introverts. This may help explain the different approaches that your colleagues may take when discussing and reviewing an issue. If your city does not conduct a retreat, you may want to suggest doing so. The use of an experienced facilitator during the retreat is strongly recommended.

**18. Remember that the council should speak as one voice.** The city council possesses its power as a group. Once a vote is taken, the council has spoken. Once a decision has been made by the city council, try to be supportive of it, even if you personally don't like the decision.

**19. Praise in public, criticize in private.** In order to form great working relationships with the mayor, council, and staff, it is of the utmost importance that you respect them both in public and in private. Don't use the media or public meetings to disrespect your colleagues or staff. People are more likely to receive criticism better in private than in front of an audience.

**20. Gratitude.** Always remember to show your appreciation to your staff for their hard work and dedication to the well-being of the city.

**21. Never engage in gossip.** Do not allow constituents to approach you with rumors concerning the mayor or council. As the Jewish Proverb states, "What you don't see with your eyes, don't witness with your mouth."

**22. Set goals.** Early in life, we learned the importance of setting goals. We also learned the importance of setting realistic goals. Don't expect to conquer the world over night. Even after setting realistic goals, you might not achieve anything you set out to accomplish your first year. Consensus-building plays a strong role in determining whether you will be able to achieve your political aspirations.

**23. Try not to reinvent the wheel.** There are actually few new ideas. Your city's most recent innovation has probably already been implemented in other cities. Before beating your head against a wall trying to be creative or innovative, find out what other cities are doing. In addition to learning about other cities' success stories, the "lessons learned" by cities who have experienced problems with various programs or services will be invaluable. Why repeat someone else's mistake, when you can repeat their accomplishments?

**24. Use the resources that are available to you.** Don't panic - help is available! There are numerous organizations and agencies available to assist local governments. Plan to make the best use of these resources.

The Arkansas Municipal League is available to serve you. AML's website and publications, such as "City & Town" contain a variety of information on training, legislation, policy issues, and AML's programs and services. AML's staff is ready and willing to assist your city.

**25. Recognize the importance of training.** Take advantage of the excellent training programs available to Arkansas's municipal elected officials through the Arkansas Municipal League. These programs provide opportunities for you to network with your peers, exchange ideas, and share common concerns. Additionally, recognize the importance of training the city's workforce.

While state law requires that certain city employees (police officers, fire fighters, water and wastewater treatment operators, etc.) receive training annually, most of the available training opportunities for municipal employees are voluntary.

Some elected officials are reluctant for their cities to spend significant resources on training because they fear that their city might become a “training ground” for employees who may leave the city for better paying jobs elsewhere. Unfortunately, this problem does exist in many communities. However, the benefits of having a trained, professional workforce cannot be overstated. Consider this excellent training motto: "The only thing worse than training your people and losing them is not training them and keeping them" - Associated General Contractors.

**26. Practice what you have learned.** Once the class is over, take the information you have gained and apply that knowledge to your everyday life. By using the information, you will be able to perform at a higher level, therefore showing others the importance of municipal training.

**27. Learn from other experienced officials.** Identify an experienced and wise city official (not necessarily from your own city) who would be willing to serve as a mentor. It is strongly encouraged that you form relationships with municipal officials throughout the state, especially those with similar populations and who are facing some of the same issues that your city faces. It is also important that city officials look to other cities that have accomplished the goals that they are now trying to attain. Receiving quality advice from city officials, regardless of your time in office, could possibly prevent you and your colleagues from making needless errors.

**28. Review and understand the Arkansas Open Meetings Law found within the Arkansas Freedom of Information Act.** If you never understand any other laws, make sure that you are familiar with this one.

Knowingly and willfully participating in a meeting that violates the Freedom of Information Act is punishable criminally as a Class C Misdemeanor and can result in a fine of up to \$500. Additionally, any person, firm, corporation or other entity can sue civilly to require you to comply with the Open Meetings part of the Arkansas Freedom of Information Act.

**29. Avoid conflicts of interest.** As an elected official, you should recognize when you have a legitimate conflict of interest, so that you will be sure to disqualify yourself and not vote on the particular issue at hand. Under A.C.A. §14-42-08, it is illegal for a member of a city council to vote on any question brought before the council in which he or she is personally interested. Please note, however, that a council member should only abstain from voting on an issue if he or she has a legitimate conflict of interest, not to avoid voting on a controversial issue.

**30. Stay focused.** Your constituents expect you to perform the job they elected you to do. Do not lose sight of your commitment to your community. You will be bombarded with requests, from family, friends, associates, and business leaders, which may or may not be ethical. However, remember the voters trusted you to represent their well-being, and you will be the only one who has to answer to your electorate.

**31. Recognize the importance of intergovernmental relations.** Interaction with other governmental officials at the local, state, and national levels can be extremely important to your city. At the local level, it is important that your city communicate with other city and county officials.

Effective communication with state legislators is also important, as the General Assembly annually passes numerous pieces of legislation that impact local governments. While the Arkansas Municipal League has a legislative staff that can give state lawmakers the facts about how an issue will affect cities, it is from you, a fellow elected official (and their constituent), that legislators learn how proposed legislation might affect the citizens “back home.”

How can city officials lobby effectively with their state legislators? While personal interaction is usually the best approach, it is often difficult to meet with your legislator during the legislative session. However, telephone calls, emails, and faxes are effective methods of communicating with your legislators. Cities are also encouraged to organize connections to build relationships with legislators.

**32. Communicate!** Remember, communication is the key to any healthy relationship. Don't be afraid to express your concerns or feelings regarding an issue. However, when speaking to others, always remember to be polite. Like the saying goes, “You can catch more flies with honey than you can with vinegar.”

**33. Don't forget your constituents.** Once upon a time you were a constituent. It is important that you remember the level of respect you demanded as a voter. Your constituency expects you to understand their problems and issues and to be genuinely concerned about their well-being. Never forget who put you in office, because they will not forget you on Election Day.

**34. Live up to your official responsibilities.** Since being elected to office, you probably have gained a better appreciation for those that serve. Attending every event you are invited to may be impossible. It is, however, strongly suggested that you attend every council meeting scheduled during your tenure.

**35. Seek feedback from constituents.** Remember to seek out answers from your constituents by making personal calls, attending backyard barbecues, community picnics, and/or making house calls. They expect you to vote to protect their needs and their community for generations to come.

**36. Contact information.** Let your constituents know the best means of contacting you (e-mail, social media, snail mail, fax, or phone). Always remember that you were elected to represent the public rather than to hide from them.

**37. Always respond to the voter.** As an elected official, it is your responsibility to respond to any phone calls, letters, emails, or faxes you may receive from your constituents. It may be time-consuming, but in the end, the voters will applaud you for your effort and your willingness to attend to their needs and concerns.

**38. Never let them see you sweat.** At some point during your term, you may find yourself being attacked by the mayor, councilmembers, voters or reporters. But remember, it is always better to take the high road. As a public official, you have become a role model for your entire community. You should always remain level-headed. People are watching, and that includes the future leaders of your community.

**39. When in doubt, go for modesty.** According to Webster's Dictionary, modesty means “freedom from conceit or vanity.” The people elected you as mayor or to the city council because they felt a connection to you and your vision for the city. If they perceive that you have changed and your behavior is no longer in line with your performance as a candidate, they may

lose faith in you. You may possibly become just another “politician” in their eyes and not the public servant they elected. When serving the people, always remain a humble servant.

**40. Be specific.** Once you have learned the issues affecting your city, it is your responsibility to articulate the needs of the city to your state legislators. It is important that you help them to understand where your city stands on each individual issue so that they may vote or act accordingly.

**41. It’s not about getting even!** Remember that speeding ticket you received prior to taking office? Well, this is not the time to get even. Do not use your new role to make political or personal attacks on anyone you feel wronged you before or after taking office.

**42. Remember why you ran for office and whom you serve.** Remember to not get caught up in all the hype. As an elected official, your sole responsibility is to serve the people to the best of your ability. You obviously ran for office because you believed that you had something good to offer to the people. Now that you’re in office, the people expect you to work solely for the betterment of their community.

**43. Act in an ethical manner.** Many elected officials are confronted with ethical dilemmas daily. City officials are encouraged to learn about ethics standards within the State of Arkansas thereby having a better understanding on what approach to take when facing these occasionally unavoidable situations.

**44. Do the right thing.** Always strive to do the right thing, regardless of popularity. Remember that which is right is not always popular, and that which is popular is not always right.

**45. Consult with and follow the advice of the city attorney.** We cannot over-emphasize the importance of talking to your city attorney before addressing the complex issues impacting your city.

**46. Work with your media outlets.** Inform the newspaper and other media of every possible thing you are doing and get their feedback and input. Invite them to your work sessions and include them in the decision-making. If they are a part of it, they can't complain.

**47. Choose only a couple of things to work on at a time.** Do them well but have only a few major initiatives at a time.

**48. Be a leader, not just a politician.** Remember the adage – “a politician looks to the next election, a leader looks to the next generation.”

**49. Recognize that controversy is inevitable at times.** How you choose to deal with controversy will be an important measure of your effectiveness as an elected official. Remember to focus on the real issues, and do not make promises that you cannot keep.

**50. Try to have fun!** Public service is hard work, but there are no rules against having a good time. Make a concerted effort to enjoy your term in office. Otherwise, it may be the longest period of your life. Try to maintain your sense of humor, and don’t take yourself too seriously. Additionally, take pride in the fact that you will have a hand and a voice in the future development of your community. There is no greater reward in public service than knowing that you helped to make a difference in your community!



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## Definitions

*"Liberty cannot be preserved without a general knowledge among the people, who, have a right ...and a desire to know"*

-John Adams

The following definitions are terms municipal officials will encounter and hear from other municipal officials or city staff at some point during their service. The following definitions should be used to familiarize and educate oneself in the jargon of the city language. Should the following definitions conflict with definitions in federal, state or local applicable law, please use those definitions found in those laws.

**Acclamation.** A candidate is elected by acclamation when there are no opponents running against him or her in an election.

**Accountability.** People are expected to be responsible for their actions and may be required to explain them to others. Representatives are accountable to the residents of the municipality in which they are elected.

**Activity.** A specific and distinguishable service performed by one or more organizational components of a government to accomplish a function for which the government is responsible (e.g., police is an activity within the public safety function).

**Ad Valorem Tax.** A tax based on value. Property taxes in a municipality are an ad valorem tax. Taxpayers pay set rate per dollar of assessed value of taxable property.

**ADA.** The Americans with Disabilities Act (“ADA”) is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else. The ADA gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications. The ADA is divided into five titles (or sections) that relate to different areas of public life.

**Administration.** The people in the municipal organization who are responsible for making sure policies and decisions of council are carried out for the day-to-day operations. The head of administration is the Chief Executive Officer.

**Administrative.** Pertaining to management and carrying out of laws and functions, as opposed to legislative and judicial.

**Advisory Board or Commission.** A group of people who are appointed to help with the implementation of the policies and decisions of an area but whose decisions are recommendations without the force of law.

**Agency and trust funds.** Funds established to account for cash and other assets held by a municipality as agent or trustee. Such funds are not assets of the municipality but, through the operation of law or by agreement, the municipality is responsible for their accountability. Examples are the Fireman’s Relief Fund and the Police Pension Fund.

**Allocation of funds.** To set aside funds for a specific purpose or program.

**Amendment.** A change or addition which changes the meaning or scope of an original formal document. Often these are laws or regulations. However, plans or specifications can also be amended.

**Appointed.** The action of being selected, hired into, designated, or chosen for a municipal position which may or may not have to be confirmed by the governing body depending on the law regulating the position.

**Appropriation.** A sum of money authorized by a legislative body to be spent for a certain purpose.

**Arkansas Division of Workforce Services Law.** A body of law which establishes a free public Employment Service, or a system of Unemployment Insurance, or both, and which may also establish other systems compensating for wage loss.

**Arkansas (National) Electric Code.** A one (1) volume set of code regulating installation of electrical systems, including alterations, repairs, replacement, equipment, appliance, fixtures, fittings and appurtenances thereto standards for new constructed buildings adopted at periodical intervals from the National Electric Code series and modified by the State of Arkansas to be the minimum code standards for electrical wiring in the State.

**Arkansas Energy Code.** A one (1) volume set of code regulating energy efficiency standards for new constructed buildings adopted at periodical intervals from the International Code series and modified by the State of Arkansas to be the minimum code standards for energy efficiency in the State.

**Arkansas Fire Prevention Code.** A three (3) volume set of codes regulating fire, building and residential buildings adopted at periodical intervals from the International Code series and modified by the State of Arkansas to be the minimum code standards for reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises, and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations in buildings in the State.

**Arkansas Plumbing Code.** A one (1) volume set of code regulating plumbing installation, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances standards for new constructed buildings adopted at periodical intervals from the International Code series and modified by the State of Arkansas to be the minimum code standards for plumbing in the State.

**Arkansas State Gas Code.** A one (1) volume set of code regulating piping and equipment, fuel gas-fired appliances and fuel gas-fired appliance venting systems standards for new constructed buildings adopted at periodical intervals from the International Code series and modified by the State of Arkansas to be the minimum code standards for gas connections in the State.

**Arkansas State Mechanical Code.** A one (1) volume set of code regulating installation of mechanical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air conditioning and refrigeration systems and other energy-related systems standards for new constructed buildings

adopted at periodical intervals from the International Code series and modified by the State of Arkansas to be the minimum code standards for as previously mentioned in the State.

**Assessment.** The value placed on an item of real or personal property for property tax purposes. The rate of tax times the value equals the amount of tax levied on the property. Also a special tax levied on the property within a special assessment district.

**Assets.** Resources owned or held by the City which have monetary value.

**Audit.** An examination of the financial activities of an agency and the report based on such examination.

**Authority.** The power and permission to speak, make decisions, give orders, and enforce rules.

**Balance Sheet.** A statement that discloses the assets, liabilities, reserves and equities of a fund or government unit at a specified date.

**Balanced Budget.** A budget in which revenues and expenditures are equal.

**Bill.** A term used to denote a law or statute passed by the State legislative bodies, which is listed by the body in which introduced it.

**Bond.** A debt instrument issued by a municipality. Bonds normally bear interest. They are a common way of raising money for capital improvements.

**Boundary.** An imaginary line or border that indicates the limits or extent of an area.

**Budget.** A plan for spending and receiving money to sustain municipal operations during a fiscal year or years. A capital budget is a plan for financing purchases or construction of items of high cost and long life, such as fire engines, streets, and buildings.

**Bylaw.** A law passed and enforced by a local authority in accordance with the powers given to that authority.

**Candidate.** A person whose runs for election for a position in federal, state or local government for a specific term of time.

**Capital outlay.** Expenditures made to acquire fixed assets or additions to them. They are recorded in the general fund or utility fund where the assets are to be used. Ultimately, under good property accounting, such assets acquired through the general fund should be reflected in the general fixed assets group of accounts.

**Capital program or capital budget.** A schedule of purchase or construction of items of high cost, such as fire engines, streets, and buildings, over a period of years (normally five) together with a plan for spending and receiving the money to pay for the items.

**Capital reserve fund.** Established to account for resources legally set aside for anticipated capital expenditures, including construction, purchase or replacement of, or additions to, municipal building, equipment, machinery, motor vehicles or other capital assets.

**Carryover.** Appropriated funds that are encumbered at the end of a fiscal year are allowed to be retained in the budget to be expended in the next fiscal year for the purpose designated.

**Certification.** A formal, written declaration that certain facts are true or valid.

**Chief Executive Officer:** The top administrative official of a municipality who is responsible for the day-to-day operations of the municipality that is a mayor-council form of government is the mayor.

**Citizen.** A person who lives in a municipality.

**City.** An area organized and incorporated under the laws of the State of Arkansas that is formed out of the unincorporated county and is designated as a city or the first or second class based on its population.

**City Council.** The governing body of a city which sets legislative policy for the city.

**City Council meeting.** A meeting of the elected members of council, where community concerns, issues, policies, projects, and actions are debated, discussed and vote upon. A city council meeting are classified into regular, special, public hearing or work sessions and all all considered public meetings.

**City Council member.** A candidate elected to the City Council as an elected representative of the municipality from a designated ward of the city for a term of four (4) years.

**City administrator.** The chief administrator of a municipality in the council-administrator form of government, appointed by the council as the city's chief executive.

**City manager.** The chief administrator of a municipality in the council-manager form of government, appointed by the council as the city's chief executive.

**Civil service system.** A means of hiring & disciplining employees, usually pertaining to police and fire, whereby a civil service commission hears appeals on complaints brought by employees and applicants.

**Cluster development.** A type of residential development where the overall density conforms to typical standards but allows for the concentration of structures on a portion of the tract while leaving the remaining open space for common resident usage. This type of development should be sympathetic to environmental conservation and protection.

**Collateralization.** Occurs when a borrower pledges an asset as recourse to the lender in the event that the borrower defaults on the initial loan.

**Collective bargaining.** A process by which an employee organization/union negotiates with an employer to reach agreement on wages, hours, and terms and conditions of employment.

**Comprehensive plan.** A generalized, coordinated land use policy statement of the governing body of a city, town, or county, consisting of a map or maps and descriptive text covering objectives, principles and standards used to develop the plan. A comprehensive plan includes a plan, scheme, or design for (at least) the following elements: land use; housing; capital facilities; utilities; natural resource lands and critical areas; and rural areas (counties only).

**Condemnation.** See **Eminent domain.**

**Community.** A group of people who have something in common, such as a geographic location, a common identity, or shared goals.

**Consensus.** A general agreement between individuals or groups of people.

**Constituents.** The residents, property owners, and business owners in a municipality, generally considered to be those who are able to vote in an election.

**CPI.** Consumer Price Index measures changes in the price level of consumer goods and services purchased by households over time.

**Debt service.** Payments to creditors, primarily the holders of municipal bonds. Debt service includes principal, interest and minor incidentals such as agents' fees.

**Dedicated tax.** A tax levied to support a specific government program or purpose.

**Dedication.** The donation of land or the creation of an easement for public use.

**Defeasance.** Defeasance occurs with the refunding of an outstanding bond issue before the final payment, or a provision for future payment, of principal and interest on a prior issue.

**Deficit.** The excess of expenditures/uses over revenues/resources.

**Democracy.** A system of government in which people choose to govern by voting for them in elections.

**Department.** An organizational unit comprised of programs and sub-programs. Each department is managed by a single director.

**Depreciation.** The portion of the total expended to acquire a capital asset charged as an expense during a particular period of time. Depreciation is usually estimated in a straight line calculation in which the original value is decreased each year as a percentage of full value over the expected life of the asset.

**Developer.** Any landowner, agent of such landowner or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

**Development plan.** The provisions for the development of a tract of land, including a subdivision plat, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities.

**Disbursement.** The expenditure of monies from an account.

**Division.** A sub-unit of a department which encompasses a portion of the duties assigned to a department. May consist of several activities.

**Easement.** A right-of-way for public or quasi-public use. Normally, they are used for utilities, bridle paths, parkways, floodways, scenic uses, and other purposes. The fee title to land in the easement areas remains tied to the adjacent land, and the easement rights are relinquished when the public or quasi-public use ceases.

**Effectiveness.** A type of measure category sometimes referred to as quality indicators. Effectiveness measures examine the degree to which services are responsive to the needs and desires of the customers. These measures tell how well the job is being performed and how well the intent is being fulfilled.

**Efficiency.** A type of measurement category sometimes called productivity. This is often measured in terms of unit cost over time. Efficiency refers to the ratio of the quantity of service to the cost in dollars or labor, required to produce the service.

**Effluent.** A term applied to the water discharged from a sewage treatment device.

**Electors/Electorate.** People who can elect, or vote for, representatives who are responsible for making decisions and representing the people who live and work in a particular area.

**Elected at-large.** When a City Council member is elected by all eligible voters of the wards in the municipality.

**Elected by ward.** When a City Council member is elected from only the ward in the municipality in which reside within.

**Election.** An election is a process in which people vote to choose a person or group of people to hold an official position, such as residents voting for City Council members or mayor.

**Electoral Ward or Ward.** A geographic area that a municipality can use to divide areas for election purposes, based on the number of people who live there. A municipality may have one (1) or more City Council members for every electoral ward.

**Electoral process.** The manner in which voters elect representatives from candidates in an election.

**Emergency Medical Services (EMS).** A system that provides emergency medical care.

**Eminent domain.** The concept of the power of certain governmental entities to acquire, for public use, privately owned real estate, by means of legal processes and adjudicated compensation to the private owner. Also referred to as “**Condemnation**”.

**Employee Assistance Program (EAP).** An employee benefit program that assists employees with personal problems and/or work-related problems that may impact their job performance, health, mental and emotional well-being.

**Employee Benefits.** The cost for contribution to employee retirement, social security, health, and workers’ compensation programs.

**Employee Fringe Benefits.** Contributions made by a government to meet commitments or obligations for employee fringe benefits. Included are the government’s share of costs for various pension, medical and life insurance plans.

**Encumbrances.** Financial commitments related to unperformed services or contracts for goods for which part of an appropriation has been reserved.

**Endowment.** Funds or property that are donated with either a temporary or permanent restriction as to the use of principal.

**Estimated Revenue.** The amount of projected revenue to be collected during the fiscal year.

**Executive.** The power to carry out laws and functions, veto legislation, appoint planning commissioners and perform other duties as prescribed by law. If a municipality has a city manager, the administrative portion of the executive function is the responsibility of the manager.

**Executive session.** A meeting closed to the public; they can legally be held only for the purpose of considering employment, appointment, promotion, demotion, disciplining or resignation of any public officer or employee.

**Expenses/Expenditures.** Money allotted by the governing body that used to purchase goods, equipment, labor or services.

**Fair Market Value.** The value of a piece of real estate in the open market. Used to determine the assessed value of property for taxing purposes or compensation of the taking of private property for public purposes.

**Feasibility study.** A preliminary survey to determine the design, aesthetics, construction and economic aspects of a proposed project.

**Federal Highway Administration (FHWA).** A division of the United States Department of Transportation that specialized in highway transportation.

**Fees.** A charge to cover the cost of a service (i.e. building inspection fee, zoning fee, etc.).

**Fines and Forfeitures.** The automatic loss of cash or other property as a penalty for not complying with legal provisions and as compensation for the resulting damages or losses.

**Fiscal Year.** For the purposes of municipal government, a 12-month period, beginning January 1 and ending December 30, to which the annual budget applies and at the end of which a governmental unit determines its financial position and the results of its operations.

**Fixed Assets.** Assets of long-term character that are intended to continue to be held or used, such as land, buildings, machinery, and other equipment; also called **Capital Assets**.

**Flood Damage Prevention Ordinance.** An ordinance adopted by a community in order to implement provisions of and qualify for participation in the National Flood Insurance Program (NFIP).

**Flood plain.** The area along a natural watercourse subject to periodic overflow by water.

**Floodplain administrator.** The person designated by a city, town, or county, to administer and implement Ark. Code Ann. §14-268-101 et seq., Flood Loss Prevention, Ark. Code Ann. §15-24-101 et seq., Flood Control and other federal and state laws and local ordinances and regulations relating to the management of flood-prone areas.

**Floodplain management measures.** An overall community program of corrective and preventive measures for reducing future flood damage. These measures take a variety of forms and generally include zoning, subdivision or building requirements, and special purpose floodplain ordinances or codes.

**FLSA.** The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

**FMLA.** The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 weeks of unpaid, job-protected leave per year. It also requires that their group health benefits be maintained during the leave. FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with fifty (50) or more employees.

**Franchise Fee.** A fee/tax paid to a municipality from a utility company operating within city limits for the use of city streets, public rights-of-ways and property easements.

**Full Time (FT).** Occupying or using the whole of someone's available working time, typically 40 hours in a week.

**FTE.** Full Time Equivalent is one full time position funded for a full year or more than one part time positions that equal a full time.

**Function.** A group of related activities aimed at accomplishing a major service or regulatory program for which a government is responsible (e.g., public safety).

**Fund.** An independent fiscal and accounting term used to record all financial transactions related to the specific purpose for which the fund was created. Also referred to as a **Special Fund**.

**Funded Positions.** Is a term referring to the number of authorized positions for which funding is included in a given fiscal year's budget.

**GASB 34.** An accounting standard used by the Governmental Accounting Standards Board that is applicable to state and local governments.

**General fund.** Used to account for all revenues and the activities financed by them, which are not accounted for in some special fund.

**General obligation bond.** A financial instrument giving borrowing power to a municipality, based upon pledging of taxing power to retire the debt and pay interest.

**General obligation bond funds.** Established to account for the proceeds from bond sales and other revenues properly allocated to these funds and the costs of projects financed by them.

**Generally Accepted Accounting Principles (GAAP).** A common set of accounting principles, standards, and procedures that companies must follow when they compile their financial statements.

**Geographic Information Systems (GIS).** Services that supports all municipal departments by providing geographic data, data management, products and services.

**Goal.** A statement of broad direction, purpose or intent based on the needs of the community. A goal is general and timeless.

**Govern.** To make decisions for or have control over a specific geographic area.

**Governmental Accounting Standards Board (GASB).** The ultimate authoritative accounting and financial reporting standard-setting body for state and local governments.

**Grant.** Cash or other assets given by the federal or state government or private entity to a municipality for a specified for a certain purpose, activity or facility and time period.

**Gross Receipts Tax (GRT).** A tax on the total gross revenues of a company, regardless of their source.

**Hazardous Material (HAZ-MAT).** A hazardous material is any item or agent (biological, chemical, physical) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

**HIPAA.** The HIPAA (Health Insurance Portability and Accountability Act of 1996) Privacy Rule establishes national standards to protect individuals' medical records and other individually identifiable health information (collectively defined as "protected health information") and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically

**Impact fees.** Fees imposed on new development activities as partial financing for public improvements (public streets and roads, publicly owned parks, school facilities, etc.).

**Improvements.** Those physical changes to the land necessary to produce usable and desirable lots from raw acreage including but not limited to; grading, paving, curb, gutter, storm sewers and drains, improvements to existing watercourses, sidewalks, crosswalks, street signs, monuments, water supply facilities and sewage disposal facilities.

**Indirect Cost.** The costs assigned to funds in return for support services, such as accounting, which are necessary to support operations.

**Industrial park.** A planned industrial area where consideration has been given to human and aesthetic values, such as vegetation, open space and buffer zones.

**Inflation.** A change in the general level of prices of goods and services in an economy over a period of time. When the general price level rises, each dollar buys fewer goods and services. As a result, inflation also reflects erosion in purchasing power. A primary measure of inflation is the inflation rate, the annualized percentage change in the Consumer Price Index (CPI) over time.

**Infrastructure.** Long-lived assets such as streets, drainage structures, traffic control devices, bridges, buildings, parks, recreational facilities and public utilities.

**In-Lieu Tax.** Tax levied or payment in place of another tax or taxes. Also known as a PILOT Agreement (Payment In Lieu Of Taxes).

**Inhabitant.** A person who lives, or resides, within a municipality.

**Interest arbitration.** A process by which an impartial third party decides the content of a collective bargaining agreement when the employer and the employee group reach impasse in negotiations.

**Job description.** An outline of the duties assigned a class of personnel positions together with the training and experience normally required to qualify for the class.

**Judicial.** The power to judge, to administer justice and interpret laws and ordinances.

**Land development.** The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving (a) group of two or more buildings or (b) the division or allocation of land or space between or among two or more existing or prospective occupants to include streets, common areas, leaseholds, condominiums, building groups or other features; a subdivision of land.

**Legislative.** Pertaining to the power to make laws as opposed to administrative, executive and judicial.

**Levy.** To impose taxes, special assessments or service charges for the support of governmental activities.

**Licenses and Permits.** Revenues that come from the City's efforts to provide licenses to business and inspection services to enforce compliance with minimum code requirements for building and operating safety.

**Line-item.** Line items refer to the specific accounts used to budget and record expenditures.

**Liquidity.** The ability to convert an investment (of idle funds) quickly in order to meet obligations with minimum loss of earning power.

**Local/Municipal Government.** The level of government given the power to make decisions that relate to local issues and services. Local governments work within communities to represent

the interests and goals of community members, and make decisions on what services will be provided in the community.

**Longevity.** Employee compensation payments made in recognition of a certain number of years employed full time with the same entity. Also known as a **Step and Grade Plan**.

**Long-term Debt.** Debt with a maturity of more than five (5) years after the date of issuance.

**Mandate.** A requirement imposed by a legal act of the federal, state, or local government.

**Mandatory.** Something that is required by law or regulation.

**Materials and Services.** May include articles and commodities which are consumed or materially altered when used, such as office supplies, operating supplies, and repair and maintenance supplies, and all items of expense to any person, firm or corporation rendering a service in connection with repair, sale or trade of such articles or commodities.

**Mayor.** The chief executive of the city in the mayor-council form of government, the ceremonial head in a council-manager or council-administrator form of governments.

**Meeting.** A gathering of elected officials set or called in accordance with prescribed laws or charter provisions and where business may be transacted.

**Memorandum of Understanding (MOU).** A nonbinding agreement between two or more parties outlining the terms and details of an understanding, including each parties' requirements and responsibilities.

**Mill.** A property tax equal to one dollar of tax per one thousand dollars of assessment.

**Mission Statement.** A broad statement of purpose derived from an organizations and/or community's values and goals.

**Motion.** In the rules of order for a group or body, a motion is a proposal by a member of the group. It's a statement that describes an action or a decision. It's how decisions are made among a deliberative body.

**Municipal.** Refers or referring to a municipality.

**Municipal Employees.** People who are hired to work for the municipality and are responsible for following its policies as well as providing services to the community.

**Municipality.** An incorporated town or city that's usually governed by a mayor-council, council-manager or council-administrator form of government.

**Nonconforming use.** A use, whether of land or of structure, not complying with the applicable use provisions in a zoning ordinance or amendment.

**Nonconforming structure.** A structure or part of a structure manifestly not designed to comply with the applicable use provisions in a zoning ordinance or amendment as enacted, where such structure lawfully existed prior to the enactment of such ordinance or amendment to its location. Such nonconforming structures include, but are not limited to, nonconforming signs.

**Objectives.** Something to be accomplished in specific, well-defined, and measurable terms and that is achievable within a specific time frame.

**Obligations.** Amounts a government may be required legally to meet out of its resources. They include not only actual liabilities, but also unliquidated encumbrances.

**Official.** A person who occupies a municipal legislative, judicial, administrative, executive or enforcement position.

**Operating Budget.** A budget that sets the plan for the day-to-day operations of the City.

**Operating Expenses.** The cost of personnel and materials and services required for a department to function.

**Operating Revenue.** Funds that the government receives as income to pay for ongoing operations.

**Ordinance.** A law or statute enacted by a city, town or county.

**Part-time (PT).** A form of employment that carries fewer hours per week than a full-time job.

**Peer Review.** A cross-functional effort to review department scores.

**Penalty.** A punishment that is applied if laws or rules are not followed.

**Personnel system.** A method of recruiting, selecting and promoting people to perform the work of a municipal organization and the method of classifying and assigning pay scale to their jobs together with related personnel activities concerning hours of work, training, grievance procedures, and union relationships.

**Petition.** A document that presents a point of view on an issue and is signed by people who support that view. Petitions are sometimes used as a tool to communicate a point of view to government.

**Planned unit development.** An extension of cluster development including detached, semi-detached, attached and multistoried structures, and may include land uses other than residential to the extent they are designed to serve the residents.

**Planning.** A process of deciding what is to be done and how it is to be accomplished; the process of deciding how land should be used and where public facilities should be located.

**Planning commission.** An assembly authorized by state law to prepare and recommend plans for the development of physical, social, economic and cultural resources/facilities within a city.

**Plat.** The official map of a subdivision of land.

**Policies.** Guidelines that determine how services and programs will be provided by a municipality.

**Population.** The people who inhabit, or live in, an area. Also the number of people in a group.

**Press Release.** Informs the local media about an event, a report or an issue. A press release gives reporters information they need to write a news story.

**Priorities.** Choices that are categorized from the most important to the least important.

**Principal.** In the context of bonds, the face value or par value of a bond or issue of bonds payable on stated dates of maturity.

**Program.** A division of a department which specifies a particular group of activities.

**Property.** Land, buildings and businesses in a municipality.

**Property assessment.** The process of placing a dollar value on land and property developments. This value is used when calculating the amount of property taxes that will be charged to the owner of this land or property.

**Property Taxes.** An amount of money charged to property owners in the municipality based on the value of the land and any developments (e.g. buildings on the land).

**Public hearing.** A meeting or portion of a meeting set up to give members of the public a chance to speak on a particular subject such as a proposed ordinance.

**Public spaces.** Shared spaces in a municipality, such as alleys, streets and sidewalks, parks and recreational facilities.

**Qualified elector.** See **Voter**.

**Refunding.** The issuance of new debt whose proceeds are used to repay previously issued debt.

**Regulation.** A rule, procedure or other formal requirement passed to carry out the purpose of the law. It carries the same legal power as the law. However, the rule or formal requirement may only be used to carry out the purpose of the law under which it is passed.

**Reimbursement.** Repayment to a specific fund for expenditures incurred or services performed by that fund to or for the benefit of another fund.

**Representative democracy.** A system of government that provides residents with the ability to elect a representative to govern and make decisions on their behalf.

**Representatives.** People who are elected or appointed to represent the residents of a municipality or local authority, discuss issues and ideas in council meetings or board meetings and let people know about their decisions.

**Reserves.** Amounts of revenue set aside for a specific and unspecific purpose.

**Resident.** A person who lives, or resides, within a municipality.

**Resolution.** An act that is typically less formal than an ordinance, expressing the opinion or mind of the legislative body, and generally dealing with matters of a special or temporary character.

**Resources.** The useful or valuable possessions or qualities of a country, organization or person. Resources can come from the environment as well as from the products and services that people in a municipality or community make and provide.

**Revenue.** Money that comes into a municipality through various methods, such as taxes, levies, and sale of land.

**Revenue bonds.** A borrowing tool with higher interest rates than general obligation bonds, but does not need voter approval. Based on a revenue-producing project and not municipal taxing power.

**Revenue Estimates.** Revenues are projected often using trend analysis.

**Revisions.** Written or added changes, corrections or improvements to a plan, specification or drawing.

**Revolving funds.** Special purpose funds providing a constant source of funds for assessable public improvements. General obligation bonds, repayable from general revenues, as well as assessed taxes, may be used as sources for establishing such a fund.

**Right-of-way (ROW).** A right-of-way is a right to make a way over a piece of land, usually to and from another piece of land. The pathways over which utilities and drainage ways run are often referred to as easements.

**Rural.** Areas with farming and agricultural activities, generally with a relatively low population density.

**Sales and Use Tax.** A percentage tax levied by a governmental entity on the price of a sale that is collected by a merchant or consumer and remitted to the governmental entity that levied the tax. A city sales and use tax must be approved by the city voters before the levy is valid and enforceable.

**Sinking fund.** Established to account for the accumulation of money providing for the retirement of bonds and the payment of interest.

**Soil percolation test.** A field test conducted to determine the absorption capacity of soil to a specific depth in a given location for the purpose of determining suitability of soil for on-site sewage disposal.

**Solid waste management.** The methods of collecting and dealing with household, commercial, construction, industrial, yard and agricultural waste.

**Special assessment bond funds.** Similar to general obligation bond funds, however, the cost of public improvements provided by the bond proceeds are assessed against owners of properties benefited by the improvements.

**Special interest group.** A group with an interest in a specific area that works to promote its beliefs, values and views.

**Special revenue funds.** These funds are established to account for revenues specifically raised for a particular purpose. A special fund is usually created for each purpose (light tax fund, water tax fund).

**Special use.** A use which is not appropriate to a particular zone district as a whole, but may be suitable in certain localities within the district only when specific conditions and factors prescribed for such cases within the zoning ordinance are present. Special uses are allowed or denied by a planning commission or city council.

**Specifications.** The written instructions which accompany and supplement the drawings in a contract.

**Strategic plan.** A plan developed and used by the municipality to set the direction for the future of the municipality. It is a statement of beliefs, principles or guidelines that guide the work of a municipal organization, and considers the roles and responsibilities of the people involved.

**Subdivision.** The division of a single tract or other parcel of land into two or more lots. (Specific definitions will vary in specific ordinances or regulations.)

**Subdivision and land development regulations.** Procedures and requirements which must be met before the subdivision or development of land is permitted.

**Sustainable.** Maintaining at a certain level. At the municipal level, this can involve ensuring there are enough resources for the future of the community when making decisions for the present.

**Taking.** Subject to much litigation and court interpretation, this term refers to the taking and appropriation of private property for public use, with “just “compensation paid to the property owner. See **Eminent domain**.

**Taxes.** An amount of money that is charged and collected on such things as property, income and business profits, or added to the cost of some goods, services, and transactions levied by a government for the purpose of financing services performed for the common benefit.

**Temporary funds.** Created to accommodate a specific need that may arise. Must include a system of complete accountability and be closed promptly upon completion of its purpose. Remaining assets should be distributed in accordance with the intentions of the elected officials as set forth at the time the fund was created.

**Term of office.** The length of time that a representative holds an elected position. All elected municipal officials in a mayor-council form of government have a term of office of four (4) years.

**Tort Immunity.** A state law, A.C.A. §21-9-301, which extends immunity to cities only for acts of negligence, but not for intentional torts.

**Unemployment Compensation.** The Unemployment Benefits payable under the Division of Workforce Services Law other than Shared Work Benefits and includes any amounts payable pursuant to an agreement under any Federal Law providing for compensation, assistance, or allowances with respect to unemployment.

**Unemployment Compensation (UC).** The State Programs that provide benefits to individuals covered under State and Federal Unemployment Compensation Laws, Supplemental Extended Compensation (payable to eligible individuals under other provisions of State and/or Federal Laws during periods of high unemployment) and other special programs which compensate individuals involved in situations which adversely affect their employment status through no fault of their own.

**Unemployment Compensation For Ex-Servicemen (UCX).** The Federal Program that provides benefits to ex-servicemen established by 5 United States Code, Chapter 85. Supplemental Extended Compensation is payable to ex-servicemen under other provisions of State and/or Federal Laws during period of high unemployment.

**Unemployment Compensation For Federal Employees (UCFE).** The Federal Program that provides benefits to Federal employees established by 5 United States Code, Chapter 85. Supplemental Extended Compensation is payable to Federal employees under other provisions of State and/or Federal Laws during periods of high unemployment.

**Unemployment Insurance (UI).** The Program Term that encompasses all State and Federal Unemployment Compensation Laws and related programs administered by the State and Federal Unemployment Insurance Services.

**Urban.** Areas in which there are cities and towns. Urban areas often have a higher population density than rural areas.

**User fees.** The payment of a fee for direct receipt of a public service by the party benefiting from the service such as water services, sewer, swimming facilities and garbage pick-up.

**Utilities.** Services such as water services, wastewater management, and solid waste management.

**Utility funds.** These funds account for the financial transactions of utility services rendered to the general public financed by specific user charges (water fund, electric fund, sewer fund).

**Variance.** The permission granted by a city council, board of adjustment or planning commission, following a public hearing, for an adjustment to some regulation in a zoning ordinance to alleviate an unnecessary hardship. The permission granted must not be contrary to the public interest and maintain the spirit and original intent of the ordinance or code.

**Viable.** Something that has the ability to work successfully, to grow, and develop.

**Vision.** A statement of the strategic long-term direction of the City used to determine optimal governance decisions.

**Volunteer.** A person who provides time and services to support activities and people, without expecting any financial fee or reward.

**Voter.** A person who is registered to vote with the county clerk and has the legal right to vote in an election.

**Wastewater management.** Providing a system to dispose of water that has been used by residents of a municipality.

**Water services.** Involve using a water resource and, in some municipalities, the storage of treated and untreated water. Water service also includes the movement of untreated water to a treatment facility, the storage of treated water in a reservoir, and a pipe or distribution system to homes, businesses and industry.

**Workers' compensation.** Workers' compensation laws protect people who become injured or disabled while working at their jobs. The laws provide the injured workers with fixed monetary awards, in an attempt to eliminate the need for litigation. These laws also provide benefits for dependents of those workers who are killed because of work-related accidents or illnesses. Some laws also protect employers and fellow workers by limiting the amount an injured employee can recover from an employer and by eliminating the liability of co-workers in most accidents. State statutes establish this framework for most employment. Federal statutes are limited to federal employees or those workers employed in some significant aspect of interstate commerce.

**Zoning.** The regulation by a municipality (city, town, or county) of the use of land within its jurisdiction, and of the buildings and structures located thereon, in accordance with a general plan and for the purposes set out in the enabling statute.