

# Guidebook for Municipal Officials of Mayor-Council Cities

Revised November 2021





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## **Introduction**

As local government becomes increasingly complex, local officials must understand the duties and responsibilities of their offices. The purpose of this guidebook is to assist newly elected city officials in learning their statutory duties and responsibilities in order to become effective city leaders. This publication also points out the differences in the functions of the various municipal offices.

Arkansas statutes are laws passed by the Arkansas General Assembly (the state legislature) and are codified into the Arkansas Code Annotated of 1987 as amended. The Arkansas Municipal League has published a *Handbook for Arkansas Municipal Officials*, which contains most of the laws affecting municipal government in Arkansas. This handbook has the same numbering system as the Arkansas Code Annotated (abbreviated as Ark. Code Ann. or A.C.A.) but does not contain all the statutes found in the Arkansas Code (which occupies an entire bookshelf!). The League also publishes a book, *General Acts Affecting Arkansas Municipalities*, after each regular session of the Arkansas General Assembly. The League recommends that you, as a municipal official, ask your city attorney when you have legal questions or need assistance with legal issues. As always, the League staff remains available to assist you.

## **Disclaimer**

The information contained in this guidebook is not intended as legal advice for any specific case. Readers are responsible for consulting with legal counsel when questions arise concerning the application of the law to a particular set of facts. This guide is intended solely for educational and informational purposes.

# Chapter I

## An Overview of Arkansas Municipal Government

Arkansas municipalities are creatures of the state. Prior to 2011, cities and towns had only the powers granted to them by the Arkansas Constitution and statutes passed by the Arkansas General Assembly. This is known as Dillon's Rule and, according to the Arkansas Supreme Court, it means:

“Municipal corporations possess and can exercise the following powers, and no others: (1) Those granted in express words (by the state legislature); (2) Those necessarily or fairly implied in or incident to the powers expressly granted; (3) Those essential to the accomplishment of the declared objects and purposes of the corporations; not simply convenient, but indispensable.” (*Tompos v. City of Fayetteville*, 280 Ark. 435, 438, 658 S.W.2d 404, 406 1983)

The Arkansas Legislature expanded this rule to a certain extent for some cities. “Home rule” statutes gave the power to cities of the first class and certain cities operating under a charter the power to exercise all powers relating to municipal affairs so long as they did not conflict with state law. In 1875, the legislature enacted A.C.A. § 14-55-102, which gave broad authority to municipalities by granting cities and towns the power to pass ordinances. Although § 14-55-102 could be interpreted as repealing Dillon's Rule, the Arkansas Supreme Court continued to apply Dillon's Rule long after the enactment of that statute in 1875, upholding ordinances under that section if they were legitimately aimed at protecting public health and safety.

However, Act 1187 of 2011 repealed Dillon's Rule and extended certain powers granted to cities of the first class to all municipalities. A.C.A. § 14-43-602 states that the rule of decision known as Dillon's Rule is inapplicable to the municipal affairs of municipalities. It gives a municipality the authority to “perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs including, but not limited to, the power to tax.” A.C.A. § 14-43-601 defines “municipal affairs” as “all matters and affairs of government germane to, affecting, or concerning the municipality or its government except state affairs subject to the general laws of the State of Arkansas,” which are listed in §14-43-601(a)(1). A municipality may legislate upon the state affairs described in subdivision (a)(1) of § 14-43-601 if not in conflict with state law.

### Incorporation

An Arkansas community may incorporate by a written petition that describes the geographic area seeking to incorporate and identifying the persons authorized to act on behalf of the petitioners. The petition must be signed by at least 200 or a majority of the qualified electors, whichever is greater, and presented to the county court (county judge). The county court shall set a date for a hearing and, after the hearing, the court will either approve or reject the incorporation. If approved, the incorporation is filed with the Arkansas Secretary of State and notice of election of officers for the newly incorporated municipality is posted. New cities or towns cannot incorporate if they are within three (3) miles of the boundaries of another incorporated city or town unless the governing body of that city or town has “by written resolution affirmatively consented to said incorporation.” In addition, certain real estate developments are exempt from the three-mile limitation requirement (A.C.A. § 14-38-101). Note that Act 932 of 2019 makes an exception to the consent requirement if the area seeking to be incorporated contains a population of fifteen hundred (1,500) or more.

Arkansas law also allows for an election procedure as an alternative for the incorporation of new municipalities having a population of at least 1,500 (A.C.A. § 14-38-115 [as amended by Act 932]). Once a city or town has become incorporated, it may annex additional territory as described in *Municipal Annexation, Incorporation and Boundary Changes* (2021), published by the Arkansas Municipal League.

## Classification

Arkansas municipalities are divided into three (3) classes based on population (A.C.A. § 14-37-101 et. seq.).

Class of City	Population	Referred to As
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

Once a municipality reaches a population of 500, it is classified as a city of the second class, and once a municipality reaches a population of 2,500, it is classified as a city of the first class. However, there are exceptions to these classification criteria. If the council of a town with less than 500 population wishes to become a city of the second class, it may do so by submitting an ordinance to the voters, and if the voters approve, the town becomes a city of the second class. Further, any city with of a population of 1,500 or more may, by enactment of an ordinance, become a city of the first class (A.C.A. § 14-37-103). Arkansas law also allows for cities with certain populations to reduce their classification (A.C.A. §§ 14-37-111 and 14-37-114).

## The Duties of the Mayor

All mayors are encouraged to become familiar with their duties and responsibilities by reading the sections concerning the powers of the mayor in the current *Handbook for Municipal Officials*. The purpose of this guide is to give a summary and overview of the duties of mayor.

### The Duties of the Mayor in the Mayor-Council Form of Government

The principal officer of all Arkansas cities and towns within the mayor-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.

### Legislative Duties of the Mayor

- 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; 14-44-107; 14-45-105). Mayors also have a vote to establish a quorum (A.C.A. §§ 14-43-501; 14-44-107; 14-45-105).
- 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 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 vote of the total membership of the council (A.C.A. §§ 14-43-504; 14-44-107; 14-45-105).
- The vote to override should occur at the next regular council meeting (A.C.A. §§ 14-43-504; 14-44-107; 14-45-105).

## **Administrative Duties of the Mayor**

- 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 (See Chapter V).
- 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 or town council votes to override the mayor’s action by a two-thirds 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 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]).
- A marshal in some cities of the second class (A.C.A. § 14-44-111).
- An at-large member of an Advertising and Promotion Commission (with council approval) (A.C.A. § 26-75-605).

## **Duties of the Council Members**

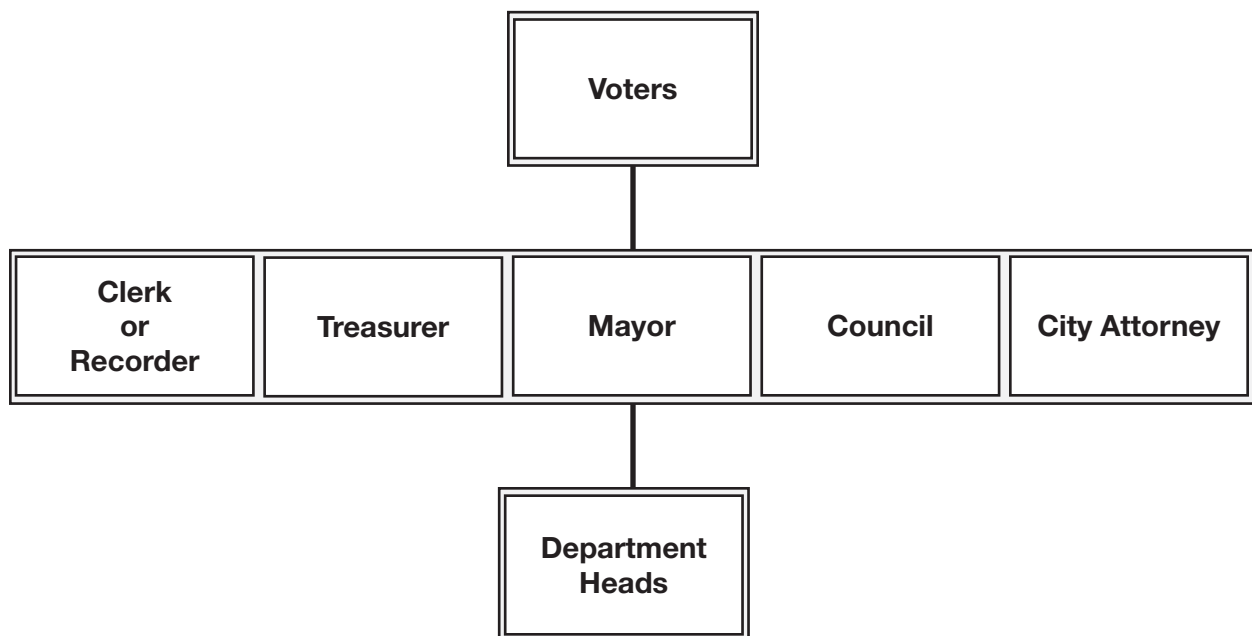
City council members are officers and officials of their city. The city council:

- 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. Councils in cities of the second class and in towns may set procedures for making purchases, except as provided in section 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 vote of the total membership (A.C.A. § 14-42-110).
- May override the mayor’s veto by a two-thirds vote (A.C.A. §§ 14-43-504; 14-44-107; 14-45-105).
- 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)). In a city of the second class or an incorporated town the city council shall fill a vacancy in the mayor's office for the unexpired term by either a majority vote of the council members or a special election (A.C.A. §§ 14-44-106; 14-45-103).
- Sets the salaries of the mayor, council members 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).
- A governing body of a city shall establish a police department (A.C.A. § 14-52-101). In lieu of establishing a city police department under A.C.A. § 14-52-101 a governing body of a city may enter into a contract of interlocal agreement for law enforcement services with an existing law enforcement agency (A.C.A. § 14-52-101).
- Directs by ordinance the number of subordinate 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 or town 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.

### **Mayor-Council Diagram**



# Chapter II

## City Council Rules of Procedure and Different Types of Meetings

### Procedural Rules

Each Arkansas city and town is unique. Your municipality and the residents you represent are no exception. The council rules of procedure should be agreed to and officially adopted by the majority of the council members. Rules of procedure are guides to the generally accepted way that things get done. Topics that are usually covered in procedural rules include:

- **Meetings:** The usual time, date and place for regularly scheduled meetings. Setting the procedure for calling a special meeting must be done by ordinance.
- **Order of Business:** The usual format to be followed, including who is responsible for preparing the agenda according to that format, and special provisions for agenda items such as developing a consent agenda.
- **General Meeting Procedures:** Time limits for debate, if any, and who may speak at what point.
- **Public Hearings:** Procedure and time limits.
- **New Business:** A process for allowing new items to be added to the agenda.
- **Exceptions:** Specific provisions for when and how the rules can be suspended.
- **Parliamentary Process:** Rules of debate governing motions, the order of issues to be discussed and other elements that control discussion at meetings. The *Procedural Rules for Municipal Officials (2014)* booklet is used by many Arkansas cities. Copies of *Procedural Rules* are available by calling the Arkansas Municipal League at 501-374-3484. You can also download it online from [www.arml.org/free](http://www.arml.org/free).

Rules of procedure and public debate are designed to facilitate the transaction of public business in an orderly way. At first it may not seem orderly to you. It is not unusual for newly elected council members to take up to six (6) months before they feel comfortable with the procedures. Do not be hesitant about asking questions if you are not sure about the consequences of your vote. For example, you may want to ask, “If I vote ‘no’ on the amendment, what happens to the main motion?” That is a reasonable request for information.

### Different Types of Meetings

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

- **Regular Council Meetings:** These meetings handle general and routine business.
- **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 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 rezoning request.
- **Work Session:** An informal meeting, generally called for the purpose of conducting an in-depth study on a limited number of topics. Work sessions 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.

## Chapter III

### Proper Ways to Pass Ordinances and Resolutions

A city or town council can take official action in two ways: It can pass a resolution or an ordinance. 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.

#### Resolutions

A resolution is an expression of the will of the council. Resolutions are used to state the council's opinion on various matters—for example, supporting or opposing legislation pending at the state capitol. Resolutions usually affect items of a temporary or administrative nature, such as entering into contracts, approving large purchases or entering into agreements with other governmental units. A resolution is the official expression of the council and may be adopted by the council at one reading, as long as it is not general or permanent in nature (A.C.A. § 14-55-202).

#### Ordinances

An ordinance is a local law 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, we recommend 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. An ordinance must contain only one general subject, clearly stated in its title (A.C.A. § 14-55-201).

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's, recorder's or attorney's reading of the ordinance; this is followed by allowing the person(s) proposing the ordinance the opportunity to explain its provisions. 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 (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 different days, unless two-thirds of the members of the council shall suspend the rule (A.C.A. § 14-55-202). However, "[i]n a city with a population of less than fifteen thousand (15,000) persons in the most recent federal decennial census, if the ordinance under consideration has been submitted to and approved by the electors of the municipality and is being amended, repealed, or otherwise altered by the municipal council, then the ordinance shall be fully and distinctly read on three (3) different days not less than twenty-eight (28) days apart." (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 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). Additional and more detailed information about resolutions and ordinances may be obtained from the *Handbook*, Title 14, Chapter 55, Subchapters 1-7.

## **Chapter IV**

### **Personnel**

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. (See the most recent editions of the League's *Sample Personnel Handbook for Arkansas Cities and Towns* and *Understanding Municipal Personnel Law and Suggestions for Avoiding Lawsuits*.)

#### **Personnel Administration**

Many Arkansas cities have neither a large enough workforce nor the financial resources to justify having a full-time personnel director. The common procedure is to assign personnel operations to one person, such as the mayor, city recorder or city clerk. Nevertheless, this guidebook recommends that your city employ an individual or train a current employee to be thoroughly familiar with all aspects of personnel administration.

Regardless of the organizational structure a city uses, two common-sense principles apply:

1. 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.
2. 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.

#### **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 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. This becomes critical if a city employee claims that the city violated the Americans with Disabilities Act. Job descriptions should be reviewed and updated periodically to ensure that all duties and responsibilities of the position are reflected in the job description. (For assistance in drafting an employee handbook see *Sample Personnel Handbook for Arkansas Cities and Towns* and *Understanding Municipal Personnel Law and Suggestions for Avoiding Lawsuits*.)

### **Unions or Professional Associations**

Upon receipt of a written request and signed by a full-time municipal employee who is represented by a union or professional association, the municipality shall withhold membership dues of the union or professional association from the salary of the employee. The municipality shall transmit all dues that are withheld under this section to the union or professional association representing the employee within five (5) days of the end of the pay period. This withholding shall be discontinued only upon receipt of a written notice of cancellation signed by the employee (A.C.A. § 14-58-103).

# Chapter V

## Budgeting and Finances

The residents of your city are entitled to an accounting from their municipal officials. 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 financial matters. One noted political analyst suggests two 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.

### City Budgets

Your city's annual operating budget should be the principal policy management tool for governing. 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.

### Arkansas Law and Budgeting

- Every city and town must have an annual operating budget approved by its governing body (A.C.A. §14-58-201 through § 14-58-203).
- The mayor must submit a proposed budget to the governing body of the city or town by December 1 of each year. The council shall enact a budget by February 1 each year. The governing body should also enact a temporary budget or spending resolution for January, as all expenditures of city funds must be authorized by an appropriation of funds approved by a majority vote of the council. The budget constitutes such an appropriation.
- The fiscal year of each city and town shall begin January 1 and end at midnight, December 31 of each year (A.C.A. § 14-71-102).
- Deficit spending is generally prohibited. Cities are not allowed to spend more money than they accrue during a year (Ark. Const. Art. 12 Sec. 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 sec. 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 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 pickup 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.

### **Other Income (Miscellaneous Revenues)**

- Outside fire protection fees
- Sale of equipment or real property
- Animal licenses
- Hotel and motel/hamburger taxes (A.C.A. §§ 26-75-601 through 618)
- Vehicle licenses
- Interest earned from special accounts

### **Purchasing and Bidding**

In all cities of the first class with the mayor/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; 14-58-203). In addition, the mayor of a city of the first class, city of the second class or incorporated town 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 city of the first class or duly authorized representative should advertise in the local newspaper for competitive bids.
- 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, cities of the 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.

### **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 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).



# Chapter VI

## The Freedom of Information Act

The Arkansas Freedom of Information Act (FOIA) (A.C.A. §§ 25-19-101 through 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 (or other governing body) 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, city recorder or town recorder should not be in executive session.

This has been a very brief discussion of a very complicated law. For further information, please refer to the *Arkansas Freedom of Information Handbook* available from the League at 501-374-3484, or online at [www.arkansaspress.org/page/foihandbook](http://www.arkansaspress.org/page/foihandbook).

# Chapter VII

## Functions of the Arkansas Municipal League

### Purpose

The Arkansas Municipal League, established in 1934, is an agency of the municipalities of Arkansas. The League has a voluntary membership and was created to assist cities and towns with information, services and representation in the public affairs of our state and nation.

### Organization

The Executive Committee is the governing body of the League. It is composed of 30 members—six officers elected at the annual convention and 24 additional members appointed by the president. Chosen by the Executive Committee, the executive director is responsible for administering the League's policies, programs and services. The executive director selects League staff and together they work to provide Arkansas' municipalities the best in League programs and services.

### League Programs

- **Ordinance and Codification Service**—The ordinance and codification service is an important function of the League. Officials can request sample ordinances relative to almost any subject of municipal concern. The League also provides codification of city ordinances. Codification arranges your city ordinances according to subject matter.
- **Inquiry Service**—All League staff members are available for assisting local officials with issues relating to their municipalities. Frequent questions concerning procedures for new officials and various League programs are answered by telephone, email, referrals, memorandums and surveys. Officials seeking information may arrange to meet with staff at League headquarters. League staff members also attend council meetings throughout the state, upon request, as time permits.
- **Planning Service**—The League offers as a service to member cities and towns a registered city planner for consultation purposes. The first meeting each year is complimentary. The planner is also available to schedule seminars upon request.
- **Cable Television Franchise Management Service**—This service offers a cable television franchise management through Local Government Services or LGS. The goals of the program are to ensure that local governments have access to the expertise required to negotiate for the benefits and services needed in our communities on reasonable terms and conditions.
- **Grants Service**—The League offers an in-house grants service for member cities and towns, which includes information about grant opportunities, assistance with grant applications, and basic grant writing and grant management certification workshops.

- **IT Service**—Over the years, the League has endorsed companies that provide cities and towns with the latest tools supported by experienced IT professionals. Investing in the right technology is crucial, and municipalities must budget sufficiently for IT services like user-friendly websites; data backup and offsite storage to protect your information and to recover from a disaster; document protection and easy document retrieval for open records requests; and business-grade email systems. The League has vetted many IT service providers in Arkansas and out of state. Please contact the League for more information about these providers.
- **Loss Control/Risk Management Program**—The Loss Control/Risk Management Program provides members with individual loss-control assistance and assistance in establishing an emergency preparedness plan. The Loss Control Program offers safety inspections and on-site consultation for the Municipal League Workers' Compensation Program, Municipal Vehicle Program and Municipal Property Program participants. The Loss Control/Risk Management Program offers safety training in various categories, including personal protective equipment, trench safety, confined space safety, bloodborne pathogens, back safety and lockout/tagout programs. These trainings are taught on location in your municipality. Specific safety plans are developed with member cities and towns on how to prepare for the safety of workers and for emergencies such as bomb threats, cyberterrorism, tornadoes, and chemical and biological threats. The League also offers an extensive streaming library on topics centered on loss control and risk management.

## League Activities

**Winter Conference & Annual Convention**—Each year the League sponsors a winter conference and an annual convention for municipal officials and personnel from across the state. These officials gather to discuss mutual problems, discover new techniques and learn of new developments in local government. Outstanding speakers address officials on subjects of municipal concern. Many legislative issues are discussed at winter conference and the convention. However, the League's *Policies and Goals* for the forthcoming year are voted on and adopted at the annual business meeting during the convention. Of course, no successful conference or convention is all work. Attendees and guests also enjoy the special activities provided for them.

**Voluntary Certification Program for Municipal Officials and Personnel**—To increase municipal officials' and personnel members' knowledge of local governance, the League offers an annual curriculum of core and continuing certification workshops. The core workshops cover municipal basics, such as budget preparation, personnel matters and city government 101. Continuing education topics vary and are only offered at the winter conference and annual convention.

City and town officials and personnel who complete 21 hours of the program's core curriculum in a calendar year (15 hours of core workshops and six hours of continuing certification) achieve the designation of Certified Municipal Official and Certified Municipal Personnel, respectively. To maintain certification, participants must complete six hours of continuing certification in subsequent calendar years.

Advanced level training is also available to League members. This includes 15 hours of Advanced Level 2 and 20 hours of Advanced Level 3 training. Participants pursuing any and all levels of certification must obtain six hours of continuing certification annually to maintain certification status. If you have previously achieved your Level 1 training of 21 hours and received your CMO/CMP certificate, you may advance to Level 2 training.

After achieving your CMO/CMP Level 2 certification, officials and personnel are encouraged to complete the Level 3 certification workshops. These workshops include leadership 201, technology/cybersecurity and conflict management, to name a few.

Established in 2010, the Voluntary Certification Program was originally offered to mayors, city managers and city administrators only, but as demand increased the League expanded the program to include all municipal officials and all municipal personnel.

## **Publications and Other League Resources**

To act as a clearinghouse of information for the cities and towns of Arkansas is one of the original guiding principles of the League and providing updated and timely information remains a vital part of the League's member services. As such, the League develops and maintains a library of publications covering an array of topics important to cities and towns, from guidance on compliance with the Americans with Disabilities Act, to local sales tax elections, to an overview of Arkansas' tort immunity statutes. Most of these publications are available for download from the "Publications" page on League's website at [www.arml.org/free](http://www.arml.org/free).

*City & Town* is the official magazine of the Arkansas Municipal League. It has a print readership of nearly 7,000 and is published 12 times a year. It contains features, columns and other articles of interest to municipal officials and personnel. It is also available online at [www.arml.org/services/publications/city-town](http://www.arml.org/services/publications/city-town).

During each session of the Arkansas General Assembly, members of the League staff analyze the proposed measures that affect the state's municipalities. The *Legislative Bulletin* at [www.arml.org](http://www.arml.org) is updated daily during sessions and enables city and town leaders to advise their legislators at the state capitol of the local impact of various proposals.

The *Handbook for Arkansas Municipal Officials* is updated and published every other year at the conclusion of the regular session of the General Assembly. It includes laws that affect Arkansas municipalities and has become an important source of information and guidance for city and town officials.

The *Arkansas Directory of Municipal Officials* is another important resource published by the League. It contains a list of member cities and towns, their officials, city addresses, telephone and fax numbers, emails, and websites. City classification and the county in which the city or town is located are also included. The League now offers the *Arkansas Directory of Municipal Officials* as a searchable PDF. Both the print version and the PDF are available at [www.arml.org/store](http://www.arml.org/store).

## **Benefit Programs**

The League provides the officials and employees of member cities and towns with optional benefit programs. The Municipal Health Benefit Program provides medical, dental and vision benefits to employees and officials. The advantage of being a part of the large group has enabled cities over the years to maintain a relatively stable cost for this important fringe benefit for municipal officials and employees in an era of soaring medical costs. Other programs such as the Municipal Officials AD&D Plan and life insurance, and AD&D plans for both officials and employees, are available through the League at group rates.

The Municipal Vehicle Program provides low-cost vehicle coverage to members. MVP, Part I, is an optional program whereby participating municipalities can pool their resources and provide liability protection on their vehicles. Part II allows municipalities the option of carrying physical damage coverage on their vehicles on a pooled self-funded basis. The Municipal Property Program provides low-cost property coverage. It is an optional program whereby participating cities and towns can pool their resources and provide all risks protection for municipal buildings and contents.

The Municipal League Workers' Compensation Program protects municipal workers in most Arkansas cities and towns. The program was established to help cities and towns meet their statutory responsibilities for on-the-job employee injuries and loss-of-time claims. The Firefighters Supplemental Income Protection and Death Benefit Program is also available to member cities and towns participating in the MLWCP. This valuable program protects the earnings of volunteer firefighters who are injured on the job.

The Municipal Legal Defense Program is another service offered to League members. A steering committee governs the plan, with the executive director and their staff administering the program. Participating municipalities annually contribute amounts based primarily on their population. Through this program, municipalities, municipal officials and employees are provided protection against lawsuits involving their assets. Cities and towns in the MLDP may request written and oral legal opinions on municipal law. In addition, cities and towns participating in this program can take advantage of the League's drug testing programs.

The Municipal League Pension Management Trust is an optional program whereby Arkansas municipalities can place excess cash funds or pension investments in a safe and competitive account that provides excellent liquidity. Participant municipalities join together to invest monies not currently needed to enhance their investment opportunities and increase investment earnings. In most cases, invested funds are available for withdrawal within 24 hours.

### **Conclusion**

The Arkansas Municipal League serves member cities and towns and addresses their current and future needs. The League has been and will continue to be at the forefront of municipal progress and problem solving. The League is an instrumentality of Arkansas' cities and towns and exists to be of service to our members.







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*Guidebook for Municipal Officials of Mayor–Council Cities*