

ARKANSAS MUNICIPAL LEAGUE

THE CIVILPEDIA HANDBOOK

A GUIDE TO MUNICIPAL
GOVERNMENT IN ARKANSAS

SECTION 1

OVERVIEW OF MUNICIPAL
GOVERNMENT IN ARKANSAS

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INTRODUCTION

Welcome to the first edition of the *Arkansas Municipal Civilpedia: A Guide to Municipal Government in Arkansas*. The primary purpose of the *Civilpedia* is to provide a practical guide to assist elected officials, newly elected and incumbent alike, in learning everything you need to know about your municipal government. While the *Civilpedia* will not replace the need to consult an attorney every now and then, it will provide you with the fundamental information you need regarding your statutory duties and responsibilities, how to pass ordinances and resolutions, municipal boards and commissions, revenue sources for municipalities, human resource issues, and much more. Further, it includes checklists, charts and timelines to provide practical guidance for municipal officials. The *Civilpedia* provides real-world examples and cites Arkansas statutes and case law, and it is designed to be updated on a regular basis as the Arkansas Code is amended and to reflect any changes in case law.

Before diving in, it is important to note that Arkansas statutes are laws passed by the Arkansas General Assembly and are codified into the Arkansas Code Annotated of 1987 as amended. The *Civilpedia* cites many statutes in the Arkansas Code and throughout it you will see Arkansas Code Annotated (abbreviated as A.C.A.) followed by pairs of numbers. When you see, for example, A.C.A. § 14-42-102, it means that the statute can be found in Title 14 – Chapter 42 – Subchapter 1. In this example, Title 14 references “Local Government,” Chapter 42 references “Government of Municipalities Generally” and Subchapter 1 references “General Provisions.” The *Civilpedia* will help you become familiar with the layout of the code, and you’ll learn to recognize that when you see something like A.C.A. § 14-43-104, you know that Chapter 43 pertains predominantly to cities of the first class.¹

DISCLAIMER

The information contained within this handbook is not intended as legal advice for any specific issue that may arise. The *Civilpedia* is meant to be used as a resource to learn more about municipal government in Arkansas. As you know, or will soon find out, many of the issues and challenges municipal governments face on a day-to-day basis are very fact specific. Elected officials are responsible for consulting with legal counsel when questions arise concerning the application of the law to a particular set of facts. This handbook is intended solely for educational and informational purposes.

¹ There will also be times you read citations with the word “et seq.” after them, such as A.C.A. § 14-44-101 et seq. “Et seq.” is an abbreviated form of a range of Latin words that simply means “to follow.” So, if you see A.C.A. § 14-44-101 et seq., it will reference not only A.C.A. § 14-44-101, but every other statute in subchapter one, which in this case would be A.C.A. § 14-44-101 through A.C.A. § 14-44-117 (which is the last statute in this particular subchapter).

SECTION I. OVERVIEW OF MUNICIPAL GOVERNMENT IN ARKANSAS

Chapter 1. Introduction to Municipal Government

A. Overview

Prior to 2011, only cities of the first class enjoyed what is commonly referred to as “Home Rule”. Home Rule refers to a certain autonomy that a local government has in its governance. In other words, cities of the first class were authorized to perform any function and exercise full legislative power in any and all matters pertaining to its municipal affairs. We can distinguish this by looking at the authority cities of the second class and incorporated towns had prior to 2011. Cities of the second class and incorporated towns only had the powers granted to them by the Arkansas Constitution and statutes passed by the Arkansas General Assembly. This was termed “Dillon’s Rule” and, according to the Arkansas Supreme Court, it meant:

“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).

However, Act 1187 of 2011 repealed Dillon’s Rule by amending A.C.A. § 14-43-602 to read “(a) A municipality is authorized 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. (b) The rule of decision known as ‘Dillon’s Rule’ is inapplicable to the municipal affairs of municipalities.” “Municipal affairs” are all matters and affairs of government germane to, affecting or concerning the municipality or its government.² This may very well be the single most important provision for municipalities in Arkansas.

The Arkansas General Assembly meets every odd year from January to around April for its legislative session. This is where your state legislators get together to pass laws that typically deal with situations that have arisen in the interim between sessions. Local governments are often the first level of government to deal directly with new issues that arise. Because of this, it is vital for municipalities to have the ability to act quickly when necessary to address these issues in order promote and protect the public health, safety and welfare of the citizens of the municipality and thus the citizens of Arkansas.

B. Incorporation

The state of Arkansas comprises 75 counties. Within the 75 counties, there are essentially two types of areas: unincorporated (areas of the county that are not within any municipal boundaries) and incorporated (i.e. municipalities). In Arkansas, the term ‘municipality’ is defined to mean, “a city of the first class, a city of the second class, or an incorporated town.”³ Every municipality in Arkansas has a unique beginning, whether it includes a specific reason as to why a community decided to incorporate or an interesting figure for whom the municipality is named.⁴ However, every municipality shares at least one thing in common—they started as an unincorporated area and incorporated into a municipality.⁵

There are two methods by which an Arkansas community in an unincorporated area may incorporate into a municipality.⁶ The first method is through a petition procedure. Under this method, the petition must contain: (1) a description of the geographic area seeking to incorporate, (2) the identity of the persons authorized to act on behalf of the petitioners, and (3) the name proposed for the incorporated area. The petition must be signed by at least 200 people in the area seeking to incorporate or a majority of the qualified electors in the area seeking to incorporate, whichever is greater.⁷ Once signed, the petition must be presented to the county court and filed with

2 See A.C.A. § 14-43-601 for a list of exceptions that are specifically state affairs as opposed to municipal affairs.

3 Ark. Code Ann. § 14-43-601(a)(2)(A).

4 Batesville was established in 1821-1822, making it the oldest incorporated municipality in Arkansas!

5 As of publication, Diamondhead is the newest municipality and was officially incorporated on December 3, 2020.

6 A.C.A. § 14-38-116 requires any entity, prior to undertaking an incorporation or disincorporation proceeding, to coordinate with Arkansas Geographic Information Systems Office (GIS) for preparation of legal descriptions and digital mapping for the area being incorporated.

7 A.C.A. § 14-38-101(a)

the county clerk.⁸ Shortly after, the county court will set a date for a public hearing and, after the hearing, the court will either approve or reject the incorporation.⁹ If the petition is approved, then the incorporation is filed with the Arkansas Secretary of State and notice of election of officers for the newly incorporated municipality is posted.¹⁰

The second method allows for an election procedure as an alternative for the incorporation of new municipalities having a population of at least 1,500.¹¹ As with any initiative, a petition is still required, and the petition must also contain the three elements required above. However, the petition must be signed by at least 25% of the qualified voters who reside in the territory proposed to be incorporated.

The one caveat to incorporation is that new municipalities cannot incorporate if they are within three miles of the boundaries of another incorporated municipality or in the area in which the existing municipality is exercising its planning territorial jurisdiction unless the governing body of that municipality has “by written resolution affirmatively consented to said incorporation.”¹²

C. Classification of Municipalities

Arkansas municipalities are divided into three classes based on population.¹³

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 Town	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 this classification criteria. If the council of an incorporated town with fewer 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 a population of 1,500 or more may, by enactment of an ordinance, become a city of the first class.¹⁴ Arkansas law also allows for cities with certain populations to reduce their classification.¹⁵

Chapter 2. Roles in Local Government

A. Overview

While the position and title might look different depending on the municipality, fundamentally every municipality has some form of the following three elected positions in which office holders are elected by the citizens of the municipality. These positions are: (1) mayor; (2) council member or city director; and (3) city clerk, treasurer, clerk/treasurer, recorder or recorder/treasurer. In the mayor-council form of government, the legislative branch is made up of council members, while in city manager/city administrator forms of government the legislative branch is made up of a board of directors. Cities of the first class have either: (1) an elected clerk/treasurer or (2) an elected city clerk and an elected treasurer; or (3) an elected city clerk and an appointed treasurer.¹⁶ Cities of the second class have either: (1) an elected recorder/treasurer; (2) an elected recorder and an elected treasurer; or (3) an elected recorder and an appointed treasurer.¹⁷ Incorporated towns have either: (1) an elected recorder/treasurer; or (2) an elected recorder and an appointed treasurer. It is important to note that many municipalities, especially larger cities of the first class, assign the duties that the treasurer would normally hold to a non-elected finance

⁸ A.C.A. § 14-38-101(c)

⁹ So long as the petition sufficiently contains everything required, then the petition should be endorsed. However, A.C.A. § 14-38-104(a)(4) does provide some level of discretion to the county court in granting/denying the petition.

¹⁰ A.C.A. §§ 14-38-104 - 105

¹¹ A.C.A. § 14-38-115

¹² A.C.A. § 14-38-101(b). However, this prohibition does not apply if the area seeking to incorporate contains a population of 1,500 or more.

¹³ A.C.A. § 14-37-101 et seq. It is important to note that as time has gone by, the substantive differences between the three different classes continues to decrease as cities of the second class and incorporated towns have gotten more and more authority that previously only existed with cities of the first class.

¹⁴ A.C.A. § 14-37-103

¹⁵ See A.C.A. §§ 14-37-111 and 14-37-114.

¹⁶ See A.C.A. §§ 14-43-303, 14-43-316 and 14-43-405.

¹⁷ See A.C.A. §§ 14-44-114 and 14-44-115.

officer.¹⁸ Municipalities will also typically have a city attorney; however, as we will cover later, not all city attorneys are elected, and the duties of city attorneys are different depending on the needs of the municipality.

B. Organization of the Governing Body

Before discussing the individual duties and roles each official plays in municipal government, let's review the organization of the governing body and the organizational meeting municipalities have at the beginning of each year. For municipalities operating under the mayor-council form of government, the governing body consists of the city council and the mayor.¹⁹ For municipalities operating under the city manager form or city administrator form of government, the governing body consists of the mayor and the board of directors.

Every year in January the members of the governing body for each city or town (regardless of the form of government) are required to meet and organize the governing body.²⁰ This annual organization meeting consists of many objectives. These objectives include judging the election returns and the qualifications of the members of the governing body. This meeting is also the time for the governing body to set its rules and procedures for meetings for the rest of the year, including, but not limited to, how the agenda is set for meetings, the filing of resolutions and ordinances, and how citizen commentary will be conducted.²¹ This is a good time for the governing body to set a procedure for how special meetings will be called. And, while it doesn't have to be at this meeting, this is also a good time for the mayor and governing body to decide who will perform the functions of the mayor if the mayor is unable to perform the duties of the office or cannot be located.²² However, the more complete your rules are the better, and your ordinance governing the organization of the governing body can always be amended if the need arises. For cities of the first class, if the mayor is unable to perform the duties of office or cannot be located, then either the city clerk, another elected official if designated by the mayor, or an unelected employee or resident of the city if designated by the mayor and approved by the city council may fill in and perform the functions of the mayor during the disability or absence of the mayor. The same is true for cities of the second class and incorporated towns except instead of the city clerk it would be the recorder who could fill in for the mayor.²³ Again, the law does not require this to be done at the annual organization meeting, but it is highly recommended that you do this at the beginning of the year to be prepared for unforeseen circumstances.

There are many different examples of parliamentary procedures that local governments may adopt, or they may wish to draft their own rules of procedures. Many adopt *Robert's Rules of Order*; however, some others may find it too dense and lengthy for council meetings.²⁴ What is most important is that the procedures and policies are in writing so everyone can become familiar with them to ensure meetings run smoothly. And, if there are any questions, then you can consult with your written procedures and policies. What is also important is that the procedures and policies are yours, and as such, are subject to change as the governing body wishes.²⁵

C. Mayor-Council Form of Government

1. The Mayor

In the mayor-council form of government, the mayor is the principal officer of the city or town. By virtue of this position, not only is the mayor the ex-officio president of the council, but the mayor is also the chief executive officer of the municipality. In other words, the mayor oversees the day-to-day operations of the municipality. The

18 See A.C.A. § 14-59-115(b). The primary duty of the treasurer is to follow the Arkansas Municipal Accounting Law. This may be one of the single most important positions in municipal government, and it certainly is not an easy job. Therefore, some municipalities will have a combined office of the clerk/treasurer and assign the normal duties the treasurer would have to someone specialized or educated in the world of municipal accounting and finance.

19 In mayor-council forms of government, the mayor is the ex officio president of the city council and presides over city council meetings. See A.C.A. § 14-43-501(b). See also Ark. Op. Atty. Gen. No. 96-062, where the attorney general opined that the mayor could not be excluded from executive as the mayor is the ex officio president of the city council and is required to preside at council meetings. And see Ark. Op. Atty. Gen. No. 96-067, where the attorney general opined that the mayor was a member of the governing body for purposes of the Freedom of Information Act.

20 A.C.A. § 14-43-501

21 Some municipalities actually have it in their rules that commentary will be allowed granting each person three minutes and that the minutes will be tracked by an egg timer.

22 See A.C.A. § 14-43-501(b)(3). However, do not get this confused with what happens if there is an actual vacancy in the mayor's position. This provision is for those instances in which the mayor may be very ill and unable to work for a month or longer but has not done something to create an actual vacancy such as tendering a resignation or passing away.

23 See A.C.A. §§ 14-44-107(c) and 14-45-105(c).

24 The first edition of Robert's Rules of Order was published in February of 1876 and was written by Henry Martyn Robert.

25 "A deliberative body, however, is entitled to adopt its own rules of internal procedure, the observance of which is within the discretion of the deliberative body itself, free from supervision by the court. See *Reaves v. Jones*, 257 Ark. 210, 515 S.W.2d 201 (1974).

duties of the mayor in a mayor-council form of government can be divided into two different categories: administrative and legislative duties.

Administrative Duties

As the executive officer of the municipality, the mayor oversees the day-to-day activities of the municipality and supervises department heads, who are also supervisors of the employees of their respective departments. With that in mind, there are also various other statutory duties required of the mayor. Mayors in cities of the first class are required to prepare and submit to the governing body within the first 90 days of each year a complete report on the finances and administrative activities of the city during the previous year and advising as to the financial condition and future needs of the city and making recommendations.²⁶ However, all mayors are required to report within the first 90 days of each year to the council on the municipal affairs of the city and recommend such measures as may be advisable.²⁷ Further, all mayors of cities and towns are also required to prepare and submit a budget to the city council for approval on or before December 1 of each year for the operation of the city or town from January 1 to December 31 of the forthcoming year.²⁸

One of the mayor's most important duties in mayor-council forms of government is the appointment and removal of department heads.²⁹ The city or town council, however, may override the mayor's action by a 2/3 vote of the council.

Let's look at this again: Only the mayor can appoint or remove a department head. In other words, the council cannot make an appointment, nor can the council initiate the removal of a department head—only the mayor can. However, if the mayor makes an appointment and the council overrides the appointment by a 2/3 vote, then the appointment does not happen. The same goes for removals. If the mayor removes a department head, the council can override the removal of the department head by a 2/3 vote. Only the mayor can initiate the process to appoint or remove a department head. The number of department heads in municipalities differ depending on the size and needs of the municipality. The most common examples of department heads are the police chief and fire chief. However, the list does not end there and could include the head of your sanitation department, a water supervisor or building officials.³⁰ To ensure clarity, the council should declare what positions in the municipality are department heads and conversely which positions are not.

Let's consider a scenario based on what we have covered above.

A police chief has committed a serious violation of the law while on duty and should be terminated.

- Can the council initiate the procedure to terminate the police chief?³¹
- Who is authorized to terminate the police chief?
- If the mayor terminates the police chief, can the city council overturn the decision?³²

The mayor's appointment power does not end with department heads. There are many different positions on various boards and commissions that the mayor may appoint, such as trustees to a library board (with council approval),³³ a health officer if the position has been created by ordinance,³⁴ airport commissioners (with council confirmation),³⁵ a parks and recreation commission (with council confirmation)³⁶, marshals in some cities of the second class,³⁷ or an at-large member of an advertising and promotion commission (with council approval)³⁸ among others.

26 A.C.A. § 14-58-302

27 A.C.A. § 14-43-504(c)

28 A.C.A. § 14-58-201

29 A.C.A. § 14-42-110

30 See A.C.A. § 14-56-202(b) for more on building officials.

31 No. The council cannot initiate the procedure to appoint or remove a department head.

32 Yes. By a 2/3 vote of the council, the council may override the mayor's decision to appoint or remove a department head.

33 A.C.A. § 13-2-502

34 A.C.A. § 14-262-103

35 A.C.A. § 14-359-105

36 See A.C.A. §§ 14-269-202 and 14-269-302.

37 A.C.A. § 14-44-111

38 A.C.A. § 26-75-605

Legislative Duties

As we will discuss in the next section, the city council in mayor-council forms of government fill the legislative branch of municipal government. However, the mayor does have some legislative duties. To begin, the mayor presides over council meetings, or in other words, helps facilitate the meetings. This includes calling the meeting to order, recognizing council members for questions or comments, and moving the meeting through the agenda. However, the mayor's legislative duties are not merely ministerial. The mayor can vote to establish a quorum of the governing body—a quorum of the governing body is necessary to hold a meeting.³⁹ The mayor can also vote when the mayor's vote is needed to pass any ordinance, bylaw, resolution or motion.⁴⁰ This authority is typically phrased, “the mayor can vote whenever there is a tie.” Remember, however, the mayor may vote when the vote is needed to pass any ordinance, bylaw, resolution, or motion. Let's look at a scenario and work through a couple of problems.

Knowledge Check

There is an ordinance in front of the council that would close all public parks at 10 p.m. The council is made up of six council members. All six council members are present at the meeting as well as the mayor presiding over the meeting.

- If the council votes three votes in favor of the ordinance and three votes against the ordinance, can the mayor vote?⁴¹*
- If the council votes two votes in favor of the ordinance, three votes against the ordinance, and one member abstains from voting, can the mayor vote?⁴²*
- If the council votes three votes in favor of the ordinance, two votes against the ordinance, and one member abstains from voting, can the mayor vote?⁴³*

The mayor also has the authority to veto any ordinance, resolution or order adopted by the council. However, the council may override the mayor's veto by a 2/3 vote of the total membership of the council.⁴⁴ The mayor is authorized to veto within five days of the action taken. Before the next regular meeting of the council, the mayor is required to file with the city clerk or recorder, as the case may be, the veto to be laid before the next regular meeting.⁴⁵ It is recommended that the mayor file the written veto, providing reasons for the veto, with the clerk or recorder.

Other legislative duties of the mayor include signing all ordinances, resolutions and city council minutes⁴⁶ and, 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.

2. The City/Town Council

In the mayor-council form of government, the city or town council is the legislative body of the municipality. Most actions taken by the council are legislative in nature. To be more specific, there is very little a single council member can do alone, but they are a part of a larger legislative body that takes action through the passage of legislation (e.g., ordinances, motions, bylaws and resolutions).⁴⁷ The council is tasked with enacting ordinances and bylaws concerning municipal affairs that are consistent with state law in order to promote the health, safety and welfare of the public.⁴⁸

³⁹ See A.C.A. §§ 14-43-501 & 14-44-107 and 14-45-105.

⁴⁰ See A.C.A. §§ 14-43-501 & 14-44-107 and 14-45-105; and see *Gibson v. City of Trumann*, 311 Ark. 661, 845 S.W.2d 515 (1993).

⁴¹ Yes. In this situation we actually have a tie, but more importantly, it takes four votes to pass the ordinance. Since the mayor may vote when the vote is needed for passage, the mayor can vote in favor of the ordinance to pass it.

⁴² No. If the mayor votes in favor of the ordinance, there would still only be three votes in favor of the ordinance—one shy of the four needed to pass it. Therefore, the mayor cannot vote as his vote would not pass the ordinance.

⁴³ Yes. In this scenario we technically do not have a tie (although an abstention from voting is sometimes seen as voting against). We have three votes in favor of the ordinance and the mayor can cast the fourth vote to pass the ordinance.

⁴⁴ See A.C.A. §§ 14-43-504 and 14-44-107 & 14-45-105.

⁴⁵ A.C.A. § 14-43-504(d)

⁴⁶ A.C.A. § 14-55-205

⁴⁷ A.C.A. § 14-55-203

⁴⁸ See A.C.A. §§ 14-55-201 and 14-43-602.

Councils have broad authority to pass local legislation concerning municipal affairs. Councils in cities of the first class may set procedures by ordinance for making purchases that do not exceed the sum of \$35,000 and councils in cities of the second class and incorporated towns may provide by ordinance the procedure for making all purchases.⁴⁹ Councils also set the time and place for regular city council meetings.⁵⁰ From these examples we can see that on one hand the council has authority to enact legislation on municipal affairs, while on the other hand the council also sets procedures dictating how some day-to-day operations should operate.

The powers of the council do not end there, however. The most important power the council has is the “power of the purse,” as the council has management and control of the city finances and does so by adopting a budget.⁵¹ It takes money to run a municipality and the council is in charge of appropriating the funds it deems necessary to operate the municipality. Budgets are required to be adopted on or before February 1 of each year and can be adopted by ordinance or resolution.⁵² As discussed in the previous section, the council may override the mayor’s appointment and removal of department heads by a 2/3 vote of the council and the council may override the mayor’s veto by a 2/3 vote. It is also the duty of the council to establish city fire departments and police departments, or contract or enter into interlocal agreements for fire and police services.⁵³ When it comes to taxes, it is the council’s sole discretionary responsibility to pass ordinances levying local sales taxes and referring the same to the voters, as well as certifying to the county clerk the amount of property taxes to be levied within the municipality prior to the regular meeting of the county quorum court in November or December of each year.⁵⁴ It is highly recommended that the council vote on the millage not later than August or September to ensure it gets to the county clerk on time.

Regarding appointment powers, councils in cities of the first class may fill, by appointment, the vacancy to the office of mayor if the expired term is less than one year,⁵⁵ while in cities of the second class and incorporated towns the council shall fill a vacancy in the mayor’s office for the unexpired term by either majority vote of the council or a special election.⁵⁶

3. The City Clerk, Treasurer, Clerk/Treasurer, Recorder or Recorder/Treasurer

In the overview of this chapter, we discussed that every municipality has some type of clerk/recorder position and some type of treasurer position. Now, it differs depending on the classification of the city and the will or needs of the city. As mentioned above, every city of the first class has a city clerk and every city of the second class and every incorporated town has a recorder. Every municipality also has a treasurer, however, the position of treasurer is often combined with the position of clerk or recorder. The best way to concisely review the roles and duties of all these technically different positions is to look at the duties of city clerks and recorders in state and local law (ordinances) as well as separately looking at the duties of treasurer, recognizing that the duties under the clerk/recorder section and the treasurer section will both apply to clerk/treasurers and recorder/treasurers.

City Clerks and Recorders

The duties of city clerks and recorders are prescribed by various legislative acts of the Arkansas General Assembly. Statutorily speaking, the role of city clerks and recorders is limited in scope. For example, one statutory requirement of city clerks is to have the custody of all the laws and ordinances of the city and to keep a regular and correct journal of the proceedings of the council.⁵⁷ Moreover, state law requires the city clerk to “submit monthly a full report and detailed statement of the financial condition of the city ... show[ing] receipts, disbursements, and balance on hand, together with all liabilities of the city” and to submit the report “to the council in open session.”⁵⁸ For city clerks in cities of the first class, further duties may be prescribed by ordinance.⁵⁹

49 A.C.A. § 14-58-303. Also see Section II, Chapter X of the Civilpedia.

50 A.C.A. § 14-43-501 (Typically done at the annual organization meeting at the beginning of the year).

51 A.C.A. § 14-43-502

52 A.C.A. § 14-58-202. Also, recall that the mayor is required to submit to the council on or before December 1 of each year a proposed budget for operation for the forthcoming year.

53 See A.C.A. §§ 14-53-101 (fire departments) and 14-52-101 - 102 (police departments).

54 A.C.A. §§ 26-73-202 & 14-14-904

55 A.C.A. § 14-43-401(b)(1)

56 A.C.A. § 14-44-106 & 14-45-103

57 A.C.A. § 14-43-506(a)

58 A.C.A. § 14-43-506(b)(1)-(2)

59 A.C.A. § 14-43-313

Recorders in cities of the second class and incorporated towns have their duties prescribed by ordinance.⁶⁰ It is critical to emphasize how important the previous two sentences are. Much of what city clerks and recorders do on a day-to-day basis are not statutory requirements of the job. Rather, duties may be assigned by the council to keep a municipality operating. It is important for a municipality to actually define these extra duties via ordinance for a number of reasons. The first reason is to simply make everyone aware of what the duties of the city clerk or recorder are. Whether it is a seasoned clerk or recorder or someone new running for the office, everyone should be aware of what the duties are and that they are spelled out precisely via ordinance.

This leads to the second reason why this is important, and this reason is better shown through an example.

Let's say Mayor Alex and Recorder Mary are both elected for the first time in the same year. Everything runs smoothly and is going great in the municipality with everyone getting along and doing their duties. Four years later, Mayor Alex doesn't run for reelection, but Recorder Mary does, and Bob runs for mayor. Both get elected to hold office for the next four years. Mayor Bob is nothing like Mayor Alex. He is lazy, never shows up to work and hardly does any of his duties, thus a lot of things end up falling into Recorder Mary's lap. This continues for the next four years. At the next election, Mayor Bob and Recorder Mary get reelected. The same problems persist for the next four years. People rarely see Mayor Bob and Recorder Mary continues to do a lot of the day-to-day work to keep the city operating. At the next election, Recorder Mary gets reelected, and Mayor Bob gets beat by Mayor Charlie. Mayor Charlie is a young, very active mayor who wants nothing more than the best for the city and wants to be highly involved in everything. Unfortunately, this begins to cause some conflicts between Mayor Charlie and Recorder Mary, as Recorder Mary has essentially been doing a lot of the day-to-day work that Mayor Bob neglected. Now that Mayor Charlie is in office and active in the day-to-day operations of the city, Recorder Mary feels like he is encroaching on her job.

This is a common scenario we see in municipalities and one that often leads to the most internal conflict. The good news is it can be easily avoided. So long as the extra duties assigned to the city clerk or recorder are prescribed by ordinance, then we have something we can view and follow. If we end up with a proactive mayor after years of a nonactive mayor, then the council can simply amend the ordinance to take away some of those extra duties that had been assigned to the city clerk or recorder.

City clerks also maintain the official seal of the city.⁶¹ The city clerk may also countersign checks on municipal bank accounts, although others may be designated as check-signers, or "authorized disbursing officers," by ordinance of the council or board of directors.⁶² The city clerk or recorder signs bonds and debentures of the municipality⁶³ and receives, files and retains the financial disclosure statements (also known as Statement of Financial Interest) from elected officials, including the mayor, council members, city clerk, treasurer, the city attorney and the district judge.⁶⁴

The above simply describes the duties prescribed by statute. However, we all know that the duties city clerks and recorders end up with far exceed what is statutorily required. For example, the city clerk or recorder in your municipality may be tasked with the following:

1. Arranging for the publication of official notices, including but not limited to: request for bids, public hearings, ordinances and elections;
2. Preparing ordinances and resolutions with the assistance of the city attorney;
3. Assisting in preparation of the municipality's budget;
4. Instructing and training employees of the city;
5. Administering the city's payroll, insurance programs, and relief and pension funds;
6. Collecting certain municipal taxes and fees;
7. Issuing licenses and permits;

⁶⁰ See A.C.A. §§ 14-44-109(b) (for cities of the second class) and 14-45-107 (for incorporated towns).

⁶¹ A.C.A. § 14-43-406

⁶² A.C.A. § 14-59-105(b) (city checks must contain the signature of two authorized disbursing officers).

⁶³ See A.C.A. § 14-164-201 et seq. and ACA 14-164-212(a).

⁶⁴ See A.C.A. § 21-8-701 (listing who is required to file a financial disclosure statement); and see A.C.A. § 21-8-703(a)(3) (designating the city clerk as the recipient of financial disclosures from municipal officers).

8. Serving as the purchasing officer;
9. Handling zoning applications;
10. Serving as a secretary to other municipal boards and commissions;
11. Providing for the destruction of original documents that have been transferred to a legally acceptable electronic or miniature medium;⁶⁵ and
12. Handling human resource and personnel issues.

As you can see, the duties of the city clerk and recorder vary widely from city to city, and many of the duties are based on the ordinances of the governing body. Indeed, the duties of the office should be spelled out in an ordinance of the governing body. If the council or board does not take the initiative on this, the clerk should.

Treasurers

The treasurer may have the shortest “job description” in the Arkansas Code, but it entails one of the single most important duties in municipal government: staying in compliance with the municipal accounting code. The municipal accounting code is codified in A.C.A. §§ 14-59-101 to 119. One particular statute in the municipal accounting code, A.C.A. § 14-59-115, prescribes the duties of a municipal treasurer and states two things: (1) “Each municipal treasurer of this state or the designated representative that has been approved by the governing body shall submit a monthly financial report to the council or board of directors,” and (2) “municipal treasurers shall maintain the accounting record prescribed in this chapter.” The code goes on to lay out the requirements and essentials of municipal accounting and prescribes such things as requiring payments by prenumbered checks and, in some situations, electronic fund transfers,⁶⁶ requiring municipalities to reconcile their cash receipts and disbursements journals,⁶⁷ maintaining a record of fixed assets,⁶⁸ maintenance and destruction of accounting records,⁶⁹ and much more that we will cover in detail in Section 2.

Why is all of this important? Since the treasurer is ultimately the person in charge of ensuring the municipality follows the municipal accounting code, if the treasurer refuses or neglects to maintain the books and records, then the treasurer could be charged with malfeasance.⁷⁰ Additionally, if the Arkansas Legislative Audit determines that the treasurer is not substantially in compliance with the municipal accounting code, then the Legislative Audit will report to the Legislative Joint Auditing Committee, which has the authority to withhold state turnback funds from the municipality.⁷¹ This is why the role of the municipal treasurer is so important, but this does not mean that the treasurer should ever bear this burden alone. It is up to all municipal officials to ensure budgets are correct, the municipality is not spending more money than it has and the municipal accounting code is followed to ensure turnback funds are not withheld.

4. The City Attorney

The city attorney in the mayor-council form of government is either elected, appointed or contracted with by the municipality. There are a handful of statutes in the Arkansas Code that detail this process.⁷² Instead of being distinguished by the classification of the city, however, these statutes are distinguished by the population of the municipality. In cities of the first class with populations over 50,000 the city attorney is by default elected to a four-year term. However, if no attorney residing in the city is elected as city attorney, then the city council may select a resident attorney to fill the office for the remainder of the unfilled term.⁷³ If no resident attorney of the city is willing to serve as city attorney or if no attorney resides within the limits of the city, then the mayor and city council may contract with any licensed attorney of this state or the attorney’s firm to serve as legal adviser,

65 A.C.A. § 14-2-201

66 A.C.A. § 14-59-105

67 A.C.A. § 14-59-108

68 A.C.A. § 14-59-107

69 A.C.A. § 14-59-114

70 A.C.A. § 14-59-118

71 A.C.A. § 14-59-117

72 A.C.A. § 14-43-314 (cities of the first class over 50,000); § 14-43-315 (cities of the first class under 50,000); § 14-42-122 (cities of the first class under 10,000); § 14-43-319 (cities of the first class under 5,000); ACA 14-42-112 (cities of the second class and incorporated towns).

73 A.C.A. § 14-43-314

counselor or prosecutor until a qualified city attorney is elected or appointed.⁷⁴ The duties of the city attorney and the salary are all set by the city council.⁷⁵

In cities of the first class under 50,000 in population, if it is not established by ordinance that the office of the city attorney will be appointed, then the position is elected for a four-year term. If there is no resident attorney of the city willing to serve as city attorney or if no attorney resides within the limits of the city, the mayor and council may contract with any licensed attorney in which the duties will be described by ordinance.⁷⁶ Note the difference between cities of the first class under 50,000 and over 50,000. In cities over 50,000, the position is by default elected, and the city can only appoint if no one is elected to that office. In cities of the first class under 50,000, the council may adopt an ordinance calling for the position to be appointed by default.

In cities of the first class with populations under 10,000 we see a similar statutory framework with a slight variation. If not established by ordinance that the office of the city attorney will be appointed, then the position is elected, and the officeholder will serve a four-year term. If there is no attorney residing in the city elected, then the council may appoint a resident attorney to fill the office for the remainder of the unfilled term. If there is no attorney serving as city attorney whether by election or appointment, or if no attorney resides within the corporate limits of the city, then upon a 2/3 vote of the council, the municipality may contract with a licensed attorney of this state or the licensed attorney's law firm. Note the difference here: In cities over 50,000 and under 50,000, the mayor and council contract with the city attorney if no resident attorney is serving. In cities of the first class under 10,000, by a 2/3 vote of the council, the city may contract.

In cities of the first class with populations under 5,000, the framework is similar to those larger cities. If it is not pre-established by ordinance that the attorney will be appointed, then the position is elected and will serve a four-year term. If no attorney is elected and no resident attorney is appointed, then the mayor and city council may contract with any licensed attorney of the state or their law firm.

In cities of the second class and incorporated towns, the city attorney is elected unless the council has passed an ordinance stating that the position will be appointed. When no attorney resides within the limits of the city or town or when no resident attorney has been elected, the mayor and city or town council may appoint a licensed attorney to serve as city attorney.

For cities and towns of all sizes, the duties of the city attorney are largely prescribed by ordinance based on the needs of the municipality. However, these duties include, without limitation, authorization to file information for the arrest of any person for violation of any ordinance or laws of the state violated in the city or town, to represent the municipality in civil and criminal actions, advise with all city or town officials as needed, prepare all legal papers, and to file a complete report of the city attorney's work with the council at the end of each year.⁷⁷

As mentioned above, a city attorney may be elected. An elected city attorney must meet the qualifications of an elector, which include a residency requirement. A city attorney may also be appointed if the position is appointed by ordinance. Recall, the position of treasurer may be an appointed position as well, however, even if appointed, the treasurer is still an officer of the municipality and therefore must also be a qualified elector. The same applies to city attorneys. If the municipality does not have anyone elected to the position or if there is no city attorney who lives within the city, then the city is authorized to contract with a licensed attorney or the attorney's law firm. The contract attorney does not have to be a qualified elector as the whole purpose of this provision is to address those instances where there is no one in the city who wants to be the city attorney. If a city needs to contract with a city attorney, an actual agreement with the attorney is needed.

74 A.C.A. § 14-43-314

75 A.C.A. § 14-43-314(b)&(c)(2)(B)

76 A.C.A. § 14-43-315

77 A.C.A. § 14-42-112

D. City Manager Form of Government

1. Overview

The city manager form of government is a form of local government that provides a clear line of authority and responsibility with a city manager, who acts as the chief executive officer—think CEO of a corporation—and can be held strictly accountable for municipal operations. This form of government is unique because it combines the political leadership of an elected board of directors with the managerial experience of an appointed manager. As discussed above, the city manager form of government contains all the same positions we reviewed in the mayor-council form of government. However, the duties and roles of the officials differ in the city manager form of government.

Before diving into the details of the city manager form of government, it is important to make quick notation. The City Manager Enabling Act of 1989 (Act 907 of 1989, now codified under A.C.A. § 14-61-101 *et seq.*) changed the way city manager forms of government operated—to an extent. Cities organized under the city manager form of government prior to July 3, 1989, are authorized to continue to operate as they previously had under the provisions of A.C.A. § 14-47-101 *et seq.*, unless the city chose to hold a special election in order to exercise one of the options available under A.C.A. § 14-61-101 *et seq.* Given that municipalities operating under this form of government may look different, this handbook provides a broad overview of the city manager form of government while keeping in mind that there may be some distinguishing factors among Arkansas municipalities operating under this form of government.

Only cities with a population of 2,500 or more as of the latest decennial census may adopt the city manager form of government.⁷⁸ To adopt this form of government, a petition containing signatures of electors equal to 15% of the aggregate number of ballots cast for all candidates for mayor in the preceding general election must be submitted to the mayor.⁷⁹ Once received, the mayor will issue a proclamation submitting the question of organizing the city under the city manager form of government to the electors at a special election.⁸⁰ If the electors vote against reorganizing under the city manager form of government, another vote cannot be taken on the issue until four years have passed and another petition is submitted to the mayor.⁸¹ If the electors vote for the reorganization, then the mayor will file certificates stating that the proposition was adopted with the Secretary of State and with the county clerk. Once that is done, the mayor shall call a special election to be held in the city for the purpose of electing seven city directors.⁸² This was the process used by municipalities to adopt the city manager form of government prior to 1989. Now, if a municipality wants to adopt the city manager form of government, or if a municipality currently operating under this form of government wants to reorganize under the same form of government with the new law in place, the municipality would need to follow the petition process for special elections codified in A.C.A. § 14-61-113, as well as the new statutes governing initial organization and reorganization codified in A.C.A. §§ 14-61-115 – 116.

2. The Mayor

Unlike the mayor in the mayor-council form of government, the mayor in the city manager form of government can either be elected directly by the electorate of the municipality or the mayor can be a city director who is chosen by the board of directors to fill the role.⁸³ The default term for a city director chosen as mayor is two years, but the board of directors may provide by ordinance that the term of mayor shall be one year.⁸⁴ There is no prohibition on serving as mayor for more than one term.⁸⁵ If the mayor is chosen by the electorate, then the mayor serves for a term of four years.⁸⁶

By default, the powers of the mayor are very limited in the city manager form of government. The mayor presides at all meetings of the board and is recognized as the head of city government for all

78 A.C.A. § 14-47-101

79 A.C.A. § 14-47-106(b)

80 A.C.A. § 14-47-106(b)(1)(A)

81 A.C.A. § 14-47-106(b)

82 A.C.A. § 14-47-106(b)(3)

83 See A.C.A. §§ 14-47-116(a)(1) and 14-61-111. This is one of the major differences between the city manager form of government pre-1989 and post-1989 change in the law.

84 A.C.A. § 14-47-116(a)(2)(A)-(B)

85 A.C.A. § 14-47-116(a)(3)

86 A.C.A. § 14-61-111

ceremonial purposes.⁸⁷ Further, the mayor signs all written agreements, contracts, bonds, mortgages, pledges, indentures, conveyances and other written instruments that have been approved by the board.⁸⁸ Finally, the mayor may vote on all matters coming before the board but does not have the power to veto⁸⁹, unless the authority has been given to the mayor by a majority vote of the electorate at a general or special election.⁹⁰ In municipalities with the city manager form of government that have a population of over 100,000 the mayor may have the authority to remove and replace the city attorney at the mayor's discretion.⁹¹

Generally, the role of the mayor in the city manager form of government is largely a ceremonial position. The board of directors acts as the supreme legislative and executive body of the city, and the city employs a qualified city manager to manage the city.⁹² The mayor, if chosen from among the directors, is authorized to vote on issues before the board but does not have a veto. A directly elected mayor may have a veto.

However, the board of directors by 2/3 vote via an ordinance or the electors by petition and majority vote can prescribe more authority to the mayor.⁹³ The list of additional powers a mayor in the city manager form of government may wield can be found in A.C.A. 14-47-140(a)(1)(A)-(G). They include the power to veto,⁹⁴ the power to hire and remove the city manager and city attorney,⁹⁵ and the power to appoint, subject to confirmation by a majority of the board, persons to fill vacancies on the board.⁹⁶

3. The Board of Directors

In the city manager form of government, the board of directors constitutes the supreme legislative and executive body of the city and is vested with all powers and authority, which prior to reorganization, were vested under then-existing laws, ordinance, and resolutions in the mayor and council of that city.⁹⁷ The board has the responsibility to hire a city manager and set their salary.⁹⁸ The board can also terminate the city manager's employment at any time with or without cause.⁹⁹ After a municipality is reorganized into the city manager form of government, the statutory term of office of the city treasurer, city clerk, city attorney, city marshal and recorder in cities of the second class cease and terminate, and the incumbent of each of these offices remains in office subject to removal and replacement at any time by the board of directors.¹⁰⁰ The board may also override the mayor's veto by a 2/3 vote, if the mayor has a veto.¹⁰¹

As the statute states, the board simply constitutes the supreme legislative and executive body of the city. While the board's role is similar to a city or town council's in the legislative aspect (i.e. passing ordinances and resolutions), many executive functions are performed by the city manager. However, the city manager ultimately answers to the board of directors.

4. The City Manager

The city manager acts as the chief executive officer and performs many of the administrative and executive duties the mayor performs in the mayor-council form of government. The city manager is typically someone qualified, through experience, education or both, and chosen by the board of directors to take on the managerial tasks of the city. City managers have the authority, to the extent that such authority is vested in them by the board of directors via ordinance, to supervise and control all administrative departments, agencies, offices and employees of the municipality.¹⁰²

87 A.C.A. § 14-47-116(b)(1)-(2)

88 A.C.A. § 14-47-116(b)(3)

89 A.C.A. § 14-47-116(b)(4)

90 A.C.A. § 14-61-114(b). If the mayor has been granted the authority to veto, then the mayor is not authorized to vote unless the vote is necessary for passage of a measure. See A.C.A. § 14-61-114(d)(2)(B).

91 A.C.A. § 14-47-108(a)(2)(D)

92 A.C.A. § 14-47-109(a)(2)

93 A.C.A. § 14-47-140(a)(1)

94 A.C.A. § 14-47-140(a)(1)(A)

95 A.C.A. § 14-47-140(a)(C)-(G)

96 A.C.A. § 14-47-140(a)(1)(B)

97 A.C.A. § 14-47-109(a)(2). This is also subject to ACA 14-47-120(10) which provides the city manager with, "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."

98 A.C.A. § 14-47-119

99 A.C.A. § 14-47-119(e)

100 A.C.A. § 14-47-108(a)(1)(2)(B)

101 A.C.A. § 14-47-140(a)(1)(A)(ii)(a)

102 A.C.A. § 14-47-120(1)(A)

In municipalities with populations over 100,000, the city manager has the authority to remove and replace the city attorney at the city manager's discretion if this authority has been vested with the city manager.¹⁰³ The city manager enforces all obligations in favor of the city or its inhabitants that are imposed by law, or under the terms of any public utility franchise, upon any public utility. The city manager also has the authority to inquire into the conduct of any municipal office, department or agency that 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.

The city manager may nominate, subject to confirmation by the board, persons to fill vacancies at any time occurring in any office, employment, board, authority or commission to which the board's appointive power extends (if the mayor doesn't have this appointment power). The city manager may also remove from office all officials and employees, including members of any board, authority or commission who may otherwise be removed by the city's legislative body in the mayor-council form of government.

The city manager also has contracting and purchasing authority and is therefore authorized to contract for and purchase supplies, materials and equipment for the various municipal offices, departments and agencies of the city and may contract for services to be rendered to the city or for the construction of municipal improvements. However, the board is required to establish a maximum amount, and each contract, purchase or authorization exceeding the amount so established shall be put to bid.

The city manager prepares the municipal budget annually and submits it to the board for approval or disapproval and is responsible for its administration after adoption. The city manager is also required to prepare and submit to the board, within 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. The city manager is also required to keep the board advised of the financial condition and future needs of the city and make necessary recommendations. Overall, the city manager shall perform other such additional duties and exercise such powers as may, by ordinance, be lawfully delegated by the board.

5. The City Clerk and Treasurer

In the city manager form of government, the positions of both the city clerk and the city treasurer are appointed by the board of directors and the board may remove or replace the clerk or treasurer at their pleasure.¹⁰⁴ Like in the mayor-council form of government, the positions of city clerk and city treasurer may be consolidated into a single position by ordinance.¹⁰⁵ The duties and roles of the clerk, treasurer or clerk/treasurer in the city manager form of government are the same as in the mayor-council form of government.¹⁰⁶

6. The City Attorney

City attorneys in the city manager form of government are not elected but rather hired and/or removed by either the board of directors, the city manager or the mayor, depending on who has been vested such authority. Like the clerk and treasurer in the city manager form of government, when a city reorganizes under the city manager form of government, the statutory term of office of the city attorney ceases and terminates and the incumbent remains in office subject to removal and replacement at any time by the board, city manager or mayor. The duties of the city attorney are similar to those in the mayor-council form of government, mainly duties prescribed by ordinance to fit the needs of the city.

¹⁰³ A.C.A. § 14-47-108(a)(2)(C)

¹⁰⁴ A.C.A. § 14-47-108(a)(2)(B)

¹⁰⁵ A.C.A. § 14-47-131(b)(1)

¹⁰⁶ See previous pages for duties of city clerks and treasurers.

E. City Administrator Form of Government

1. Overview

Any city of the first class or any city with a population of at least 2,500 may adopt the city administrator form of government.¹⁰⁷ The city administrator form of government is very similar to the city manager form of government. However, there are several important distinctions. In the city administrator form of government, there are seven elected directors and a mayor elected in nonpartisan elections.¹⁰⁸ A city with the city administrator form of government is divided into four wards “composed of contiguous territory and substantially equal population.”¹⁰⁹ The persons elected to fill these positions must reside in their respective wards. The other three positions and the position of mayor are elected at large.¹¹⁰ These are the two major distinctions. In the city manager form of government, the seven directors may all be elected at large or by wards or by wards and districts.¹¹¹ In the city administrator form of government, each of the four wards has one director who is elected by the residents of their ward, while the other three directors are elected at large. The mayor in the city administrator form of government is always elected at large as opposed to the city manager form of government, where the mayor is either a director who is elected to the office of mayor by the other directors or elected directly by the electorate.

2. The Mayor

While the mayor in the city administrator form of government is elected at large, the duties of the mayor are still limited compared to the mayor-council form of government. The mayor is recognized as the head of the city government for all ceremonial purposes and presides at regular and special board meetings. However, unlike the mayor in the city manager form of government, the mayor does not have a vote on matters before the board but does have the power to veto all decisions made by the board except for personnel decisions.¹¹² The mayor also 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.¹¹³

3. The Board of Directors

The board of directors in the city administrator form of government is the legislative and executive body of the city and is vested with all powers and authority that, 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.¹¹⁴ The board of directors is also charged with the responsibility of hiring a city administrator and setting the administrator’s salary.¹¹⁵ The board may also, on a majority vote, terminate the city administrator’s employment at any time, either for or without cause. However, interestingly enough, the city administrator cannot 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.¹¹⁶ State law also requires the board to meet twice during each calendar month, and any director who fails to attend five consecutive regular meetings of the board, or who fails to attend 50% of the regular meetings of the board during a calendar year shall be deemed to have resigned.¹¹⁷

4. The City Administrator

As the chief executive officer of the municipality, the city administrator performs much of the day-to-day work that a mayor in the mayor-council form of government might do. To see the full statutory extent of the city administrator’s duties, see A.C.A. § 14-48-117; however, some duties are worth mentioning. The city administrator supervises and controls all administrative departments, agencies, offices and employees to the extent that such authority is vested through an ordinance enacted by the board of directors. The city administrator also represents

107 A.C.A. § 14-48-101

108 See A.C.A. §§ 14-48-108 and 14-48-110.

109 A.C.A. § 14-48-107

110 A.C.A. § 14-48-110

111 A.C.A. § 14-47-109(d)(2)

112 A.C.A. § 14-48-111(a)(3) – (b)(1)

113 A.C.A. § 14-48-111(a)(2)

114 A.C.A. § 14-48-110(a)(2). However, this is subject to the powers of the mayor found in A.C.A. § 14-48-111 and the powers of the city administrator in A.C.A. § 14-48-117.

115 A.C.A. § 14-48-116

116 A.C.A. § 14-48-116(d)

117 A.C.A. § 14-48-120

the board in the enforcement of all obligations in favor of the city or its inhabitants imposed by law. To the extent that the board has prescribed by ordinance, the city administrator may contract for and purchase supplies, materials and equipment for municipal offices and contract for, or authorize contracts for, services to be rendered to the city or for the construction of municipal improvements. The city administrator is also charged with preparing the municipal budget each year, submitting it to the board for approval or disapproval, and is responsible for administration of the budget after adoption. Again, this is not an exhaustive list of the duties of the city administrator, but it showcases the executive nature of the work.

5. The City Clerk and Treasurer

When a municipality adopts the city administrator form of government, the terms of office of the city treasurer, city clerk, city attorney, city marshal and recorder (in cities of the second class) end immediately. These officeholders remain in office subject to the removal and replacement, at any time, by the city administrator with approval of the board of directors.¹¹⁸ At the discretion of the board of directors, the office of the city treasurer and office of the city clerk may be consolidated by ordinance, or the board may charge another position—typically a finance officer—with the responsibility of administering the financial affairs of the city.¹¹⁹ The duties of the clerk and treasurer (or finance officer) are statutorily the same as in the mayor-council form of government.

6. The City Attorney

City attorneys in the city administrator form of government are also not elected. As in the city manager form of government, when a city reorganizes under the city administrator form of government, the statutory term of office for the city attorney ceases and the incumbent remains in office. However, here the city attorney is subject to removal and replacement at any time by the city administrator with the approval of the board of directors.¹²⁰ Again, the duties of the city attorney are the same as they are in the other two forms of government and predominantly based on what is required and prescribed by ordinance. However, note the difference between the city manager and city administrator forms of government. In the city manager form of government, the oversight belongs to the mayor and board of directors while in the city administrator form of government it is the city administrator, with the approval of the board of directors.

Chapter 3. Ordinances and Resolutions

A. Overview

Generally speaking, the legislative body of a municipality—the council or board of directors—takes official action by passing a resolution or an ordinance. Municipalities are empowered to make and publish bylaws and ordinances, not inconsistent with the laws of this state, which, as to them, shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of such corporations and the inhabitants thereof.¹²¹ The city attorney prepares most ordinances, resolutions, bylaws and orders or should at least approve the final draft to be submitted to the council. The city clerk or recorder may also assist in preparing ordinances, resolutions, orders and bylaws and, even if the clerk or recorder does not assist in this capacity, it is important for them to understand the legal requirements and customary practice for these documents, as the clerk or recorder will likely be charged with keeping records and ensuring ordinances are published.

Ordinances, bylaws, resolutions and orders all share certain similarities. However, there are distinctions between these different types of actions, and knowing the differences is important. For example, in the Arkansas Code, ordinances and bylaws are frequently referred to in the same sentences and sections, and little distinction is made between the two. It might be helpful to consider bylaws as a subset of ordinances. In other words, all bylaws are ordinances, but not all ordinances are bylaws. As a general rule, ordinances control matters external to the municipality's governing body, and bylaws regulate matters internal to it. Bylaws are defined by *Black's Law Dictionary* as “a rule or administrative provision adopted by an organization for its internal governance and its

118 A.C.A. § 14-48-106

119 A.C.A. § 14-48-124

120 A.C.A. § 14-48-106(a)(2)(B)

121 A.C.A. § 14-55-102

external dealings.”¹²² In Chapter 1 of this section, we discussed the organizational meeting that municipalities have in January each year in which the governing body determines how the meetings of the governing body will be conducted. Though we may not refer to it as such, if the governing body takes action in setting the dates and times for the council or board meetings for the year, it constitutes a bylaw, as it is an administrative provision adopted for the internal governance of the governing body.

B. Ordinances

A municipal ordinance is a city law through which the mayor and the city council make the power of the city effective. In more technical terms, McQuillin, a respected commentator on municipal law, defined ordinances as all “local law[s] of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct, relating to the corporate affairs of the municipality.”¹²³ An ordinance is a local law that usually regulates persons or property and usually relates to a matter of general or permanent nature. An ordinance is more formal and authoritative than a resolution, which is why we recommend your city attorney approve the structure and content of all proposed municipal ordinances.

There are two categories of rules to follow when dealing with ordinances: content and procedure. When it comes to the content of an ordinance there is not a specific section of code that necessarily dictates the content ordinances. However, there are eight key concepts to help ensure you are passing a lawful ordinance:

1. Ordinances must be reasonable.¹²⁴
2. They must not be oppressive.
3. They must not be discriminating or partial.¹²⁵
4. They must not unduly restrain lawful trade.
5. They must not violate civil rights.
6. They must not be ambiguous.¹²⁶
7. They should not conflict with state or federal law.¹²⁷
8. They must contain only one general subject, and the subject must be clearly stated in the title.¹²⁸

Passing an ordinance is a three-part process. First, there is the introduction of the ordinance at a council meeting. Then the city clerk, recorder or city attorney, depending on your local rules, reads the ordinance, and the person(s) proposing the ordinance is allowed the opportunity to explain its provisions. Finally, the council debates the ordinance and either defeats, postpones, refers it to a committee for further study or approves it.

The Arkansas Code does not prescribe the form in which municipal ordinances shall be prepared except that the ordinance must be in writing and clearly signify that it is the “will” of the municipality. A municipal ordinance can be divided into seven parts: (1) the title, (2) the enacting clause, (3) the command (the “WHEREAS” section), (4) the penalty, (5) the repealing clause, (6) the emergency clause and (7) the attestation.

Each of the seven parts has its own distinct function. The title succinctly informs the reader what the ordinance is about (See key concept 8 above). The enacting clause, as the name implies, enacts the ordinance. The command spells out exactly what behavior is mandated or prohibited. The penalty spells out the range of punishments available for those who do not follow the command.¹²⁹ The repealing clause gets rid of any other existing ordinances that might conflict with the new ordinance.¹³⁰ The emergency clause, which we will discuss further

122 Black’s Law Dictionary (11th ed. 2019)

123 5 McQuillin Mun. Corp. § 15:1 (3rd ed.)

124 The ordinance’s effect must be related to its purpose. In other words, your goal with the ordinance must make sense. If the ordinance is intended to lower noise levels during the night, then you can’t punish people for wearing ugly clothing! This issue is very rare, and municipalities must go far afield for this to be an issue.

125 Ordinances and resolutions should not single out a single person. This would ride the lines of a Bill of Attainder or the legislative body judging a person guilty instead of a court. Discriminatory ordinances, even if they are per se civil rights violations, cause constitutional concerns. For example, banning tall people from property isn’t necessarily a civil rights issue as it is not a protected class, but it can cause constitutional concerns.

126 Ordinances that carry fines or punishments in any way may not be ambiguous. In other words, a reasonable person should understand what conduct is prohibited. For example, if we just state, “No running at a moderate speed on the sidewalks” we have questions such as “what is a moderate speed?” If we state, “Dangerous animals are prohibited,” what is a “dangerous” animal?

127 See A.C.A. §§ 14-55-102 and 14-55-502.

128 A.C.A. § 14-55-201

129 There are statutory and/or constitutional limits on the amount of penalty that may be imposed by municipal ordinance such as those found in A.C.A. § 14-55-501 504. The governing body, the clerk/recorder and the city attorney should be aware of these limitations.

130 The “Repealer” section is particularly important, especially if the new law is designed to supersede an existing ordinance or part thereof, in which case, it is better to specify

below, explains why the municipality cannot postpone the enforcement of the ordinance.¹³¹ Finally, the attestation provides the proof that the ordinance went through the appropriate processes and is a validly enacted ordinance.

Another important clause to consider is a severability clause. If an ordinance has subparts and a court finds one of the parts invalid, the court will likely not strike down the other parts if they are different or distinct enough (“severable”) from the invalid portion. A severability clause expresses the council’s intention to have the court treat the ordinance as valid even if certain portions of the ordinance are challenged and deemed unconstitutional.¹³²

Unlike the content rules of thumb above, when it comes to the procedural rules for municipal ordinances there are statutory requirements that must be met.

1. Reading Requirement

All ordinances of a general or permanent nature must be read fully and distinctly on three different days unless 2/3 of the members of the council suspend the rule.¹³³ However, in municipalities with a population of fewer than 15,000, 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, then the ordinance shall be fully and distinctly read on three different days not less than 28 days apart.¹³⁴

While the reading requirement is straightforward, there are a few notes to make. First and foremost, the mayor is authorized to vote to pass the motion to suspend the rules.¹³⁵ There is also a common argument among attorneys regarding how often to dispense with the reading requirement rule. It is important to note that the reading requirement has been law for over a century without any changes and harkens back to a time when many people couldn’t read and had to hear aloud what an ordinance stated. Some attorneys believe that there must be a first reading and then we can dispense with the rule and have the second and third readings by title only. Some believe that we can dispense with the rule at the beginning of the meeting. Some might even argue that we can dispense the rule at the beginning of the year and not have to dispense with it again for the rest of the year. There is no clarification in the law nor has the Arkansas Attorney General opined on the issue. The safest route you can take, especially if you do not have a city attorney, is to read ordinances in full for the first reading, and then the reading requirement may be dispensed with a 2/3 vote of the governing body. As a practical matter, it is critical that the mayor clarifies precisely what the motion to waive actually seeks.

Certain ordinances—those that contain lengthy technical codes, for example—can be onerous to read aloud. Fortunately, cities are authorized by the passage of a municipal ordinance to adopt by reference technical codes, regulations or standards, without having to set forth the provisions of the code or parts thereof, if three copies of the code, or relevant parts, are filed either electronically or by hard copy in the clerk’s office and open to inspection and view by the public prior to the passage of the ordinance.¹³⁶

2. Voting Requirement and Effective Dates

To pass any bylaw, ordinance, resolution or order, a concurrence of a majority of a whole number of members elected to the council is required.¹³⁷ The effective date for ordinances of a general or permanent nature is 90 days after publication or posting.¹³⁸ However, if the governing body has, by ordinance, fixed the deadline for filing referendum petitions at not less than 30 days nor more than 90 days after the passage of an ordinance, then the effective date shall be the day after the deadline fixed in ordinance.¹³⁹ Most municipalities passed such an ordinance decades ago. However, it is critical that the ordinance is easily accessed and clear to ensure compliance with state law.

cally name the ordinance in contrast to making the general repealer. A.C.A. § 14-55-401 provides that all ordinances lawfully passed and adopted shall remain in force until altered or repealed by the council.

131 Not all ordinances will have emergency clauses.

132 *Drummond v. State*, 320 Ark. 385, 389, 897 S.W.2d 553, 555 (1995). A severability clause may read something like – “SECTION. If, for any reason, any portion or portions of this ordinance shall be held invalid, such invalidity shall in no way affect the remaining portions thereof which are valid, but such valid portions shall be and remain in full force and effect”.

133 A.C.A. § 14-55-202(a)

134 A.C.A. § 14-55-202(b)

135 Ark. Op. Atty. Gen. No. 2007-051

136 A.C.A. § 14-55-207

137 A.C.A. § 14-55-203

138 A.C.A. § 14-55-203

139 See A.C.A. § 14-55-203 and Ark. Const. art. 5 § 1.

If an ordinance contains an emergency clause, there must be two separate votes: one for the substantive part of the ordinance, and one for the emergency clause.¹⁴⁰ The ordinance, with an emergency clause, will go into effect immediately upon passage or at the time specified by the emergency clause, regardless of publication or posting.¹⁴¹ However, if the ordinance that contains an emergency clause imposes any fine, penalty, forfeiture or deprivation of liberty or property, then the ordinance will not be effective until it has been published or posted.¹⁴² For example if the municipality is passing a law that contains a penalty, then the public needs to be aware of the new conduct being penalized before it goes into effect.

Speaking of emergency clauses and voting, the mayor is not allowed to vote on an emergency clause.¹⁴³ Emergency clauses should be used solely for emergencies, not simply because the council wants something to go into effect immediately for the sake of simplicity. If an ordinance includes an emergency clause, it should also lay out the very specific facts that show why an emergency clause is necessary.

Let's look at two examples and determine if each example provides enough information for an emergency.

“The council hereby finds that the city is in desperate need of new regulation governing fireworks and hereby declares an emergency, such that this ordinance shall take effect immediately.”¹⁴⁴

“The council hereby finds that the city is in desperate need of new regulation governing fireworks, because there has been a drought in Jax County and the conditions are ripe for a wildfire. Having seen such fires spread throughout the state in past weeks the City Council, hereby declares an emergency, such that this ordinance shall take effect immediately”¹⁴⁵

3. Publication Requirement

All bylaws or ordinances of a general or permanent nature and all that contain any fine, penalty or forfeiture are required to be published in some newspaper published in the municipality.¹⁴⁶ If the municipality does not have a newspaper published in the municipality, then written or printed notices may be posted in five of the most public places designated by the governing body. What constitutes a newspaper published in the municipality, you may ask? Unfortunately, there isn't a great answer to the question. There are no Arkansas Supreme Court opinions on the matter, but the attorney general opinions on the issue focus on what work is being performed by the newspaper within the municipality. For example, a newspaper would not necessarily have to be physically printed in the municipality to be considered “published in the municipality.” There are many factors a court might look at in adjudicating this issue, such as whether the newspaper's headquarters are located in the municipality, whether it is the municipality's prime source for information or whether the editing takes place in the municipality.¹⁴⁷ Consider these factors when determining where to publish or post municipal ordinances.

C. Resolutions

Unlike ordinances, which are local laws for the municipality of a general or permanent nature, a resolution is an expression of the will of the council. The major distinction between an ordinance and a resolution is that a resolution may not have any legal effect. A resolution is an expression of opinion or intent, but it may also perform some legal act, such as calling for a referendum regarding alcoholic beverages.¹⁴⁸ Resolutions are typically used to state the council's opinion on various matters—for example, supporting or opposing legislation pending at the state capitol. Resolutions also usually affect items of a temporary or administrative nature, such as entering into

140 Ark. Const. art. 5 § 1 provides, “shall vote upon separate roll call in favor of the measure going into immediate operation”.

141 A.C.A. § 14-55-203(c)(1)(C)

142 A.C.A. § 14-55-203(c)(1)(C)

143 Ark. Const. art. 5 § 1 provides, , “two-thirds of all the members elected to the city or town councils.”

144 This is probably not sufficient enough. Information is lacking, as we see in the second example, to determine whether this is an emergency or not.

145 This provision provides more “necessity.” We have added serious conditions that constitute the urgent need to regulate fireworks, as we are in a drought and wildfires are picking up all over the state.

146 A.C.A. § 14-55-206(a)

147 See Ark. Op. Atty. Gen. No. 95-227, where the AG opined that The Fairfield Bay News was in all likelihood “published” in Fairfield Bay although the actual printing took place in Heber Springs, but all other activities necessary to prepare and produce a camera-ready copy of the paper were performed in Fairfield Bay, where the principal office was located.

148 See A.C.A. § 3-9-206(a)(1): “A referendum election [for on-premises consumption] may be called in a city by resolution adopted by a majority vote of the governing body of the city ...”

contracts, approving large purchases or entering into agreements with other government 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.¹⁴⁹

Since resolutions are simpler to adopt than ordinances, how much of the council's business can be conducted through resolutions? Unfortunately, the law is unclear. Certain actions of the municipality are mandated to be performed on the basis of an adopted ordinance or resolution, such as the establishment of a budget and the authorization to expend funds,¹⁵⁰ enter into contracts¹⁵¹ and award franchises.¹⁵² An ordinance or resolution is also required when enacting laws carrying monetary or jail time penalties¹⁵³ and for the redistricting of wards.¹⁵⁴

Now that we have discussed resolutions and ordinances, let's work through some examples to determine when ordinances or resolutions go into effect, and when we should use an ordinance or resolution.

Knowledge Check

- (1) The city of Olive passed an ordinance prohibiting jaywalking. The ordinance provides a penalty in the form of a fine up to \$500. The governing body also passed an emergency clause with the ordinance. When does the ordinance go into effect?¹⁵⁵
- (2) The city of Zorro passes its annual budget each year through an ordinance. Midway through this year the council needed to amend the budget and did so by resolution. Was this proper?¹⁵⁶
- (3) Through one vote, the city of Gemma passed an ordinance, containing an emergency clause, to prohibit fireworks in the city limits. Was this proper?¹⁵⁷

Chapter 4. Elections, Vacancies and Wards

A. Overview

The purpose of Chapter 4 is to provide a baseline knowledge of elections, wards¹⁵⁸ and vacancies. If you're reading this, you have more than likely already gone through the election process and have been elected. However, there is a lot of information to keep track of in regard to elections and frequent changes to the elections law. We also receive questions regarding citizen initiatives and referendums. While municipalities are familiar with the process of the council referring ordinances, like sales tax and annexation ordinances, to the electorate, many municipalities have never dealt with a citizen's initiative and referendum as it pertains to your local legislation. From there we will turn our attention to vacancies in municipal offices and the procedures to fill vacancies, as well as some common issues that arise. Finally, we will discuss municipal wards detailing which municipalities must have wards, how many wards municipalities must have, and redistricting.

149 A.C.A. § 14-55-202

150 A.C.A. § 14-58-202 (budget may be adopted by ordinance or resolution)

151 City of Dardanelle v. City of Russellville, 372 Ark. 486, 490, 277 S.W.3d 562, 656 (2008) (purchase of property requires resolution by city council)

152 A.C.A. § 14-47-139 (either ordinance or resolution)

153 A.C.A. § 14-55-504 (ordinance required)

154 See A.C.A. §§ 14-43-311 and 14-44-102 (either ordinance or resolution).

155 Although the ordinance contains an emergency clause, the ordinance will not go into effect until the ordinance has been published. Remember, if the action being prohibited is going to be enforced through a punishment or penalty, it cannot go into effect until the public has been put on notice.

156 It was meant to be a trick question! Although budgets may be adopted by either an ordinance or a resolution, we can only amend the enacting document by the same method. If the budget was adopted by an ordinance, it would take an ordinance to amend the previous ordinance, and the same is true for resolutions.

157 No. A municipality cannot pass an emergency clause through the same vote as the ordinance. There must be a separate vote on the emergency clause.

158 Cities of the first and second class only!

B. Elections

Each election, the Arkansas State Board of Election Commissioners in conjunction with the Secretary of State's office and the Arkansas Ethics Commission publish the "Running for Public Office" handbook. In it you will find all of the qualifications for each office of the state as well as updated filing deadlines. It is a great handbook and worth checking out each year before you file for office. Since that handbook exists, we will focus on the baseline requirements for running for municipal offices and look at some important distinctions between "elected" and "appointed" offices. In Chapter 2, we covered all of the municipal officials a municipality might have and some of the differences in positions depending on the classification of the city and form of government. Here, we go into more detail about the qualifications for municipal positions and terms of office.

As a primer, every municipal official must meet some constitutional and statutory qualifications. The most important is that officer holders, whether elected or appointed, are required to possess the "qualifications of an elector."¹⁵⁹ This includes being a citizen of the United States, being a resident of the State of Arkansas, being at least 18 years of age, and lawfully registered to vote in the election for which you are running.¹⁶⁰ You must also have never been convicted of a felony or convicted of embezzlement of public money, bribery, forgery or other infamous crime.¹⁶¹ You are also prohibited from filing, running as a candidate or holding any municipal office if you have plead guilty or found guilty or plead *nolo contendere* to a public trust crime.¹⁶²

There is a significant distinction between officials who are "elected and appointed" and those officials that are "nominated and confirmed." Municipalities operating under the mayor-council form of government do not have to worry about the nomination and confirmation aspect as it relates to municipal officials. There are two ways an official may hold office in municipal government in mayor-council forms of government. Officials can be elected to hold the office, or they can be appointed to the office. We see appointments generally occur in two ways. First, cities sometimes appoint someone to fill a vacancy when the incumbent office holder ceases to hold the office for which they'd been previously elected prior to the expiration of the term. We also see appointments when a municipality decides to separate the positions of clerk/treasurer or recorder/treasurer and choose to appoint a treasurer. Regardless of these two situations, remember that the person appointed must be a qualified elector to hold the office, and that includes a residency requirement. So, if a treasurer is appointed rather than elected, the treasurer must still be a qualified elector.¹⁶³

On the other hand, some officials in the city administrator and city manager forms of government are nominated and confirmed by the board of directors. The "officials" in these two forms of government who are nominated and confirmed are employees rather than officials, and thus the Arkansas Code does not delineate the qualifications for positions like the clerk and treasurer in cities with these two forms of government. With this background in mind, let's look at the terms of office of officials in the different forms and classifications of municipalities.

1. Mayor-Council Form of Government

In cities of the first class with a population of 50,000 or more, the mayor, each council member, the city clerk, treasurer, clerk/treasurer and city attorney¹⁶⁴ hold office for a term of four years. The Arkansas Code establishes the timeline of municipal election cycles. The mayor, the clerk and one council member from each ward are elected beginning in 1960 and every four years thereafter. So, by starting in 1960 and counting four years onward, we determine when those positions will be on the ballot, which would be in 2024, 2028, and so forth. On the other hand, the city attorney, the treasurer (if applicable) and one council member from each ward are elected beginning 1962 and every four years thereafter. Therefore, for these positions, we start in 1962 and count four years onward to determine when these positions will be on the ballot. The next ones would be 2026, 2030, and so forth.

¹⁵⁹ Ark. Con. art. 19 § 3

¹⁶⁰ Ark. Con. art. 3 § 1

¹⁶¹ See Ark. Con. art. 5 § 9 and A.C.A. § 21-8-305.

¹⁶² A.C.A. § 21-8-305

¹⁶³ Ark Op. Atty. Gen. No. 2002-105

¹⁶⁴ If the city attorney is elected.

In cities of the first class with a population of fewer than 50,000, the mayor, the city clerk, the treasurer, clerk/treasurer and city attorney hold office for four years. By default, city council members only hold office for a term of two years. However, any city of the first class may, by ordinance referred to and approved by the voters, elect two council members from each ward to four-year terms, resulting in staggered terms with one council member being elected to a four-year term from each ward every two years, with an initial two-year term for position 2.¹⁶⁵

In cities of the second class, the mayor, recorder, treasurer or recorder/treasurer hold office for a term of four years. The mayor is elected beginning in 1966 and every four years onward, so 2026, 2030, and so forth will be the next election years for mayors in cities of the second class.¹⁶⁶ The recorder, treasurer or recorder/treasurer are elected beginning in 1972 and every four years onward, so the next election years for these positions will be 2024, 2028, and so forth.¹⁶⁷ City council members in cities of the second class are elected to two-year terms, unless the voters have approved four-year terms.¹⁶⁸

In incorporated towns, the mayor and recorder/treasurer both hold office for a term of four years. The mayor is elected beginning in 1966 and the recorder/treasurer is elected beginning in 1982, which puts both positions on the same four-year cycle, so the next elections for these positions will be in 2026, 2030, and so forth.¹⁶⁹ Council members in incorporated towns are elected to two-year terms, unless the voters have voted for four-year terms.¹⁷⁰

2. City Manager and City Administrator Form of Government

In the city manager form of government, each director is elected for a term of four years. If the municipality operating under the city manager form of government elects its mayor in an election, then the mayor will also serve for four years. If the mayor is elected by the board of directors themselves, then the mayor by default holds the term for a period of two years unless the board has provided, by ordinance, that the term of the mayor is one year. In the city administrator form of government, each director and the mayor are elected to a term of four years. There are also some additional qualifications to run for board of director in both forms of government. First, in both forms of government, you are required to be 21 years of age to run for office, as opposed to the 18 years old requirement.¹⁷¹ Further, you are required to have resided within the municipality for at least 30 days to run for the board of directors in the city manager form of government. In the city administrator form of government, the mayor and board of directors are required to be 21 years of age and required to have resided in the municipality for at least six months.¹⁷²

As discussed in the introduction to this section, the clerk, treasurer and city attorney positions are not elected and are instead appointed by the board of directors. Therefore, the term of office for these officials is subject to the board of directors.

3. Miscellaneous Issues

There are three issues that frequently arise in regard to elections and vacancies that deserve attention. The first is recall elections. Any municipal officer who holds an office for a term of four years in the mayor-council form of government is subject to removal from the office by the electors qualified to vote for a successor of the incumbent.¹⁷³ A recall requires a petition requesting the removal of a person holding the office that is signed by a number of qualified electors equal to 25%. The petition must be filed by noon not more than 105 days or less than 91 days before the next general election following the election at which the office was elected.¹⁷⁴

The second issue concerns residency requirements of municipal officials. We have previously covered the required qualifications to run for municipal office. A common question we receive is, “What happens when a council member no longer resides in the ward they were elected to?” This question could apply to any other municipal official who moved outside of the corporate limits. This question is not easy to answer. Outside of the requirement

165 A.C.A. § 14-43-312

166 A.C.A. § 14-44-105

167 A.C.A. § 14-44-115

168 A.C.A. § 14-44-103

169 See A.C.A. § 14-45-104 and 14-45-108.

170 A.C.A. § 14-45-102

171 See A.C.A. § 14-47-109(f) and 14-48-110(f).

172 A.C.A. § 14-48-110

173 A.C.A. § 14-42-119(a)

174 A.C.A. § 14-42-119(b)

to be a qualified elector, there are a couple of statutes in the Arkansas Code that require council members to reside in the corporate limits or wards if voted on by wards.¹⁷⁵ There is even a specific statute that details what happens if a council member ceases to reside in the ward they were elected to.¹⁷⁶ It sounds like it would be easy for a municipality to deal with an issue concerning a municipal official no longer residing in the municipality or ward. Unfortunately, that is not the case, as there is a practical problem to the equation. If a council member refuses to resign their seat after moving outside of the ward they were elected to represent, then as a practical matter, the municipality will have to involve the courts.¹⁷⁷

The third issue concerns those instances where no one files or refiles for a municipal office. This issue usually comes in two forms: (1) an incumbent official misses the election filing period and no one else files; or (2) an incumbent does not want to run for office again so doesn't file, but no one else files for the office. In both of these situations, we are dealing with the "holdover" provision of the Arkansas Constitution. Article 19, Section 5 of the Arkansas Constitution provides: "All officers continue in office after the expiration of their official terms, until their successors are elected and qualified." Further, the Arkansas Supreme Court has explicitly recognized that this provision of the Arkansas Constitution applies to city council members.¹⁷⁸ Therefore, the incumbent officeholder will continue to hold office until their successor is elected and qualified. So, if you missed the filing period and no one else filed for your position, you would remain in office for a new full term. The same is true if you do not want to continue to hold office, but no one else filed for the position. The incumbent officeholder will remain in office until someone is elected to succeed them.¹⁷⁹ The main takeaway is that neither of these situations create a vacancy in the office because the incumbent officeholder would remain in office and the seat would never be vacant.

C. Initiatives and Referendums

Most municipalities are familiar with referendums, as we are required by law to refer certain ordinances to the voters (i.e. annexation and sales tax ordinances). What municipalities are typically not familiar with are citizen initiatives and referendums. Here, we will go over the background of local initiatives and referendums (we will not be covering the referendum and initiative processes for state laws and constitutional amendments) and walk through some of the procedures and requirements.

Amendment 7 to the Arkansas Constitution, approved by the voters during the 1920 general election, granted the people with the power to propose legislative measures, laws and amendments to the Arkansas Constitution and to enact or reject the same independent of the General Assembly. Amendment 7 also extended the initiative and referendum powers to the legal voters of each municipality and county: "all local, special, and municipal legislation of every character in and for their respective municipalities and counties."¹⁸⁰ It takes 15% of the legal voters of the municipality to order the referendum or invoke the initiative upon any local measure. In other words, it takes a petition signed by 15% of the voters in the municipality. The fifteen 15% is computed upon the total vote cast for the office of mayor at the last preceding general election. So, if 2,000 voters voted in the mayoral election in the previous general election, then the number of signatures needed would be 15% of 2,000, which would be 300 signatures.

For initiatives, the filing of the petition is not less than 60 days and not more than 90 days before the election at which it is to be voted upon. The referendum petition on the other hand is filed not less than 30 days and not more than 90 days after the passage of the measure by the city council. In the previous section we went over when ordinances go into effect, and we learned that an ordinance goes into effect either 91 days after passage or the day after the deadline for filing referendum petitions upon ordinances as fixed by ordinance.¹⁸¹ This is the time frame that provision is referencing. The city council may, by ordinance, set the deadline for filing referendum petitions

175 A.C.A. § 14-43-308-309

176 A.C.A. § 14-43-310: "... shall cease to reside in the ward from which he or she was elected, that person shall be disqualified to hold the office and a vacancy shall exist which shall be filled as prescribed by law."

177 Ark. Op. Atty. Gen. No. 2011-016; and Ark. Op. Atty. Gen. Nos. 2008-012 and 95-401

178 Phillips v. Earngey, 321 Ark. 476, 481 (1995)

179 It must be noted that you are not forever stuck in office. Nothing prohibits the incumbent officeholder from resigning. However, if the incumbent officeholder did resign, then a vacancy would be created and the vacancy would have to be filled in accordance with the applicable law.

180 Ark. Con. art 5 § 1 as amended by Amendment 7

181 A.C.A. § 14-55-203

on ordinance and that deadline can be anywhere between 30 and 90 days after passage of the measure by the city council.

Municipal referendum petition measures are submitted to the electors at the next regular general election, unless the referendum petition expressly calls for a special election.¹⁸² Further, it is the responsibility of the city clerk or recorder to certify the sufficiency of the petition. This is not something municipal clerks and recorders deal with often. Therefore, it is vital to have a good working relationship with your county clerk, who can provide assistance in this process and provide guidance. One frequently asked question is, “Who pays for the election when the voters bring the referendum or initiative?” In all cases, the city or town would bear the cost.¹⁸³ Now, if the issue is on the ballot of the general election or primary election, then the cost isn’t as significant as it might be if the issue was the only thing on the ballot.

D. Vacancies

Vacancies in municipal offices occur for a plethora of reasons, the most common being through resignation or death of the officeholder. Luckily, the Arkansas Code provides clear procedures on how municipalities fill these vacant positions, but as always, the procedure is dependent on the class and form of government.

The general premise is that vacancies in municipal offices that are authorized by state law to be filled by appointment by the city or town governing body require a majority vote of the remaining members of the governing body. However, a majority of a quorum of the whole number of the governing body is required to fill the vacancy.¹⁸⁴ Further, the governing body may appoint any qualified elector, including members of a governing body, to fill the vacancy, but a member of the governing body may not vote on their own appointment.¹⁸⁵

In the mayor-council form of government, vacancies of officers are filled by the city council until a successor is duly elected and qualified. The successor shall be elected for the unexpired term at the first general election that occurs after the vacancy has happened.¹⁸⁶ However, there is one distinction for city council members. In cities of the first class under 20,000, vacancies in the position of city council are filled by the remaining members of the city council. In cities of the first class over 20,000 in population, if the unexpired portion of the term of a council member exceeds one year, then the council may opt to either elect by a majority vote of the remaining members of the council or to call for a special election to fill the vacancy. If the city of the first class has over 20,000 population, but the unexpired portion of the term is one year or less, then the successor shall be chosen by a majority vote of the members of the council.¹⁸⁷

In cities of the second class, if a vacancy occurs in the office of mayor, marshal, recorder, treasurer or recorder/treasurer, then at the first regular meeting following the vacancy, the city council shall elect a person to fill the vacancy either by a majority vote of the council members or by a call for a special election.¹⁸⁸ Vacancies on the city council, however, are filled only by a majority vote of the remaining members of the council.¹⁸⁹ In incorporated towns, vacancies in the office of council members, recorder/treasurer and marshals are all filled by a majority vote of the town council. The mayor, however, is either elected by a majority of the town council or by a special election.¹⁹⁰

In the city manager form of government, if there is a vacancy on the board of directors, then the vacancy is filled by a majority vote of the board.¹⁹¹ In the city administrator form of government, a vacancy in the office of mayor or member of the board of directors is filled by either a majority vote of the board members or by a special election.¹⁹²

182 A.C.A. § 7-9-111(h)

183 A.C.A. § 7-5-104

184 A.C.A. § 14-42-103

185 A.C.A. § 14-42-103

186 A.C.A. § 14-43-412

187 A.C.A. § 14-43-411

188 A.C.A. § 14-44-106

189 A.C.A. § 14-44-104 (It is also important to note that the mayor cannot veto the appointment.)

190 A.C.A. § 14-45-103

191 A.C.A. § 14-47-113

192 A.C.A. § 14-48-115

E. Wards

Wards are divisions or districts of municipalities. They delineate certain areas of the city from each other. For purposes of Arkansas municipalities, they are important for representation and election. Just as the Arkansas General Assembly is divided into 35 Senators and 100 Representatives who each have a specific geographic area that they represent, wards operate the same within municipal boundaries.

1. Mayor-Council Cities and Towns

Incorporated towns do not have wards. Instead, incorporated towns have five council members who are elected at large, or by everyone in the town. The positions are simply designated Positions 1-5. When an incorporated town becomes a city of the second class, the council is required to divide the city into a number of wards of approximate equal population that will seem to best serve the interest of the city.¹⁹³ Two council members are elected from each ward and designated as Council Member 1 and Council Member 2. These council members must reside in the ward they represent. However, in cities of the second class, by default the council members still run at large, unless the council has provided by ordinance that all council members will be elected by ward, or the council may provide that one council member in the ward is elected at large and the other council member in the ward is elected by ward only. When a city of the second class becomes a city of the first class, nothing really changes as far as the elections go. There are still two council members per ward, and they may be elected at large, by ward only, or one council member in the ward elected by ward and the other elected at large.¹⁹⁴

2. City Manager Cities

In the city manager form of government, a city may choose to divide the city by wards and districts (districts overlap multiple wards).¹⁹⁵ Therefore, in the city manager form of government, a director may be selected in the following manners: (1) All members of the board of directors are elected at large; (2) an odd number of directors, including the mayor, with any combination of directors being elected at large and from wards, whether the position designated as mayor is appointed or directly elected; (3) an odd number of directors, including the mayor, with any combination of directors being elected from wards and from larger designated districts that overlap wards, whether the position designated as mayor is appointed or directly elected; (4) all members of the board of directors but one being elected from wards, with one member elected at large who shall be the mayor; or (5) all members of the board of directors being elected from wards.¹⁹⁶ If a city operating under the city manager form of government chooses to select some of its members by ward, then the governing body must divide the territory of the city into the number of wards having substantially equal population, according to the most recent federal decennial census of population in the city, equal to the number of members of the governing body to be elected from wards.¹⁹⁷ If a city chooses to select some of its members by larger designated districts that overlap wards, then the governing body must divide the territory of the city into the number of districts having substantially equal population, according to the most recent federal decennial census, equal to the number of members of the governing body to be elected from districts.

3. City Administrator Cities

In the city administrator form of government and prior to the election for the initial membership of the board of directors and the mayor, the governing body is required to divide the city into four wards with each ward being composed of contiguous territory and of substantially equal population.¹⁹⁸ Out of the seven positions on the board of directors, positions 1-4 are elected by ward (one per ward) while positions 5-7 and the mayor are all elected at large.

¹⁹³ A.C.A. § 14-44-101

¹⁹⁴ See A.C.A. § 14-43-307 and 14-43-312.

¹⁹⁵ A.C.A. § 14-61-109

¹⁹⁶ A.C.A. § 14-61-107

¹⁹⁷ A.C.A. § 14-61-109(1)

¹⁹⁸ A.C.A. § 14-48-107(a)(1)

4. Redistricting

Every so often a municipality may need to redistrict previously established wards. This is typically due to population movement within the municipality itself or population movement across the state generally. Fortunately, the Arkansas Code authorizes the redistricting of wards in cities of the first and second classes.¹⁹⁹ The city has the following powers regarding redistricting. City councils in cities of the first class have the authority to redistrict the wards in their cities when they determine that the people can best be served by adding wards, combining wards or changing ward boundary lines to equalize the population in the various wards.²⁰⁰ It is the duty of the city council to see that each ward has “as nearly an equal population as would best serve the interest of the people of the city.”²⁰¹ However, in order to comply with the equal protection clause of the U.S. Constitution, a municipal reapportionment plan should be based on the principle of one-person-one-vote. The validity of any municipal council reapportionment must be tested on the basis of population rather than on the basis of registered voters.

Within 90 days after redistricting, if 100 or more qualified electors in the city are dissatisfied with the redistricting of the city into wards, they shall have the authority to petition the circuit court, which after due hearing, shall have the authority to redistrict the city into such wards as the court shall deem best, if the court finds that the redistricting action by the city council was arbitrary and capricious.²⁰² City councils in cities of the second class also have the authority to redistrict their wards when they determine that the people can best be served by adding wards, combining wards, or changing ward boundary lines to equalize the population in the various wards.²⁰³ Within 90 days after redistricting, if 50 or more qualified electors are dissatisfied with the division of the city into wards, they shall have the authority to petition the court which, after due hearing, shall have the authority to redistrict the city into such wards as the court shall deem best, if the court finds the redistricting action by the city council was arbitrary and capricious.²⁰⁴

Chapter 5. Annexation

A. Overview

Over the past century, municipalities in Arkansas have witnessed firsthand the growth of the state and the movement of the populace from some parts of the state to other parts of the state. Within the past decade alone we have witnessed massive growth and population movement to the northwest region of the state. With growth comes the need for expansion. Given that corporate limits of municipalities are established upon incorporation, annexation is the process of expanding those original boundaries.

Before undertaking the process of annexation, municipalities are required to coordinate with the Arkansas Geographic Information Systems Office (GIS) for preparation of legal descriptions and digital mapping.²⁰⁵ The GIS Office coordinates the development, maintenance and publication of geographic information across Arkansas. GIS is the state agency that serves as the statutory keeper of municipal boundaries, election precincts, school districts, townships, land survey plats and state-certified coroners.²⁰⁶ Within 45 days of the effective date of any ordinance or resolution affecting a municipal boundary, the city clerk is required to file with the county clerk written notice, along with complete documentation of the annexation. Then within 30 days of the county clerk’s receipt of the proper documentation, the county clerk is required to provide written notice to the Secretary of State of the boundary change.

Various statutes in the Arkansas Code provide certain rules depending on where the property to be annexed is located. For example, if a municipality states its intent, by resolution or ordinance, to annex a territory in which the municipality is exercising its territorial jurisdiction (see Section 4 for more on territorial jurisdiction), then the municipality is required to initiate annexation proceedings within five years of the statement of intent.²⁰⁷ The municipality is still authorized to exercise its territorial jurisdiction during these five years, but if the municipality

199 A.C.A. § 14-43-311 & 14-44-101

200 A.C.A. § 14-43-311(a)(1)(A)

201 A.C.A. § 14-43-311(a)(1)(B)

202 A.C.A. § 14-43-311(2)(A)-(B)

203 A.C.A. § 14-44-102(a)

204 A.C.A. § 14-44-102(a)

205 A.C.A. § 14-40-101

206 For more information about the Arkansas Geographic Information Systems Office, visit their website at: <https://www.transform.ar.gov/gis-office/about-us/>.

207 A.C.A. § 14-40-208(a)

does not initiate the annexation during that time frame, then the municipality is prohibited from exercising its territorial jurisdiction for five years.²⁰⁸ While there are a few more specific rules that may come into play in very certain areas,²⁰⁹ this chapter will focus on the two primary types of annexation: voluntary and involuntary.

B. Voluntary Annexation

We typically use the term voluntary annexation to refer to those annexations that occur at the behest of a property owner. In other words, it is the property owner who initiates the annexation process. This can be done by either a petition from the majority of real estate owners in the area wishing to annex, or by petition signed by all the property owners who wish to annex into the municipality. Admittedly, it does sound duplicative, but the process is different for each, and we can look at a couple of examples.

When a majority of the real estate owners of any part of a county contiguous to and adjoining any city or town desires to be annexed into the city or town, they may apply by petition to the county court, name the persons authorized to act on their behalf, and they may include in the petition a schedule of services of the annexing municipality that will be extended to the area within three years of annexation.²¹⁰ The petition will be filed by the county clerk and public hearing will be heard on the matter.²¹¹ After the public hearing, and if the county court is satisfied that the petition is sufficient, then it is up to the city or town council to vote to approve the annexation.²¹² Then, as soon as the resolution or ordinance is passed by the council declaring the annexation has been adopted or passed, the territory shall be a part of the municipality and the inhabitants will enjoy all rights and privileges of the municipality.²¹³ The process for the 100% annexation is very similar to the process for a majority of real estate owners' annexation, though some of the time frames are slightly different.²¹⁴ Both processes are very easy to read and follow through, but let's look at an example of the two different situations.

Andy	Mandy	Brandy
Randy	Joe	Sandy
City of Jax		

Let's say there are six three-acre lots outside the city limits. Each lot is owned by a different person: Andy, Mandy, Brandy, Randy, Sandy and Joe. Randy, Joe and Sandy are contiguous and adjoining the city while Andy, Mandy and Brandy are situated directly behind the first three and therefore not contiguous or adjoining the city. Andy, Mandy, Brandy, Randy and Sandy want to be annexed into the city, but Joe does not, and he is in the middle lot that is contiguous to the city. We are not allowed to create enclaves within the city limits, so all property owners will need to be annexed. So, how do the property owners annex? The property owners would simply follow the

²⁰⁸ A.C.A. § 14-40-208(b)

²⁰⁹ A.C.A. § 14-40-201 et seq.

²¹⁰ A "majority of real estate owners" means a majority of the total number of real estate owners in the area affected if the majority of the total number of owners own more than one half of the acreage affected.

²¹¹ A.C.A. § 14-40-601-602

²¹² A.C.A. § 14-40-603

²¹³ A.C.A. § 14-40-606

²¹⁴ A.C.A. § 14-40-609

procedures laid out above codified in A.C.A. § 14-40-601-608 and if a majority of the real estate owners wish to be annexed and the petition is sufficient, then the council will be able to vote them into the city. Now, if all six of the property owners want to join into the municipality, then they can simply follow the process for the 100% annexation petition found in A.C.A. § 14-40-609.

C. Involuntary Annexation

We refer to this type of annexation as involuntary simply because it is the municipality that initiates the annexation as opposed to the property owners. The governing body of a municipality may, by 2/3 vote, adopt an ordinance to annex lands contiguous to the municipality if the lands are any of the following: (1) platted and held for sale or use as municipal lots; (2) if the lands are held to be sold as suburban property; (3) when the lands furnish the abode for a densely settled community or represent the actual growth of the municipality beyond its legal boundary; (4) when the lands are needed for any proper municipal purposes such as for the extension of needed police regulation; and (5) when they are valuable by reason of their adaptability for prospective municipal uses.²¹⁵ However, there are a couple of caveats in A.C.A. § 14-40-302 to be aware of.²¹⁶ Municipalities with fewer than 1,000 inhabitants are prohibited from annexing more than 10% of the current land area of the municipality in any one year.²¹⁷

The annexation ordinance must contain an accurate description of the lands desired to be annexed, include a schedule of services of the annexing municipality that will be extended to the annexed area within three years, and the ordinance must fix the date for the annexation election at the next special election date under A.C.A. § 7-11-205. If a majority of the qualified electors vote for the annexation, then the annexation will be included within the corporate limits of the municipality 30 days following the date of recording and filing of the description of the map. If the annexation election is approved by the voters and becomes final, then the governing body for the city will attach and incorporate by ordinance the annexed territory to and in one or more wards of the city.

Chapter 6. Records

A. Overview

Municipal records are paramount to the proper functioning of municipal government. Many records you might have in your municipality have historical value, while others are required by statute to be kept for a certain duration. Municipal records come in all shapes and forms, ranging from police body camera footage to businesses licenses to board and commission appointments. If it is a document that the municipality has, it is more than likely a record. All records are public records and therefore are releasable to the public unless there is a statutory exemption (we will cover the Arkansas Freedom of Information Act in Section 5).

The city clerk and recorder are the predominant municipal record keepers and are tasked with the management, retention and destruction of records. While there isn't a specific way cities have to keep records, it is important that your municipality develops a system that works simply and efficiently. If you are reading this you have probably heard someone at the League say, "The three most important words in the English dictionary are document, document, document." This is true for a variety of reasons pertaining to different aspects of municipal government. The Arkansas Municipal Accounting Code requires that municipalities establish a record of all fixed assets owned by the municipality.²¹⁸ So, not only is it important for the municipality to maintain this list for its own interests, but it is a statutory requirement as well.

Documenting and good record keeping is also vital in the event of a lawsuit. Records may be the most important evidence of a defense to a particular lawsuit, and being able to quickly find and produce the right records for your legal counsel to review and prepare in the defense of the municipality makes the process of getting through

²¹⁵ A.C.A. § 14-40-302

²¹⁶ Contiguous lands cannot be annexed if they: (1) have a fair market value of lands used only for agricultural or horticultural purposes and the highest and best of the lands is for agricultural or horticultural purposes; (2) are lands upon which a new community is to be constructed with funds from the federal government under Title IV or Title VII; (3) are lands that do not include residents, except as agreed upon by the mayor and county judge; and (4) are lands that do not encompass the entire width of public road right-of-way or public road easements within the lands sought to be annexed, except as agreed upon by the mayor and county judge.

²¹⁷ A.C.A. § 14-40-302(c)

²¹⁸ A.C.A. § 14-59-107

a lawsuit not only easier on the attorney, but good for your defense overall. Though municipal records fall in the domain of the clerk and recorder, it is important to always bear in mind that those records belong to the municipality, the state of Arkansas and its citizens.

B. Record Retention

There is an established procedure for retaining, destroying or replacing public records. Until your municipality is thoroughly familiar with the various statutes, public records acts, and the rules and regulations that go along with public records, we should not eliminate them. The statutes concerning record retention are spread all throughout the code, so there isn't any one specific place that provides all the information, but we will attempt to do so here.

In the modern age, most of our documents now are in a digital format and paper records are often saved digitally. The head of any municipal department, commission, bureau or board may cause any or all records kept by the official department, commission or board to be photographed, microfilmed, photostated, or reproduced on or by film, microcard, miniature photographic recording, optical disc, digital compact disc, electronic imaging or other process that accurately reproduces or forms a durable medium for reproducing the original when provided with equipment necessary for such method of recording.²¹⁹ Whenever reproductions of public records made in accordance with the framework above and have been placed in conveniently accessible files or other suitable format and provision has been made for preserving, examining and using them, the head of a city office or department may certify those facts to the mayor who shall have the power to authorized the disposal, archival storage or destruction of the records.

All municipalities may by ordinance²²⁰ establish a policy of record retention and disposal, provided that the municipality complies with any specific statute regarding municipal records and that the following records are maintained permanently in either the original or electronic form: ordinances, city council minutes, resolutions, annual financial audits and year-end financial statements.

1. Accounting Records

Municipal accounting records are divided into three groups: (1) supporting documents, (2) semi-permanent records and (3) permanent records.²²¹ Supporting documents consist primarily of canceled checks, invoices, bank statements, receipts, deposit slips, bank reconciliations, checkbook register or listing, receipts listing, monthly financial reports, payroll records, budget documents, and bids, quotes and related documentation. Support documents must be maintained for a period of at least four years and in no event shall be disposed of before being audited for the period in question.²²² Semi-permanent records consist of fixed assets and equipment detail records, investment and certificate of deposit records, journals, ledgers and subsidiary ledgers, and annual financial reports. These records must be maintained for a period of not less than seven years and in no event shall be disposed of before being audited for the period in question.²²³ Permanent records consist of city or town council minutes, ordinances, resolutions, employee retirement documents and financial audits. These records must be maintained permanently.²²⁴

Before destroying any of these records, the officer or employee destroying the records must prepare an affidavit stating which documents are being destroyed and which period of time they apply to, and the method of destruction. The destruction of documents must also be approved by the city or town council and recorded in the minutes.²²⁵

219 A.C.A. § 14-2-201

220 We recommend doing so as part of your organizational ordinance. See A.C.A. § 14-43-501.

221 A.C.A. § 14-59-114

222 A.C.A. § 14-59-114(a)(1)

223 A.C.A. § 14-59-114(a)(2)

224 A.C.A. § 14-59-114(a)(3)

225 A.C.A. § 14-59-114(b)

2. Police Records

All municipalities are required to maintain records for the city or town police department or marshal's office. Police citation books and logs must be kept for at least three years and may not be destroyed before an audit.²²⁶ We are required to maintain permanently or for at least seven years, as the municipality may determine, the following: closed municipal police files for felony and Class A misdemeanor offenses and expungement orders of municipal police cases.²²⁷ If the records are maintained for more than 10 years after the date the record was created, these records may also be copied and maintained in accordance with A.C.A. § 14-2-203. We must maintain for three years accident, incident and offense reports, fine and bond and parking meter records, radio logs and complaint cards, employment records, payroll sheets, timecards and leave requests.

3. Court Records

Municipalities in Arkansas are also required to maintain records for the district courts. We are required to maintain permanently the following records: (1) case indices for all district courts, (2) case dockets for all district courts, (3) active warrants, (4) waivers, (5) expungement and sealed records, (6) files concerning convictions under the Omnibus DWI or BWI Act, A.C.A. § 5-65-101 *et seq.*, and (7) domestic battery files.

The following records must be maintained for at least seven years and in no event disposed of before being audited: (1) complete case files and written exhibits for all district courts, not including civil or small claims division cases in which the judgment is not satisfied; (2) show cause orders; and (3) files concerning cases resulting in a suspended imposition of sentence.

Finally, the following records must be maintained for at least three years and in no event disposed of before being audited: (1) bank reconciliations; (2) checkbook registers and check listings; (3) canceled checks; (4) bank statements; (5) receipts; (6) deposit collection records; (7) receipts listings; (8) distribution reports; (9) receipt and disbursement journals; (10) time payment records; (11) citation book logs; (12) citation books from each police department and sheriff's office; (13) served, recalled or quashed arrest warrants; (14) copies of citations; (15) alternative service or community service time sheets; (16) uniform filing fees collection remittance forms and fine reports; (17) miscellaneous fee and fine collection reports; and (18) served or unexecuted search warrants.

After a municipality has maintained the records for the requisite amount of time, and after they have been audited, the records may be destroyed. When records are destroyed, the municipality is required to document the destruction by providing an affidavit that states which records are being destroyed and to which period of time the records apply and the method of destruction. The affidavit must be signed by the employee performing the destruction and one other employee of the governing body. Though not required, it is suggested that both the Executive Officer (mayor, city administrator, or city manager) and the recordkeeper (clerk or recorder) also sign.

²²⁶ A.C.A. § 16-10-211(a)(3)(K)-(L)

²²⁷ A.C.A. § 14-2-204(a)(1). However, we must ensure that A.C.A. §§ 12-12-104 and 14-2-203 are complied with, and records related to crimes of violence as defined in A.C.A. § 5-42-203 are maintained permanently.



The Civilpedia Handbook
Section I. Overview of Municipal Government in Arkansas

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