

ARKANSAS MUNICIPAL LEAGUE

# THE CIVILPEDIA HANDBOOK

## A GUIDE TO MUNICIPAL GOVERNMENT IN ARKANSAS

### SECTION 4

### PLANNING AND ZONING

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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.<sup>1</sup>

# 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.

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<sup>1</sup> 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 IV: PLANNING AND ZONING

### Chapter 1: Introduction

Municipal officials in Arkansas must be familiar with all aspects of running a modern city or town. Whether your municipality is large enough, or willing enough, to necessitate planning and zoning is for you to decide. While some officials may deal with some of the concepts we discuss in this chapter only indirectly, others must deal with them on a daily basis. In either case, and regardless of the position your municipality finds itself in, officials should understand the basics in order to make what can sometimes be hard decisions. Section IV covers the basic description of the origins of planning and the role planning has in municipal government. Once familiar with the contents of this section, you will have an understanding of how planning will interact with your departments and you will be able to understand the implications of decisions by the planning commission and, ultimately, the governing body.

### Chapter 2. Planning Authority

The authority for municipalities to plan and to regulate land use derives from two sources. The first is simply the municipality's police power. The Arkansas Supreme Court has explained the government's police power succinctly in *Springfield v. City of Little Rock*, 226 Ark. 462, 290 S.W.2d 620 (1956).

“The police power is as old as the civilized governments which exercise it. Moreover, it has been said that the very existence of government depends on it, as well as the security of the social order, the life and health of the citizen, the enjoyment of private and social life, and the beneficial use of property. One of the most important fields of legislation that may be enacted under the police power is that of regulations in the interest of public health.”

Under this police power, municipalities have the authority to protect the health, safety and general welfare of the citizenry.<sup>2</sup> This is predominantly what land use regulations are about. These types of regulations ensure that businesses and homes are built to code to prevent any potential disaster afflicting the property owners, visitors or those just passing by. They also ensure the quietness of a neighborhood by enacting zoning to establish a buffer between industrial areas and residences. Almost everything related to land use regulations can be tied back to the principle that it is the duty of a municipality to protect the public health, safety and comfort of the citizenry.

The second source for planning authority comes from the Arkansas Code, primarily in A.C.A. § 14-56-401 *et seq.* In Arkansas, cities of the first and second class and incorporated towns have the power to adopt and enforce plans for the coordinated, adjusted and harmonious development of the municipality and its environs.<sup>3</sup> Put simply, your municipality may choose whether or not it wants to engage in planning and land use regulation—it is not mandatory. However, if a municipality decides to engage in planning, it must do it in the same way as all other municipalities, with a few caveats. Unfortunately, there is no simplified process in the Arkansas Code for smaller municipalities. Therefore, a city with a population of 2,000 must follow almost the same process as the largest municipalities in the state.

### Chapter 3. Planning in General

Once a municipality in Arkansas has decided to engage in planning, there are a number of steps that must be taken in order to begin the process. There are also a number of concepts that elected officials must understand. This Chapter will outline these procedures as a general introduction to planning in our state.

#### The Planning Commission

The first step in the process is to establish by ordinance a planning commission. The planning commission has broad authority to prepare plans for the city and its planning area. The governing body of the municipality may create a planning commission of not less than five members, of whom at least two-thirds shall not hold any other

<sup>2</sup> Kirkham v. City of North Little Rock, 227 Ark. 789, 301 S.W.2d 559 (1957). See also City of Little Rock v. Smith, 204 Ark. 692, 163 S.W.2d 705 (1942). (The police power of the state is one founded in public necessity and this necessity must exist in order to justify its exercise. It is always justified when it can be said to be in the interest of the public health, public safety, public comfort, and when it is, private rights must yield to their security, under reasonable laws”).

<sup>3</sup> A.C.A § 14-56-402.

municipal office or appointment except membership on the board of adjustment or a joint planning agency.<sup>4</sup> Based on the language provided and the specific inclusion of membership in the board of adjustment and joint planning agency, this language would prevent us from appointing commissioners who already hold a position on another municipal board or commission. A city of the second class or an incorporated town may elect by ordinance to allow the city council to serve as the planning commission and board of adjustment.<sup>5</sup> The appointment and terms of the members of the planning commission are prescribed by ordinance.<sup>6</sup> The governing body of the municipality may appoint one-third of the membership of the commission from electors living outside of the municipal limits but within the recorded planning jurisdiction of the municipality.<sup>7</sup> Once the commission has been established and the members have been appointed, the commission will designate one of its members as chair and select a vice chair and such other officers as it may require.<sup>8</sup> If the municipality has elected by ordinance to have the council serve as the planning commission, then the mayor would serve as chair.<sup>9</sup> The commission is required to establish regular meeting dates providing for at least one regular meeting to be held each quarter of the calendar year, and the commission is required to maintain a public record of all business, resolutions, transactions, findings and determinations.<sup>10</sup> The purposes of the commission are to: (1) prepare, or have prepared, a plan of the municipality; (2) receive and make recommendations on public and private proposals for development; (3) prepare and administer planning regulations; (4) prepare and transmit to the governing body of the municipality recommended ordinances implementing plans; and (5) advise and counsel the municipal government and other public bodies.<sup>11</sup>

## The Planning Area

Once established, the commission's first action will be to establish a planning area map.<sup>12</sup> The planning area is the region for which the municipality will prepare plans, ordinances and regulations. It may consist of the entire municipality's territorial jurisdiction or a portion of it. A municipality's territorial jurisdiction extends up to 3 miles, depending on population, beyond the city limits.<sup>13</sup> Municipalities under 8,000 population will have a jurisdictional area up to 1 mile beyond the corporate limits but are unable to exercise any zoning authority outside the corporate limits. Municipalities between 8,000 and 60,000 population have a jurisdictional area of 1 mile beyond the corporate limits and are authorized to administer and enforce planning ordinances outside their corporate limits. Municipalities between 60,000 and 150,000 have a jurisdictional area of 2 miles beyond the corporate limits and are authorized to administer and enforce planning ordinances outside their corporate limits. Municipalities over 150,000 have a jurisdictional area of 3 miles and are authorized to administer and enforce planning ordinances outside their corporate limits.<sup>14</sup> Whenever the territorial limits of two or more municipalities conflict, the limits of their respective territorial jurisdictions shall be a line equidistant between or as otherwise agreed between the municipalities.<sup>15</sup>

## The Planning Area Map

With the planning area defined as above, the commission will now need to prepare a map showing the general location of streets, public ways and public property.<sup>16</sup> The map should also show the planning area boundaries. The commission will be in charge of maintaining and updating the planning area map as necessary, for instance when the municipality annexes more property. Once the planning area map has been prepared, the municipality must file the map with the county recorder and keep a copy available in the clerk or recorder's office. The planning area map provides a number of benefits. It can designate the long-range master street plan for the area; it can indicate the future location of needed community facilities such as parks and fire stations; it can graphically display the

4 A.C.A. § 14-56-404(a)(1)

5 A.C.A. § 14-56-404(a)(2)

6 A.C.A. § 14-56-405. See also Ark. Op. Atty. Gen. No. 2007-051 ("In delegating to municipalities the authority to prescribe by ordinance the manner and method of appointment and the terms of members, in my opinion, the General Assembly also delegated a necessarily incidental authority over the qualifications for appointment that may be exercised by ordinance. Because, as noted above, the Arkansas Supreme Court has characterized term limit provisions as a qualification for office, it appears that a municipality may, by ordinance, enact term limits on the service of planning commissioners").

7 A.C.A. § 14-56-405

8 A.C.A. § 14-56-406(a)(1)

9 A.C.A. § 14-56-406(a)(2)

10 A.C.A. § 14-56-407

11 A.C.A. § 14-56-411

12 A.C.A. § 14-56-412(c)

13 A.C.A. § 14-56-413

14 A.C.A. § 14-56-413(a)(2)

15 A.C.A. § 14-56-413(a)(1)(B)

16 A.C.A. § 14-56-412(c)

city's long-range land-use intentions, i.e. policies; and it can provide a general idea of suburban areas that will become part of the city.

## The Plan

Once the planning area is defined and mapped, it is time to form the actual plan. The plans of the municipality should address the present and future needs of the community, promoting the safety, morals, order, convenience, prosperity and general welfare of the citizens, and it should be reviewed on a regular basis.<sup>17</sup> The plans may provide, among other things: efficiency and economy in the process of development, the appropriate and best use of land, convenience of traffic and circulation of people and goods, safety from fire and other dangers, adequate light and air in the use and occupancy of buildings, healthful and convenient distribution of population, good civic design and arrangement, adequate public utilities and facilities, and wise and efficient expenditures of public funds.<sup>18</sup> Municipalities are certainly not limited to these areas above, but they are an excellent place to start and provide a great checklist for making development decisions.

The plan provides a blueprint for growth of the municipality. It outlines the manner in which the city will accommodate development or redevelopment and it should establish an overall vision for the ultimate form of the municipality. However, it does a lot more. First, a well-prepared plan will regulate growth in a manner that is in the best interest of all its citizens. Second, the plan will provide valuable information to prospective residents and investors as they seek a stable environment in which to settle or do business. The plan also identifies and analyzes the various growth issues facing the municipality. The plan should be developed in ways to ensure these issues can be resolved. Third, the plan explains in greater detail how growth will be managed in a way that fits the economic resources of the municipality. In other words, municipalities want growth, and they want business coming into the municipality. However, we want to ensure that we have all the necessities in place to handle sudden growth. Fourth, the plan provides the foundation for regulations, including the zoning code and subdivision code. This is the most critical function of the plan since its adoption provides a basis upon which a municipality may exercise zoning and subdivision regulations. Finally, the plan provides a rational basis for making land use decisions. This is extremely important in an age of almost constant litigation. Your city attorney will be extremely pleased when the planning commission and council make decisions based on the plan.

We have touched on what the plan does do. Let's look at what the plan doesn't do. The plan itself is not a legal document. It is a policy document that sets forth the intention of the municipality's planning commission and governing body regarding growth and development decisions. The plan is not a zoning code. Its provisions are general and do not refer to specific properties. Following adoption and filing of the land use plan, the commission may prepare a recommended zoning code or ordinance for the entire area of the municipality to submit to the governing body of the municipality.<sup>19</sup> The plan does not cover all elements of government; it simply is a comprehensive plan adopted by the planning commission and is not a "strategic" plan. Rather it is an element of strategic planning for the municipality. The plan is not a magic cure-all to all a municipality's problems. It can solve very few problems unless it enjoys the full support of the planning commission, governing body and residents. The plan does not control construction standards of individual buildings except to the point that they are compatible with the Arkansas Fire Prevention Code and other state and federal regulatory mandates. And finally, the plan is not a static instrument. Each municipality should address the method by which the plan can be amended to meet new challenges and issues. Municipalities often wrestle with how to amend the land use plan if a specific rezone request seems justified but is inconsistent with the plan. The key takeaway is we must always be prepared for challenges, whether we see them coming or not, and be prepared to adapt.

## Form of the Plan

The Arkansas Code does not specify the form in which the plan should be prepared. The code only specifies certain steps that must be taken in order to prepare and adopt the plan. Since there is no prescribed form, plans have taken many forms over the years, from multi-volume sets to simple brochures. The appropriate form is that which serves your city best. Over the last decade or so, plans have tended to be more compact and more visual than in the past, and most plan documents are now created for internet access.

<sup>17</sup> A.C.A. § 14-56-403(a)

<sup>18</sup> A.C.A. § 14-56-403(b)

<sup>19</sup> A.C.A. § 14-56-416(a)(1)

## The Planning Period

As with the form of the plan, there is no statutory requirement for the period to be covered by the plan. For years, a 20-year planning period was considered appropriate and is still used in many cases. Some municipalities, particularly those in high-growth areas or those in areas of the state being impacted by unique forces, find long planning periods impractical. While two decades may seem inordinarily long when utilities and public safety are considered, long term planning is a must.

In reality, different elements of the plan may require different time periods. For example, the land use element of a plan may require updating as frequently as every five years for some municipalities. And we have seen the need for this very recently with crypto mining facilities coming to the state. This is a unique technology and business that took all of us by surprise with the unique operation and noise levels generated. Transportation infrastructure projects, on the other hand, can take years to complete from the time they are first planned, so that element of the plan may project more than 20 years. The planning and construction of new community facilities may fall somewhere in between.

## Implementing Policies

We have covered the commission, the planning area and the plan. Before getting into the specifics of the different regulations, let's walk through the implementation of policies and the role the planning commission and the governing body of the municipality play in the process. All plans, recommended ordinances and regulations must be adopted through the procedure laid out in A.C.A. § 14-56-422. The planning commission must hold a public hearing on the plans, ordinances and regulations proposed and provide notice of the public hearing by publishing notice in a newspaper of general circulation in the city at least one time 15 days prior to the hearing.<sup>20</sup> Following the public hearing, proposed plans may be adopted and proposed ordinances and regulations may be recommended as presented or in modified form by a majority vote of the entire commission.<sup>21</sup> After the commission has adopted the plans and recommendation of ordinances and regulations, the commission must certify the adopted proposal to the governing body of the municipality for its adoption.<sup>22</sup> The governing body of the municipality then may return the proposal to the commission for further study or recertification or, by a majority vote of the governing body, may adopt by ordinance or resolution the proposal submitted by the commission.<sup>23</sup> Once the governing body of the municipality has adopted the proposal, the adopted plans, ordinances or regulations will be filed in the office of the city clerk.<sup>24</sup> Importantly, after the adoption of plans, ordinances and regulations and proper filing with the city clerk, any alteration, amendment, extension or discontinuance of the plans, ordinances or regulations must be made in conformance with this process or by a majority vote of the governing body of the municipality.<sup>25</sup>

## Chapter 4. Zoning

Although there are codes and programs at the state and federal level that aid in achieving plan goals, municipalities generally implement plans in a number of ways. Included in these are zoning codes or ordinances.

### Zoning Ordinance

Following the adoption and filing of the land use plan, the commission may prepare for submission to the legislative body a recommended zoning code for the entire area of the municipality. The ordinance must consist of both a map and text. The ordinance may regulate many things such as the location, height, bulk, number of stories and size of buildings; open space; lot coverage; density and distribution of population; and the uses of land, buildings and structures. It may require off-street parking and loading, provide for districts of compatible uses for large-scale unified development, for elimination of uses not in conformance with provisions of the ordinance, and for such other matters as are necessary to the health, safety and general welfare of the municipality. It may include

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20 A.C.A § 14-56-422(1). Notice by first class mail must be mailed to the boards of directors of all school districts affected by the proposed plan, ordinance or regulation if the school district is to be affected by the proposal.

21 A.C.A § 14-56-422(2)

22 A.C.A § 14-56-422(3)

23 A.C.A § 14-56-422(4)

24 A.C.A § 14-56-422(5)

25 A.C.A § 14-56-423

provisions for administration and enforcement; designate districts or zones of such shape, size or characteristics as deemed advisable; and allow and regulate home-based work as provided in A.C.A. § 14-1-106.<sup>26</sup>

The zoning ordinance must further provide for a board of zoning adjustment, which may either be composed of at least three members, or the commission as a whole may sit as the board of zoning adjustment.<sup>27</sup> The zoning board of adjustment shall: (1) Hear appeals from the decision of the administrative officers in respect to the enforcement and application of the ordinance, and may affirm or reverse, in whole or in part, the decision of the administration offices; (2) hear requests for variances in instances where strict enforcement of the ordinance would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the zoning ordinance.<sup>28</sup> However, the board shall not permit, as a variance, any use in a zone that is not permitted under the ordinance, but the board may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.<sup>29</sup> The board is further required to establish regular meeting dates and each session shall be a public meeting with public notice. Public notice consists of publishing the meeting date and business to be discussed in a newspaper of general circulation in the city, at least one time seven days prior to the meeting.<sup>30</sup> However, many municipalities often add additional notifications such as individual newspaper notifications for each request and notification to adjoining property owners.

## Zoning Code Pitfalls

There are some pitfalls that can cause problems with the zoning code. Keep in mind the following: strict separation of land uses without considering the context of a proposed development; using the same “default zoning” for all recently annexed land; developing an unmanageable number of zoning districts with little flexibility; reliance on the proposed use of the land during a re-zoning hearing; emphasis on exact land uses instead of suitability factors; failing to analyze regulations to make sure they promote the health, safety, welfare and morals of the community. Regulations that lower property values without clearly meeting this standard may invite legal challenge.

## Chapter 5. Subdivisions

Following the adoption and filing of a master street plan, the planning commission may prepare and administer, after approval of the legislative body, regulations controlling the development of land.<sup>31</sup> The development of land includes, but is not limited to:

- The provision of access to lots and parcels;
- The extensions or provision of utilities;
- The subdividing of land into lots and blocks; and
- The parceling of land resulting in the need for access and utilities.<sup>32</sup>

The subdivision regulations may establish or provide for the minimum requirements as to:

- Information to be included on the plat filed for record;
- The design and layout of the subdivision, including standards for lots and blocks, street rights-of-way, street and utility grades, consideration of school district boundaries and other similar items; and
- Standards for improvements to be installed by the developer at his or her own expense, such as street grading and paving; curbs, gutters, and sidewalks; water, storm, and sewer mains; street lighting; and other amenities.<sup>33</sup>
- The subdivision regulations may also do the following:
- Permit the developer to post a performance bond or other surety in lieu of actual installation of required improvements before plat approval;
- Provide for the dedication of all rights-of-way to the public;
- Govern lot or parcel splits, which is the dividing of an existing lot or parcel into two or more lots or parcels;

26 A.C.A. § 14-56-416(a)(3)(A)-(F)

27 A.C.A. § 14-56-416(b)(1)

28 A.C.A. § 14-56-416(b)(1)-(2)(B)

29 A.C.A. § 14-56-416(b)(2)(i)(b)-(c)

30 A.C.A. § 14-56-416(b)(3)

31 A.C.A. § 14-56-417(a)(1)

32 A.C.A. § 14-56-417(a)(2)

33 A.C.A. § 14-56-417(b)(1)



- Establish a procedure to be followed to secure plat approval by the planning commission;
- Require the developer conform to the plan currently in effect;
- Require the reservation of land for future public acquisition to use for community or public facilities indicated in the plan. This reservation may extend no more than one year from the time the public body responsible for the acquisition is notified of the developer's intent. Further, no deed or other instrument of transfer shall be accepted by the county recorder for record unless it is to a lot or parcel platted and on file or accompanied with a plat approved by the commission.







The Civilpedia Handbook  
Section IV: Planning and Zoning

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