

ACCRTA

Handbook

***A Handbook for Arkansas
City Clerks, Records and Treasurers***

Updated September 2016

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I. MUNICIPAL GOVERNMENT IN ARKANSAS

This opening section of the *Handbook for Arkansas Municipal Clerks, Recordors and Treasurers* describes municipal government in Arkansas. Offered as background information, its intention is to help city clerks, recordors, and treasurers to understand their role in municipal government. The **A.C.A** references in parentheses identify the applicable state law in the *Arkansas Code Annotated*.

A. Municipal Government

Municipalities in Arkansas may be categorized in two ways:

- (1) by the type of municipality; and
- (2) by the form of government.

The first refers to the classification of the city or town, while the second refers to the organizational form of the local government (Mayor-council, city-administrator or city manager). Cities and towns by law are divided into three classifications (A.C.A. § 14-37-102) based on population. (A.C.A. § 14-37-103).

<u>Class of City or Town</u>	<u>Population</u>	<u>Status:</u>
First	2,500 or more	City of First Class
Second	500 – 2,499	City of Second Class
Incorporated	499 or fewer	Incorporated Town

The powers and authorities of cities and towns are, in many instances, dependent upon their classification as described above. These differences will be pointed out in the publication *MAJOR DIFFERENCES BETWEEN CLASSES OF ARKANSAS MUNICIPALITIES*, which is available on the Arkansas Municipal League's website at <http://www.arml.org/resources/legal-faqs/>

Advancement of cities and towns by class can be done according to the latest census. (A.C.A. § 14-37-107). However, between census periods, any incorporated town or city of the second class may apply to the Board of Municipal Corporations to declare it a city of the first or second class. (A.C.A. § 14-37-108). The application requesting the change must include a council resolution requesting the change and must include satisfactory evidence showing the population of the town or city to be large enough to entitle it to such advancement. (*Id.*). The Board of Municipal Corporations is comprised of the State Auditor, Secretary of State, and Attorney General. (A.C.A. § 14-37-106).

Incorporated towns also have another mechanism by which they may become cities of the second class. (A.C.A. § 14-37-112). Arkansas Code Annotated § 14-37-112(a) allows the governing body of a town to adopt and publish an ordinance that the town should become a city of the second class. The registered voters of that incorporated town must then vote on the ordinance at the next general election, or in a special election. (*Id.*; *see also* A.C.A. § 7-11-201 et seq. (outlining the process for calling special elections)). If the voters approve the ordinance, a certified copy may then be filed with the Secretary of State, at which time the town immediately becomes a city of the second class.

(A.C.A. § 14-37-112(a)(2)). Any incorporated town of fewer than five hundred (500) inhabitants who have voted pursuant to A.C.A. 14-37-112 to be a city of the second class shall continue to be a city of the second class. (A.C.A. § 14-37-103(b)(1)).

Regarding cities of the second class, A.C.A. § 14-37-103(b)(2) provides that "[a]ny city having a population of one thousand five hundred (1,500) or more may, upon the enactment of an ordinance therefor, become a city of the first class, with all powers, authority, and responsibility of other cities of the first class."

Arkansas law provides that a municipality's governing body may adopt a resolution requesting the Board of Municipal Corporations to reduce its class. (A.C.A. § 14-37-114(a)). When the most recent federal census shows a city of the first class to have fewer than five thousand (5,000) inhabitants the city may apply to be reduced to a city of the second class upon adoption of a resolution by the city council. (*Id.*) . A city of the second class may be reduced to an incorporated town when the census shows the city to have fewer than five hundred (500) inhabitants, provided a resolution requesting same is passed by the city. (A.C.A. § 14-37-111(a)).

The second division among cities and towns is based on the organizational form of the local government. Under current constitutional and statutory provisions in Arkansas, the following types of government are available:

- (1) mayor-council;
- (2) city manager; and
- (3) city administrator.

The power, authority and expected performance of the city clerk and/or treasurer varies considerably according to the type of governmental form. Consequently, the starting place for officials in these positions is to determine the class of the municipality which they serve. Since most of Arkansas municipalities are governed by the mayor-council form, most of the descriptions and examples contained in this *Handbook* are directed to city clerks, recorders, and treasurers of municipalities governed by the mayor-council form.

Exceptions and specialized information for clerks and treasurers occur in either the city manager form or the city administrator form of government. SEE *HANDBOOK*, SECTION II. Therefore, begin by knowing the classification of your city or town and the form of government.

B. County Government

It is also helpful to city clerks, recorders, and treasurers to have a fair working knowledge of county government. Changes in Arkansas statutory law and the constitution have modernized county government so that counties have similar powers that cities and special improvement districts have had for a long time. Arkansas law authorizes counties to enter into cooperative ventures and activities with municipalities. (A.C.A. § 14-14-910(a)).

Amendment 55 made massive changes in quorum court and county judge powers and was the most dramatic step in modernizing county government. This was followed closely by the General Assembly's enactment of Act 742 of 1977, known

as the Arkansas County Government Code. Act 742 of 1977 is codified at Chapter 15 of Title 14 of the Arkansas Code Annotated.

It is recommended that every city clerk, recorder, and treasurer obtain a copy of the **county government code**, keep it handy and become familiar with the structure of county government. You will see many areas in which your city and county may cooperate for improving delivery of services, achieving greater efficiencies, and becoming more cost-effective. You will also note in reviewing A.C.A. § 14-14-805(12) that county quorum courts are prohibited from exercising “[a]ny legislative act that conflicts with the exercise by municipalities of any expressed, implied, or essential powers of municipal governments.”

Many of the most pertinent county government statutes, along with most all municipal laws, are incorporated in the Arkansas Municipal League’s *Handbook for Municipal Officials*. It is recommended that every city clerk, recorder and treasurer have a copy of the *most current version* of the AML’s Handbook.

C. Special Districts

Special districts also conduct local governmental affairs. The local school district is the largest and most pervasive of special districts, although you may not have any direct contact with the school district. However, you will be in contact from time to time with other special districts. They include levee districts, special improvement districts, central business districts, special districts and others.

The portion of the Arkansas Code governing the formation of special districts, especially improvement districts, is extensive, and beyond the scope of this *Handbook*. Note, however, that the city clerk, recorder, and treasurer have certain statutorily-based responsibilities in working with special districts. Various portions of the Handbook describe these responsibilities.

D. Local Government Revenues

Revenues will never seem to equal your city or town's needs. Consequently, you must use all of your talents to help city officials distribute city funds to accomplish the greatest possible good for the citizens of your city or town.

The clerk and treasurer handle funds from many sources. The principal sources of revenue are property tax receipts from the county collector and treasurer, collections from locally imposed taxes, license fees, state turnback funds for both general and the street funds, franchise fees, sales taxes for parks and recreation, bond revenue, short-term debt, and other sales and use taxes.

Article VI of the *Handbook* deals with financial administration and, as such, describes the responsibilities of the clerk, recorder, and treasurer in revenue matters: collection, deposit, expenditure, accounting, and auditing.

II. THE OFFICES OF THE CLERK, RECORDER AND TREASURER

The treasurer, where this office is separate from that of the clerk, may be less visible than that of a clerk. However, in many cities, the offices of treasurer and city clerk may be combined, which is allowed for cities of the first class having a mayor-council form of government under A.C.A. § 14-43-405(a)(2). Cities of the second class may combine the offices of recorder and treasurer under A.C.A. § 14-44-114(a). The offices of recorder and treasurer are combined by statute for incorporated towns pursuant to A.C.A. § 14-45-108.

The purpose of this chapter is to provide a general description of the duties, rights, and authority of the offices of clerk, recorder and treasurer as based in the Arkansas Constitution, the Arkansas Code, and the traditional practices of local government. More detailed information will follow in later chapters.

A. Election or Appointment and Tenure

There are three (3) ways in which one can become city clerk, recorder, treasurer, or a combination of these: election, appointment, and nomination (which is followed by confirmation). Exactly which method is used depends on two (2) factors: (a) the classification of the city; and (b) the form of government. In most cases, state law dictates how the position is to be filled. In some cases, though, a city's governing body may choose by ordinance whichever method suits the city best. As most cities have the mayor-council form of government, this will be addressed first.

Mayor-Council Government:

City clerks of cities of the first class having the mayor-council form of government are elected for four-year terms (A.C.A. §§ 14-43-303 (a)(1)(A)(ii); 14-43-316(a)(1)). In cities over fifty thousand (50,000) population, elections began in November of 1960 and are held every four (4) years thereafter, e.g. 2016, 2020, 2024 and so on. (A.C.A. § 14-43-303(a)(1)(A)). The city clerk's election in first class cities with a population of less than fifty thousand (50,000) is in November, beginning in 1962 and held every four (4) years thereafter, meaning 2018, 2022 and so on. (A.C.A. § 14-43-316(a)(1)).

Q: What happens to the city clerk whose municipality changes population or classification as a result of a census?

A: Because the federal census is taken every ten (10) years, and the city clerk elections are staggered between cities above and below fifty thousand (50,000) inhabitants, rather than at four-year intervals, the census always falls in the middle of somebody's term of office. Also, the city may sometimes want to have a special census performed for a variety of possible reasons. Under A.C.A. § 14-43-303(d), a city clerk's term must be extended by two (2) years to six (6) years if, as the result of a federal or a special census, the city shall be found to have attained a population of fifty thousand (50,000). The purpose of this extension is so that the terms of office of the mayor, clerk or other elected official will coincide with the quadrennial election schedule mandated for first class cities of fifty thousand (50,000) inhabitants or more. (*Id.*). Note that there is no provision for shortening the clerk's term of office

as a result of such growth. (*Id.*). A clerk's term of office commence January 1 following the November election. (A.C.A. § 14-42-201(b)).

In a city of the first class, the governing body may pass an ordinance providing for either the election or the appointment of the city treasurer. (A.C.A. § 14-43-405(a)(1)). Alternatively, cities of the first class having the mayor-council form of government may, by ordinance or resolution, designate the city clerk as clerk-treasurer, allowing one person to assume the duties of both clerk and treasurer. (A.C.A. § 14-43-405(a)(2)) “The term of office for these positions, combined or separate, is four (4) years.” (A.C.A. § 14-43-405(b)).

In cities of the second class, the offices of recorder and treasurer may be combined into a recorder-treasurer by ordinance of the city council under A.C.A. § 14-44-114(a). Recorders, treasurers, and recorder-treasurers are elected for four-year terms. (A.C.A. § 14-44-115). The starting point for these elections is in November 1972 and they are to be held every four (4) years thereafter, i.e., 2016, 2020 and so on (*Id.*).

In incorporated towns, recorder-treasurers are elected for four-year terms. (A.C.A. § 14-45-108). The starting point for these elections was in November 1982 and they are to be held every four years thereafter, e.g. 2018, 2022 and so on. (*Id.*) They then take office January 1, following their election in November. (A.C.A. § 14-42-201(b)).

City Manager Form of Government:

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. (A.C.A. § 14-47-108(a)(2)(B)). The board may also remove or replace the clerk or treasurer at their pleasure. (*Id.*). Additionally, the positions of city clerk and city treasurer may be consolidated into a single position by ordinance. (A.C.A. § 14-47-131(b)(1)).

There is an exception to this scenario. Sometimes the mayor in the city manager form of government is given the power to appoint officers and employees of the city, where the city: (a) Has the city manager form of government; (b) has a population of one hundred thousand (100,000) or more; and (c) the power of appointment is granted to the mayor under either an ordinance or an initiated measure. (A.C.A. §§ 14-47-108(a)(2)(C)-(E)).

City Administrator Form of Government:

Under the City Administrator model, the City Administrator nominates the city clerk and city treasurer, subject to the approval of the board of directors. (A.C.A. § 14-48-117(4)). Just as with the City Manager form of municipal government, under the City Administrator governmental model, the positions of city clerk and city treasurer may be consolidated by ordinance. (A.C.A. § 14-48-124(b)(1)).

B. Qualifications

The preceding section detailed how to become city clerk, treasurer, recorder or a combined office, but it is also important to know who can become one. Whether the office sought is appointed or elected, or nominated and confirmed makes a big

difference. The former two (2) (elected and appointed) make the clerk an officer of the city, not an employee. The last one (1) (nominated and confirmed) is much more an employee position, and subject to different requirements, which are spelled out in more detail below.

Where the position is an elected or appointed one, the city clerk, clerk/treasurer, or recorder/treasurer (as the case may be) is an officer of the municipality, not an employee. This means that to be elected to and hold one of these offices, or even to run, a person must meet certain requirements under the law. Some of the requirements are mandated by state law and others by federal law. To be eligible to run for or be appointed to a municipal office, a person must:

1. Be a citizen of the United States (Ark. Const. Art. 3, § 1);
2. Be a resident of the municipality or ward represented. (Ark. Const. Art. 19, § 3; A.C.A. § 14-42-201(c)).
3. Be at least eighteen (18) years of age (U.S. Const. amend 26; Ark. Const. Art. 3, § 1.);
4. Be a qualified elector and eligible at the time of filing, or, in case of age, at the time of taking office (A.C.A. 7-5-207(b));
5. Be free from any felony conviction, or conviction of embezzlement of public money, bribery, forgery, theft or other crime involving dishonesty or deceit, including misdemeanors (Ark. Const. Art. 5 Sec. 9) (*see State v. Oldner*, 361 Ark. 316, 206 S.W.3d 818 (2005); *Edwards v. Campbell*, 2010 Ark. 398, 370 S.W.3rd 250 (misdemeanor theft of campaign sign was disqualifying)). An exception to this rule occurs if the conviction has been sealed. Ark. Code Ann. § 16-90-1417; *Haile v. Johnston*, 2016 Ark. 52, 482 S.W.3d 323 (2016).

6. Not claim the right to vote in another county or state (Ark. Const. amend. 51, § 6); and
7. Not be presently judged mentally incompetent by a court. (*Id.*). Compare the above requirements, which apply to elected or appointed clerks, recorders, and treasurers with nominated and confirmed positions under a city administrator government. Because nominated and confirmed clerks and treasurers are employees rather than officials, the Arkansas Code does not delineate the qualifications for the clerk or treasurer in cities having either the city administrator form of government or the city manager form of government. They are also subject to removal from that position, just as any other employee would be.

Inasmuch as the municipality's governing body has authority to establish the duties of the clerk and/or treasurer by ordinance, it is conceivable that a certain level of qualification in a specific area of knowledge or practice might be necessary though such determination should be made on a case-by-case basis. Patrick Healy, former executive director of the National League of Cities, in the article, "The Professional Qualities of the City Clerk," asserted that the desirable background training for a city clerk ranges from a high school education to study in specialized areas, or a college degree. The specialized areas of study suggested include principles of bookkeeping, clerical training, business education, utility training, office management, use of business technology, personnel management, financial administration, law, and psychology.

C. Filling Vacancies

Naturally, unexpected or midterm vacancies sometimes occur in city offices. Occasionally, an official is removed from office, but much more frequently an official moves, takes another job, or experiences familial or health problems that will not allow that person to continue serving in his or her office. Please note that the term "vacancy," as used in this Handbook, means that the official in question will not be able to return to office *for the duration of his or her term*. By contrast, "absence," as used in this Handbook, means a *temporary situation* in which the official cannot attend a meeting or may not be able to discharge the duties of office, but is expected to return to duty prior to the expiration of his or her term.

Vacancies are covered briefly in this Chapter, but are covered in more detail in Chapter V of this Handbook.

The method of filling a vacancy in the office of clerk, treasurer or recorder depends on the governmental form of the particular municipality in which the office has come open, just as with initially becoming clerk or recorder. As with preceding sections, the mayor-council form of government will be discussed first, followed by city manager and city administrator.

Regardless of whether the municipality is a city of the first class, city of the second class or incorporated town, the governing body may choose any qualified elector to fill the vacancy, including members of the governing body to fill such vacancy, except that a member of the governing body shall not vote on his or her own appointment. (A.C.A. §§ 14-42-103; 14-43-412; 14-44-116). When the governing

body must fill vacancy by appointment, a majority of the remaining members of that governing body is required. (A.C.A. §§ 14-42-103; 14-43-412; 14-44-116).

Mayor Council Government:

Under the mayor-council form of government, in cities of the first class, where the clerk is an elected position, the vacancy is to be filled by the city council until "a successor is duly elected and qualified." (A.C.A. § 14-43-412(a)). In cities of the second class with the mayor-council form, if a vacancy occurs in the office of the recorder, treasurer, or recorder-treasurer, the city council elects a replacement to serve out the remainder of the recorder's term by majority vote. (A.C.A. § 14-44-116). In any event, when the city council or town council must fill a vacancy by majority vote, "a majority of a quorum of the whole number of the governing body is required to fill the vacancy." (A.C.A. § 14-42-103(a)(2)).

City Manager and City Administrator Governments:

Under the city manager form of government, the city manager must nominate persons to fill any vacancies, subject to approval by the board. (A.C.A. § 14-47-120(4)(A)(i)). As noted above, however, it is possible in towns over one hundred thousand (100,000), that the mayor has been given the power of appointment rather than the city manager. (A.C.A. § 14-47-120(4)(A)(ii); see also A.C.A. § 14-47-108(a)(2)(C)).

Under the city administrator form of government, the city administrator nominates someone to fill the vacancy, subject to approval by the board. (A.C.A. § 14-48-117(4)).

Other vacancies:

In the mayor-council form of government the city council fills all vacancies among officers of the city, with the exception of aldermanic vacancies in cities over twenty thousand (20,000) in population. Vacancies among aldermen in cities of the first class are governed by A.C.A. § 14-43-411. This statute directs that, should a vacancy occur among the aldermen of a city of the first class of less than twenty thousand (20,000) population, the city council must elect an alderman by majority vote of the remaining members of the council. (A.C.A. § 14-43-411(a)(1)(A)). At least a quorum of the whole number of the council shall remain in order to fill the vacancy and the appointment is not subject to the mayor's veto. (A.C.A. §§ 14-43-411(a)(1)(B)(i)-(ii)). In the event of a vacancy in a first class city of more than twenty thousand (20,000) population and the remainder of the term exceeds one (1) year, the city council must at the first regular meeting after that vacancy call a special election to find a replacement alderman or elect by majority vote of the remaining council members an alderman to fill the vacancy. (A.C.A. § 14-43-411(b)(1)). If the remainder of the term is less than a year, the successor is chosen by a majority of the remainder of the council. (A.C.A. § 14-43-411(b)(2)).

Vacancies in cities of the second class are governed by A.C.A. §§ 14-44-104, and 14-44-106. In the event of a vacancy in an alderman's position, the city council elects a replacement to serve out the former alderman's term by majority vote. (A.C.A. § 14-44-104). In the case of a vacancy in the office of the mayor, the city council must either select a replacement for the duration of the former mayor's term by majority vote, or call for a special election to select the replacement. (A.C.A. § 14-44-106).

Vacancies in incorporated towns are governed by A.C.A. § 14-45-103. When a vacancy occurs in the office of alderman, the town council shall elect a new alderman by a majority vote of the town council. (A.C.A. § 14-45-103(a)). When a vacancy occurs in the office of mayor, the town council shall elect a new mayor by a majority vote of aldermen or call a special election to be held in accordance with § 7-11-101. (A.C.A. § 14-45-103(b)(1)-(2)).

Absences:

The mayor is the “ex officio president of the city council and shall preside at its meetings.” (A.C.A. § 14-43-501(b)(1)(A)). In the event that the mayor of a city of the first class is absent (as opposed to having a vacancy), the city council must elect a president pro tempore to preside over council meetings. (A.C.A. § 14-43-501(b)(2)). In all classes of cities having the mayor-council form of government, if the mayor is unable to perform his or her duties or cannot be located, the recorder, another elected official of the city if designated by the mayor, or an unelected employee or resident of the city designated by the mayor and approved by the city council may perform all functions of mayor during the disability or absence. (A.C.A. § 14-43-501(b); A.C.A. § 14-44-107 (c)(1)-(3); A.C.A. § 14-45-105(c)(1)-(3)).

Additionally, in the event of an absence in the mayor's office in an incorporated town, the recorder-treasurer is to preside over town council meetings. (A.C.A. § 14-45-107(a)). If the mayor and the recorder-treasurer both are absent from any meeting of the city council, the council has the power to appoint any two (2) of its number to perform the duties of mayor and recorder for the duration of the absence. (A.C.A. § 14-45-107(b)).

D. Statutory and Constitutional Duties

The duties of the city clerk, recorder, or treasurer are prescribed by various legislative acts of the General Assembly. (See, e.g., A.C.A. §§ 14-43-506 (general duties of clerks in cities of the first class); 14-43-507 (general duties of treasurers in cities of the first class)). Though many duties of the city clerk, recorder or treasurer are assigned by the Arkansas Constitution or statutory provisions, state law also allows city councils to establish the duties of the city clerk, recorder, or treasurer by ordinance. (See, e.g., A.C.A. §§ 14-43-313 (city clerks shall perform the duties as prescribed by ordinance); 14-44-109(b) (duties of recorder and treasurer in cities of the second class determined by statute and by city ordinance); 14-45-109(b)(1) (duties of recorder may be set by ordinance)).

For example, the city clerk of a city "shall give the bond, perform the duties, and receive such salary as is prescribed by ordinance in each of these cities." (A.C.A. § 14-43-313). The Arkansas Code also states that the city clerk "shall have the custody of all the laws and ordinances of the city and shall keep a regular and correct journal of the proceedings of the city council." (A.C.A. § 14-43-506(a)). Moreover, state law requires the city clerk "to submit quarterly a full report and a 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 [city] council in open session." (A.C.A. §§ 14-43-506(b)(1) (2)).

The duties of the recorder of a city of the second class are prescribed by ordinance. (A.C.A. § 14-44-109(b)). The same applies in incorporated towns A.C.A. § 14-45-107. Since clerks and treasurers in city manager and city administrator forms of

government are appointed by the board of directors, their duties are likewise prescribed by action of the board. The city clerk maintains the official seal of the city. (A.C.A. § 14-43-406). The city clerk may also countersign checks on municipal bank accounts, although others may be designated as check-signers by ordinance of the city council, or board of directors in the city manager or administrator cities. (See A.C.A. § 14-59-105(b) (city checks must contain the signature of two (2) authorized disbursing officers)). Pursuant to A.C.A. § 14-59-105(c), the clerk shall also maintain the proper ledger for electronic fund transfers of public officials' and employees' salaries.

In addition to the above, the city clerk signs all bonds and debentures of the city (A.C.A. § 14-164-201 et seq.), and the clerk receives, files, and retains the financial disclosure statements from elected officials, including the mayor, aldermen, clerk, treasurer, the city attorney, and the district judge. (See A.C.A. §§ 21-8-701 (listing who is required to file a financial disclosure statement); 21-8-703(a)(3) (designating city clerk as the recipient of financial disclosures from municipal officers)).

In addition to the duties specifically established by the Arkansas Code or the Constitution, the local governing body may assign certain duties to the clerk, recorder or treasurer. Among these may include the following:

1. Arranging for the publication of official notices, including but not limited to: requests 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 city taxes and fees;
7. Issuing licenses and permits;
8. Serving as the purchasing officer;
9. Handling zoning applications;
10. Serving as a secretary to other city boards and commissions;
11. Providing for the destruction of original documents that have been transferred to a legally acceptable electronic or miniature medium. (See A.C.A. §§ 14-2-201 et seq. (the official record-keeping policy of Arkansas, as embodied in the Arkansas Code Annotated)).

As indicated, the duties of the clerk 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.

III. CLERK AS SECRETARY OF THE GOVERNING BODY

A. General

The activities described in this chapter of the *Handbook* likely occupy the majority of the city clerk's time. In the view of some, the clerk's council-supportive duties comprise the office's most important set of activities. Not only does assistance to the city council require enormous energy, near-infinite patience, and timeless devotion, but the establishment of a clear and lasting record of the governing body's actions will be as important to persons living in the future as it is to those living now. Consequently, this chapter of the *Handbook* offers helpful hints and provides examples and charts a clear path according to state law.

B. Meetings of the Governing Body

This section of the *Handbook* describes the components of the meeting of the governing body that are of direct concern to the city clerk. As such, it presents ideas on how the city clerk can both support and facilitate the work of the city council. The word, "council," is used in its broad sense to include city and town councils, city boards of directors, and all municipal governing bodies. Note that all councils in the mayor/council form of government are to meet in January and fully organize the city council and its meetings including but not limited to agendas, dates and times. (A.C.A. 14-43-501(a)).

1. Preparation of Agenda

The city clerk should prepare a written agenda of the next meeting of the city council and give it to the governing officials prior to the meeting. This expedites the

council's actions, by informing council members of issues and concerns that will be considered at the meeting. State law does not dictate city council agendas, so local council bylaws and ordinances will govern.

Furthermore, the clerk should insert with the agenda copies of proposed ordinances and resolutions that will be considered together with any background or relevant information that will help council members in understanding the issues. Routine reports of the various city departments do not need to be included in the agenda package; and, in fact, they are often prepared on the day of the council meeting for oral presentation. The agenda package should be sent to the city council and the mayor early enough before the city council meeting of the next week. This allows the members of the council time over the weekend to read the material and to become familiar with issues that will be considered at the meeting. A Monday city council meeting, however, might call for a Thursday afternoon distribution of agendas but it is important that council members receive the materials by the weekend preceding the meeting.

In regard to a Friday afternoon distribution, it is recommended that the city council establish, by ordinance, that the agenda for the upcoming meeting closes at least by noon Friday preceding the meeting. The council's having a firm time and day for closing the agenda accomplishes several important purposes:

- a. It allows the city clerk sufficient time to organize all relevant materials and place them in the agenda package for sending prior to the weekend;
- b. It avoids the city council's being bombarded with last-minute, "dire-need" propositions it is asked to consider without an adequate amount of time for

review and study of the issues, and

- c. It permits the mayor and the city council the opportunity to visualize and plan the entire meeting.

Recognizing that emergencies do happen, the city council ordinance that closes the agenda at noon Friday should also allow for consideration of materials submitted after that date, subject to a procedure set forth by the city council. The foregoing is a suggested method of operation. The council is legally entitled to set such rules and should do so by ordinance as soon as possible. These "rules of operation" should include but not be limited to setting regular meeting dates and times, procedures for special meetings, setting agendas and procedures for public speaking during meetings. By doing this, the council will alleviate future debates about "how things are done" and concentrate on meaningful democratic dialogue about the issues at hand.

In the clerk's role as liaison to the city council, you should adopt the attitude that you are to provide open but orderly access to the city council. Disorder often spawns bad decisions.

2. Conduct of the Meeting

The council should establish by ordinance the parliamentary procedures it will use, such as the *Arkansas Municipal League's Procedural Rules Guide*, and a fixed pattern in conducting its meetings. The following council meeting plan is an example, although state law does not specify any particular order or sequence:

- 1) call to order;

- 2) roll call and declaration of quorum;
- 3) reading and approval of minutes of the previous meeting;
- 4) correspondence;
- 5) public hearing(s), if any;
- 6) reports of standing committees, departments, and/or boards;
- 7) unfinished business, i.e. pending resolutions, ordinances, and orders;
- 8) new business - items considered for the first time;
- 9) announcements, and
- 10) adjournment.

If a quorum is not present at the roll call, the meeting cannot continue. (A.C.A. §§ 14-43-501(a)(2)(A); 14-45-101(b)). The only recourse is for those present to set a date and time to meet again and adjourn. State law does not indicate whether correspondence should be handled early in the meeting or near the end. The correspondence should be ready early in the meeting, since some of it may be pertinent to issues that will be discussed and possibly decided later in the session. If it is necessary for the council to act on correspondence, such as accept and file, instruct the mayor or department heads to respond or direct other action, dealing with correspondence early in the meeting will allow the council to handle the issue without undue delay. If the city clerk includes the minutes in the agenda package, the council may move to "approve the minutes as transcribed." The minutes should be included in the agenda package. This allows the mayor and the members of the city council to carefully review them for accuracy and consistency.

3. Public Hearings

From time to time, the city council conducts public hearings for closing streets, alleys, rights-of-way, sewer rates, and other matters. These public hearings should be held early in the council meeting. This is particularly important if you have a standing-room-only audience, since most of the people attending are probably there only for the public hearing. It is inconsiderate and may be dangerous to make them wait two (2) to two and one half (2 1/2) hours for the public hearing. To initiate the public hearing, the mayor need only say something like the following: "At this point in the meeting, I now declare open a public hearing as advertised in the public notice appearing in the newspaper, to consider" At the end of the public hearing, the mayor need only declare: "I now close the public hearing." At this point, the council has two options: (1) It may act on the matter considered at the public hearing and allow concerned residents to leave; or (2) It can defer action until later in the meeting, perhaps in the area of "new business".

Departmental reports of any standing committees of the council or various boards can be presented orally, in writing or in combination. Regardless of which method is chosen, they should be handled consistently. It is good practice to consider resolutions, orders, and ordinances carried over from earlier meetings before taking up new business. The bulk of the meeting likely will be devoted to unfinished business and new business, as these involve ordinances, resolutions and orders. Closing announcements can be made immediately prior to adjournment such as the date and time of any special meeting, any items of general significance to the community, or other types of announcements.

The mayor is responsible for running the meeting and the city attorney should help field questions about parliamentary procedure. However, to the extent that the city clerk must call for and record the votes in an organized manner and establish a clear record of the actions of the city council, you should develop a working familiarity with the municipality's procedural rules, the precedence of motions and statutory voting procedures.

The rank of motions, which is called "precedence," keeps the business of the meeting going with easy efficiency and every motion is attended to in its proper turn. The order of precedence of motions is based on the degree of their urgency; and it is logical and easy to understand. The following list of the more important motions, which has been prepared by the Arkansas Municipal League, is arranged in the order of their precedence:

1. adjourn;
2. recess;
3. question or privilege;
4. postpone temporarily (lay on the table);
5. vote immediately "previous question";
6. limit debate;
7. postpone definitely;
8. refer to committee;
9. amend;
10. postpone indefinitely, and
11. the general main motion.

Item eleven (11) is the main motion, which starts the discussion or debate. Items four (4) through ten (10) are subsidiary to the main motion and are to be considered by their rank. Items one (1), two (2) and three (3), on the other hand, are privileged motions; they are, in effect, main motions which, because of their urgency, must be decided before the pending question. They relate to the members and to the council rather than to the main motion.

This brings us to consideration of voting, recording the votes and voting procedures. How about roll call votes? Voice votes? Is it necessary to pass every ordinance by record vote? That is, must the "yeas" and "nays" be recorded in every instance? As a general rule, yes. In the case of an appointment of a municipal officer by a city council, Arkansas law specifically requires that the vote be made "viva voce," by oral vote. (A.C.A. § 14-42-105(a)). In the event that the governing body elects to pass an ordinance, resolution or order to enter into a contract, Arkansas law specifically requires that the yeas and nays shall be called and recorded. (A.C.A. § 14-55-203(a)). Certainly, where there is a division in the vote, roll call should be made and the yeas and nays should be called and recorded for each voting member of the council. A good practice for the clerk or recorder is to make a roll call on each vote, whether it is for a motion, a resolution, an order or an ordinance. A growing body of case law in the courts suggests that the "yeas" and "nays" must be recorded.

The concurrence of a majority of the whole number of members elected to the city council is required to pass any ordinance, resolution or order. (A.C.A. § 14-55-203(b)). Note that a quorum is required to conduct a legal meeting and to transact

business. **A quorum is a majority of the elected members of the council.** The next logical questions are: (1) Who can vote? and (2) Who makes up this quorum or majority? While the answer may seem self-evident (council members), the answer depends on a variety of factors, such as governmental form, the nature of the vote being called.

For example, whether this majority includes the mayor depends, again, on the municipality's classification. In municipalities with the mayor-council form of government, the mayor is not what we would normally consider a "member" of the city council. The mayor is, however, the ex officio president of the city or town council and presides over its meetings. (A.C.A. §§ 14-43-501(b)(1)(A) (cities of the first class); 14-44-107(a) (cities of the second class); 14-45-105(a) (incorporated towns)). Additionally, in cities of the first class, the mayor can vote to establish a quorum or when necessary for passage of an item at any regular meeting, and when his or her vote is needed to pass an ordinance. (A.C.A. § 14-43-501(b)(1)(B)). In cities of the second class, the mayor can vote to establish a quorum or when necessary for passage of an item at any city council meeting. (A.C.A. § 14-44-107(a)). Similarly, in incorporated towns, the mayor can vote when the mayor's vote is needed to pass any ordinance, bylaw, resolution, order, or motion. (A.C.A. § 14-45-105(a)).

Under the city manager form of government, the board of directors elects one (1) of their own members to be mayor. (A.C.A. § 14-47-116(a)(1)). The mayor in a city manager government presides over the meetings and is, in fact, a member of the board, with all attendant voting powers. (A.C.A. § 14-17-116(b)). Finally, under the

city administrator form of government, the mayor is elected in a special election. (A.C.A. § 14-48-109(a)(1)(A)(i)). The mayor also serves as the chairperson of the board of directors, may veto most decisions of the board, but has no vote. (A.C.A. § 14-48-111(a)(3)). So the form of government is critical in determining who may vote, and under what circumstances.

Remember that the passage of ordinances, resolutions and orders requires more than a majority of the quorum; it requires a majority of the whole number of members elected or appointed. (A.C.A. § 14-55-203(b)). Also, it is important to bear in mind that Arkansas law requires more than a simple majority to pass certain types of ordinances.

Such ordinances must be passed by either two-thirds (2/3) or three-fourths (3/4) of the city or town council.

Ordinances requiring a three-fourths (3/4) vote are:

1. Repeal recreation commission ordinance; (A.C.A. § 14-269-202(a)); and
2. Appointment and removal of airport commissioners; (A.C.A. §§ 14-359-105(a)(1), 106).

Ordinances requiring two-thirds (2/3) vote are:

1. Refer ordinance to electors; (A.C.A. § 14-55-301(b));
2. Amend or repeal ordinance approved by voters; (Ark. Const. art. 5 sec. 1 (also known as amendment. 7));
3. Suspend rules (pass ordinance at one (1) meeting); (A.C.A. § 14-55-202);

4. Adopt emergency clause; (Ark. Const. art. 5 sec. 1; a.k.a. Ark. Const. amend. 7);
5. Condemn private property; (A.C.A. § 14-301-104(a));
6. Condemn land for cemetery; (A.C.A. § 18-15-1402);
7. Enact occupation tax ordinance; (A.C.A. § 26-77-102(a));
8. Borrow money, cities of first class only; (A.C.A. § 14-58-401(a));
9. Override mayor's veto; (A.C.A. §§ 14-43-504(e)(2)(B); 14-44- 107(b)(2)(B); 14-45-105(b)(2)(B));
10. Confirm members of water commissions; (A.C.A. § 14-234-304(a)(1));
11. Remove members of water commissions; (A.C.A. § 14-234-305);
12. Propose amendments to home rule charter; (A.C.A. § 14-42-304(a));
13. Remove members of recreation commission; (A.C.A. § 14-269-202(g));
14. Adopt annexation ordinance calling election, (A.C.A. § 14-40-302(a)); and
15. Override mayor's appointment or removal of a department head, (e.g. police chief, fire chief, water superintendent, etc.); (A.C.A. § 14-42-110(a)(1)).

Passage of ordinances requiring two thirds (2/3) or three fourths (3/4) vote of the whole number in an incorporated town means that four (4) of the council members must concur. As indicated, the city attorney may be of help interpreting legal or statutory requirements, but it is incumbent upon the city clerk or recorder to become familiar with these issues to assist in conducting an orderly and efficient meeting of the city council. Note also that the mayor may not vote on the enactment of emergency clauses. (Ark. Const. art. 5 sec. 1, a.k.a. amend. 7).

Once it has been determined whether or not an ordinance, resolution, or bylaw has passed, as discussed above, the next question will be when the legislation becomes effective. Under Arkansas law, it depends on the nature and drafting of the legislation in question. (A.C.A. § 14-55-203(c)). Additionally, it may depend on whether your municipality has enacted an ordinance setting the time allowable for filing referendum petitions to challenge other ordinances of the governing body, as it is allowed to do under A.C.A. § 14-55-203. For example, if the governing body enacts an ordinance of "a general and permanent nature," which did not contain an emergency clause or impose any fines or penalties, such as a noise ordinance, or a requirement that businesses of a certain type obtain a permit, the ordinance would be effective ninety-one (91) days after "publication or posting", *unless* your municipality has an ordinance dictating that a referendum petition to challenge the ordinance be filed at some point between thirty (30) and ninety (90) days following passage. (*Id.*). In that case, the effective date would be the date after which referenda must be filed. (Note, however, that A.C.A. § 14-55-304 gives a sponsor sixty (60) days to circulate a municipal referendum petition, unless it concerns a municipal bond. The constitutionality of this statute is on appeal to the Arkansas Supreme Court as of this writing). On the other hand, if that same ordinance contained an emergency clause, it could go into effect immediately upon passage, *provided* that the emergency clause passed by the required number of votes, which is two-thirds (2/3).

In cases where an ordinance contains an emergency clause, there must be two (2) separate votes: (a) one (1) for the substantive part of the ordinance (the "meat" of the ordinance); and (b) one (1) for the emergency clause. It frequently happens that

the vote required to pass the substantive part of the ordinance is different from that required to pass the emergency clause. This is because (a) not every member who approves the ordinance will also approve the emergency clause; and (b) because the emergency clause requires a two-thirds (2/3) vote, whereas the ordinance itself only requires a simple majority.

4. Ordinances, Resolutions and Orders

The city attorney prepares most ordinances, resolutions and orders or should at least approve the final draft to be submitted to the council. Often a draft will be prepared by private citizens and/or attorneys or agents of citizens or private entities. The city clerk or recorder sometimes assists in preparing an ordinance, resolution or order. Even if the clerk or recorder does not assist in this capacity, it is important for the clerk or recorder to understand the legal requirements and customary practices for these documents. Sample documents from other municipalities may provide a starting point. However, care should be used in order to make sure the sample is based on current law and applies to your city or town's situation.

Ordinances, bylaws, resolutions and orders differ from each other. 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.

An ordinance is a permanent law. In more technical terms, ordinances have been defined by McQuillin, a respected commentator on municipal law, 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." (5 McQuillin Mun. Corp. § 15:1 (3rd ed.)).

Bylaws are defined by Black's Law Dictionary as "[a] rule or administrative provision adopted by an organization for its internal governance and its external dealings." (Black's Law Dictionary (9th ed. 2009)). In other words, while ordinances may be enacted by a municipality's governing body to control things *outside* its own memberships and meetings, bylaws governing matters *inside* the membership and meetings. For example, an ordinance designed to regulate the council's vote by mandating that all votes be in writing would be both an ordinance and a bylaw. By comparison, an ordinance that regulated noise in a municipality and levied a fine would be an ordinance, but not a bylaw.

Resolutions are "[a] main motion that formally expresses the sense, will, or action of a deliberative assembly (esp. a legislative body)." (Black's Law Dictionary (9th ed. 2009)). 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 may also perform some legal act, such as calling for a referendum regarding alcoholic beverages. (*See, e.g.*, A.C.A. § 3-9-206).

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 city are mandated to be performed on the basis of an adopted ordinance or resolution, such as establishment of a budget, and the authorization to expend funds (A.C.A. § 14-58-202 (budget may be adopted by ordinance or resolution)); enter into contracts (*see City of Dardanelle v. City of Russellville*, 372 Ark. 486, 490, 277 S.W.3d 562, 565 (2008) (cities permitted to enter in to contracts via resolution)); make property purchases (A.C.A. § 14-54-302; *see also Dotson v. City of Lowell*, 375 Ark. 89, 96-97, 289 S.W.3d 55, 61 (2008) (purchase of property requires resolution by city council)); award franchises (A.C.A. § 14-47-139 (either ordinance or resolution)); enacting laws carrying monetary or jail time penalties (A.C.A. § 14-55-504 (ordinance required)); requiring candidates of a political party to file petitions before a preferential primary election (A.C.A. § 14-42-206(a) (resolution required)); and redistricting wards (A.C.A. §§ 14-43-311; 14-44-102 (either ordinance or resolution)).

So, should a document be a resolution or an ordinance? You might find help in deciding by reflecting on the above description of an ordinance as "prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality." (5 McQuillin Mun. Corp. § 15:1 (3rd ed.)). If the rule or regulation is to be permanent, enact it through an ordinance. The definition of "permanent" is that it will stay in effect until it is repealed by further action of the council.

Additionally, if it applies to the public, generally, enact it through an ordinance. In fact, when in doubt between a resolution and an ordinance, make it an ordinance.

There are four (4) groups of municipal ordinances, classified according to their major purpose. Briefly, these four (4) groups are:

1. Regulatory or police ordinances -- Those of a regulatory nature, restricting the activities of individuals and groups in the interest of the common good of the town as a whole. Some of the subjects covered by these ordinances are traffic rules, zoning regulations, building codes, prohibition of nuisances, health and sanitary restrictions. Such ordinances usually carry a penalty for violation - either a fine or imprisonment or both.
2. Administrative ordinances -- those relating to the structure and operation of the government, i.e. specific duties of the mayor, clerk, department heads, fixing the salaries of city officials, describing the organization and operation of various departments, establishing personnel policies and procedures, levying of city taxes. Some of the ordinances falling into this category are "bylaws."
3. Contract or franchise ordinances --used when the city is entering into a contractual agreement for example, or a franchise contract with private utilities. Like "police" ordinances, these franchises often contain regulations and penal sections.
4. Improvement ordinances – provision for the construction of streets, waterworks, city buildings, hospitals, and other public improvements,

issuance of bonds and levying of taxes to pay for them, and method for implementing improvement plans.

The city clerk often is the first city official to view an ordinance that has been prepared, especially one submitted by a private citizen, or a citizen's agent or attorney. Therefore, it is desirable that the city clerk become familiar with the basic standards governing the validity of ordinances.

Generally speaking, a valid ordinance must meet two (2) requirements:

(1) Its subject matter must be legal. The ordinance must be within the power of a city or town to enact. Also it cannot conflict with higher law such as the constitutions and laws of the federal and state governments, or with certain principles of common law. Because a working knowledge of all these laws is necessary to understand whether or not an ordinance violates them, it can be readily seen why the services of an attorney are generally needed to draft and review ordinances.

(2) The correct procedure must have been employed by the city council in the passage of the ordinance. This procedure is not complicated. If the statutes are strictly followed as to (a) the method of reading and passing an ordinance, (b) the necessary signing and recording, and (c) the publications of the ordinance, no difficulty will be experienced in meeting these procedural requirements.

Arkansas Code § 14-55-202 states that all bylaws and ordinances of a general or permanent nature shall be fully and distinctly read on three (3) different days,

unless two-thirds (2/3) of the members comprising the council shall dispense with the rule. Thus, waiver or abbreviation of the second and third readings must be approved by two-thirds (2/3) of the members of the council. The council or board of directors may order that the ordinance not be read, or that it should be read in abbreviated form -- caption or title only -- on the second or third reading. If the record shows that the vote for an ordinance was unanimous, the statutory reading requirement will not apply. *Holman v. Dierks*, 217 Ark. 677, 233 S.W.2d 392 (1950).

Single Subject Rule. The law states that “[n]o bylaw or ordinance shall contain more than one (1) subject, which shall clearly be expressed in its title.” (A.C.A. § 14-55-201). Second, technical codes may be adopted by reference. (A.C.A. § 14-55-207). It is not necessary for the city clerk to read a 110-page building code three (3) times prior to the city council's adoption of it. Arkansas law defines technical codes to “include any building, zoning, health, electrical or plumbing codes.” (A.C.A. § 14-55-207(b)). Thus, the municipality is authorized by passage of an ordinance -- read three (3) times unless rules are suspended -- to adopt by reference technical codes, regulations or standards without setting forth the provisions of the code or parts thereof, provided that three (3) copies of the code or the pertinent parts thereof, and any related documents are filed either electronically or by hard copy in the office of the clerk for inspection by the public *prior* to passage of the adopting ordinance. Third, printed or certified copies of ordinances and “transcripts of any bylaw, ordinance, or of any act or proceeding of any municipal corporation recorded in any book or entered on any minutes or journal, kept under the direction of the municipal corporation

and certified by its clerk, shall be received in evidence for any purpose for which the original ordinances, books, minutes, or journals would be received with as much effect.” (A.C.A. § 14-55-402(a); see also A.C.A. §§ 14-2-201; 25-18-101). Thus, the clerk's certified copy of a bylaw, ordinance or transcript can be submitted to a court of law, regulatory agency or other responsible entity in lieu of the city's supplying the originals and possibly losing them. Many city clerks state that they do not allow their originals to travel more than twelve (12) to fifteen (15) feet away from the front door of the vault. Run a copy, certify it, apply the city's seal and send it. Finally, ordinances may be amended on the floor of the city council meeting, but the proposed amendment must be treated in the same manner as the original ordinance and read on three (3) separate days unless this rule is suspended by two-thirds (2/3) vote of the membership of the council. (A.C.A. § 14-55-202).

The Arkansas Municipal League has prepared a sample ordinance form which is included in this *Handbook*. That sample is included in the Appendix to this *Handbook*. It cannot be overemphasized that the form or arrangement in which the contents of an ordinance are placed may be essential to its validity. A clear manner of expression and arrangement of the various provisions of an ordinance or bylaw are "the best and frequently the only guides in ascertaining legislative intent." (5 McQuillin Mun. Corp. § 15:22 (3rd ed.)). The Arkansas code does not prescribe the form in which municipal ordinances shall be prepared. Recognizing that the ordinance must be in writing and clearly signify that it is the "will" of the municipality, the municipal ordinance can be divided into seven (7) 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 part has its own distinct function. The title succinctly informs the reader what the ordinance is about. The enacting clause does just what its name implies – it 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. (Note that your city may have an ordinance establishing a “blanket” penalty for any ordinance that does not specify one. In that case, the council may decide to rely on the “blanket” ordinance or specify a different penalty in the ordinance under consideration). The repealing clause gets rid of any other old ordinances that might conflict with the ordinance. The emergency clause, in ordinances which contain them, explains why the municipality cannot have the enforcement of the ordinance postponed. Finally, the attestation provides the proof that the ordinance went through the appropriate processes and is a validly enacted ordinance. Please note that the italicized parts of the sample ordinance are merely descriptive and should not appear in the actual text of an ordinance.

Remember that an ordinance can have only one (1) subject, which shall be clearly expressed in its title. (A.C.A. § 14-55-201). The "Command" provisions are those one (1) or more sections which state what the ordinance requires to be done or what it prohibits. There are statutory and/or constitutional limits on the amount of penalty that may be imposed by municipal ordinance. (A.C.A. §§ 14-55-501— 504). The city clerk and the city attorney should be familiar with these limitations. 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 specifically name the ordinance in contrast to making the general repealer as shown in the above example. (A.C.A. § 14-55-401) (stipulating that all ordinances remain in force until altered or repealed).

Remember that the emergency clause must be enacted by two-thirds (2/3) vote of the membership of the council, and that the mayor may not vote. (Ark. Const. art. 5 sec. 1, or amend. 7). It may not always be necessary to include an emergency clause. For example, if your municipality wants to pass an ordinance appropriating funds to paint lines on your streets, the governing body may feel that the lack of well-marked streets poses a real and significant threat to people driving in your town and, therefore, may declare an emergency. The appropriation would happen immediately. (A.C.A. § 14-55-203(c)(1)(C)). On the other hand, if the governing body chooses to pass an ordinance requiring anyone selling fish to have a license, the governing body may decide that no emergency exists, and the ordinance would become effective upon posting or publication, plus the referendum period under A.C.A. § 14-55-203. If there is no emergency and no emergency clause, the ordinance would take effect once it is either published or posted.

5. Preparation of Minutes

The preparation of minutes of the city council meeting is one of the most important functions of city clerks and recorders. While there are no statutory standards governing the content of minutes, good practice dictates that the minutes should comprise a generally concise but clear description of the actions of the city council, not only their final actions in the form of votes but also a

sufficient description to reveal that proper procedures were followed. Minutes are not, however, verbatim transcripts of the proceedings.

The city clerk or recorder may take notes or make shorthand descriptions during the meeting and prepare the minutes in full at a later time. Minutes should be prepared from this source by the next day while the events of the earlier evening are still fresh in mind. Recording devices may be helpful. You may find it desirable to have a taped transcript of any difficult or contentious public hearing. However, minutes must be prepared in written form. The recording, indexing, filing, and distribution of minutes are covered in the next section.

C. Public Record of Governing Body Actions

The permanent record of the actions of the municipality's governing body and its laws and orders are extremely important. This is one of the principal duties of the city clerk or recorder's office and the basis on which many of the clerk's or recorder's activities are organized. For cities of the first class, Arkansas law specifically states that "[t]he city clerk . . . shall have the custody of all the laws and ordinances of the city, and shall keep a regular and correct journal of the proceedings of the city council." (A.C.A. § 14-43-506(a)). The minutes prepared by the clerk or recorder constitute the "correct journal of the proceedings" to which the Code refers. In regard to cities of the second class, Arkansas law provides only that the recorder, or recorder-treasurer, "shall have such powers and perform such duties as are prescribed in this subtitle, or as may be prescribed by any ordinance of the city, consistent with the provisions of this subtitle." (A.C.A. § 14-44-109(b)). With respect to incorporated towns, Arkansas statutory law provides, "the

recorder-treasurer shall also be, and act as, clerk of the town. He shall attend all meetings of the council and make a fair, accurate, and correct record of all the proceedings, laws, rules, and ordinances made and passed by the council." (A.C.A. § 14-45-107(a)); *see also* A.C.A. § 14-59-114(a)(3)(A)(i) (stating that cities are required to maintain permanent records of council minutes).

You will occasionally be asked to produce or provide copies of the minutes of the city council meetings, as well as copies of ordinances, policy manuals, and many other documents kept by the city. Under the Freedom of Information Act (FOIA), you very frequently will have no choice but to provide these copies. Documents may be examined on-site by the public any time during normal business hours, or members of the public may elect to receive copies of public documents. (A.C.A. § 25-19-105(a)(1)(A)). You may charge a fair fee for reproducing copies of minutes, ordinances and resolutions, but note that the fee may include only the actual cost of reproduction, such as paper, toner, electricity and copier maintenance, but may not include wages for existing personnel (A.C.A. § 25-19-105(d)(3)(A)(i)).

It is suggested that you develop and maintain at least three (3) books representing the permanent journal of actions of the city council:

- (1) minutes book,
- (2) ordinance book and
- (3) resolutions book.

It may not seem necessary to separate the ordinances and the resolutions, but it is most certainly preferable that they be maintained in separate books. The

ordinances and resolutions should be separately indexed both numerically and by title. Keeping the ordinances and resolutions separated in this manner helps avoid any confusion as to whether the document is a resolution or an ordinance when a person inspects the index. The minutes book should also be maintained separately.

The minutes of the council should always contain the following: (a) the time, date and place of the meeting; (b) the name of the presiding officer; (c) the members of the city council present (to display that a quorum was present); and (d) an indication as to whether the meeting was a regular, adjourned or special meeting. Putting all of this information on every set of minutes prepared helps avoid confusion later. The city clerk or recorder, of course, is to sign the minutes.

From time to time the minutes as prepared by the clerk or recorder might be disputed by a council member. If so, then a vote may be taken whether to approve the minutes as prepared or to amend them. If amended by vote of the council then an addendum may be prepared that conforms with the amendment passed by the council. If the motion to amend does not pass, the clerk or recorder should note the discussion in the minutes of the meeting in which the minutes of the prior meeting have been challenged.

After preparing the minutes, it is suggested that the city clerk or recorder should arrange to have two (2) originals of all adopted ordinances and resolutions signed by the mayor, numbered at the top of the first page, attested by the clerk or recorder and sealed with the city's seal. File one (1) of these copies in the permanent book(s) of ordinances and resolutions.

Take the second copy and place it in a drawer file to be used later for running copies if requested. This prevents your having to open the permanent file book in order to photocopy a resolution.

Take the second copy of the ordinance and file it in a similar drawer file for future copies. Importantly, before filing these ordinances, determine which ones must be published in the newspaper of local general circulation. The statutory law of Arkansas requires that all bylaws or ordinances of a general or permanent nature and all those imposing any fine, penalty or forfeiture shall be published in a newspaper of general circulation in the city or town: provided, in municipalities where no newspaper is published, written or printed notice posted in five (5) of the most public places in said municipality shall be deemed a sufficient publication of any law or ordinance for incorporated towns, and it shall be deemed a sufficient defense to any suit or prosecution of such fine, penalty or forfeiture to show that no such publication was made. (A.C.A. § 14-55-206). The publication of these ordinances is mandatory. When the publisher returns the ordinance, file it in the drawer file for future photostatic copy-making. Clip and file the published version of the ordinances; obtain the editor's affidavit of proof of publication.

Technical codes adopted by reference, are also maintained as described in A.C.A. § 14-55-206. Again, it is essential that the clerk have at least three (3) copies of the printed code available for public examination in the office of the city clerk prior to the council's adoption by reference and also subsequent to the council's adoption. (*Id.*). In other words, at least three (3) copies of the printed code book must be in

the clerk's office before and after council action. However, the law now allows the use of electronic copies of the code. A.C.A. §§ 14-55-206 and 207. The adopting ordinance must have been published in the same manner as an ordinance of a general and permanent nature, as described above, though it is not necessary to publish the entire code book.

The clerk or recorder must also publish any licensing ordinance adopted by the council one (1) time in a newspaper of bona fide circulation in the city or town, not later than one (1) week after the passage of the ordinance. (A.C.A. § 26-77-104).

This chapter has been concerned with the public records that are generated by the clerk in the capacity as secretary of the governing body. There are other records in the clerk's or recorder's office such as bond payments, books of account, property schedules, personnel records and other kinds of records. How long must various records be retained in the city clerk's or recorder's office? The public policies and statutory requirements governing the retention and/or destruction of public records varies with the type of records at issue. As examples, A.C.A. §§ 16-46-101 et seq.; 13-4-201; 13-4-204, & 14-2-201—203 provide for retention of records in a miniature or electronic format, with certain restrictions. These Acts are also discussed in more detail in Chapter IV of this *Handbook*. If you have any questions regarding document retention or destruction, please consult with your city attorney.

There are two (2) final concerns regarding the functions of the city clerk or recorder as secretary of the governing body. One (1) has to do with the calling of special

meetings, and the other pertains to assurance that the city council is holding meetings in compliance with Arkansas' Freedom of Information law.

D. Regular and Special Meetings

The regular meetings of the city council and/or city board of directors are established by ordinance stating the time and place of meetings and the regular day or days of each month. All cities and towns are governed by A.C.A. § 14-43-501 and 502 in this regard. The majority of Arkansas municipalities have one (1) city council meeting per month, although a growing number are meeting two (2) times per month.

If a quorum is not present at a regular meeting, the mayor or three (3) members present can only establish a time and date to meet and then adjourn to that time and date. (A.C.A. §§ 14-43-501(a)(2)(A); 14-45-101(b); 14-43-502). Legal meetings in which a quorum is present may also be adjourned to another time and date.

Finally, the city council may meet from time to time in special meetings. Special meetings may be called by any three aldermen, or by the mayor . (A.C.A. § 14-43-502(b)(2)(B)). Since the Arkansas courts have held that "a special meeting duly called would be legal, if all members had notice, whether all attended or not," (City of Mena v. Tomlinson Bros., 118 Ark. 166, 175, 175 S.W. 1187, 1189 (1915)), special attention should be called to the issuance of written notice to all members of the city council. Another court case suggests that the special meeting may be legal if the members of the council either (1) had written notice or (2) had executed

waivers of notice and consent to special meetings. (See *Adams v. Sims*, 238 Ark. 696, 699—700, 385 S.W.2d 13, 15-16 (1964)).

Given the above, it is recommended that the city clerk or recorder commence every special meeting with a certificate page to be signed by all members of the council present, with a suggested title of, "Certificate of Receipt of Notice or Waiver of Notice and Consent to Special Meeting." Though the Arkansas Code is silent on the length of period in which notice should be sent to the council before the meeting, there should be a minimum of twenty-four (24) hours, and forty-eight (48) hours would be preferable (but it is recognized that the business of the council may need to be conducted on one (1) day's notice, or possibly less in extreme circumstances). To prevent confusion and to comply with the statute, every city council should adopt an ordinance spelling out the procedure for calling special meetings.

E. Freedom of Information Law

The Arkansas Attorney General's Office has prepared a booklet on the Freedom of Information (FOIA) law, describing its content and its implications on the conduct of city council meetings and city business, records, and meetings. The city clerk can obtain copies from either the attorney general's office or the Arkansas Municipal League, www.arml.org. The clerk should order enough copies of this booklet not only to have in the office but also to distribute to the mayor and members of the city council. Additionally, it is important for clerks to study, and become familiar with, Attorney General opinions or to consult with either a local or City attorney.

IV. OFFICE MANAGEMENT AND PROCEDURES

A. General

One of the most powerful influences on local government's public image is what its own employees think and say about it. The public places much credence—perhaps oftentimes too much—in the casual remarks of the public employee. The aggregate of this word-of-mouth publicity sometimes will outweigh all the carefully prepared, publicly stated policy. Consequently, each department of municipal government should be charged with upholding the city's good public relations. Because the city clerk or recorder often has more frequent contact with the public than almost any other city employee, this responsibility commonly falls, in large part, on those offices.

Because of its location and function in the city administrative offices, the city clerk's or recorder's office is often the most accessible point of contact for the public with local government. Sometimes it is the only contact. People look to their city government for information, answers, advice and sometimes to complain. The degree and extent to which the city clerk can respond is a direct reflection upon the quality of the delivery of services of that local government to its citizens. Thus, it is important that the city clerk or recorder recognize at all times the need for good public relations. The city clerk's or recorder's public relations outlook is to be administered within the framework of the office, which itself is quite demanding in terms of office management and procedures. Because the city clerk's office is at the center of local government decision-making and recording and distribution of

information, the clerk must perform a variety of activities with different objectives, impact and performance.

The purpose of this chapter is to describe general office management, techniques and procedures that should be helpful as the city clerk develops, organizes and implements office activities. As such, this chapter deals not only with state law requirements of the office, but also with sound office management practices. Arkansas city clerks and recorders said in interviews that these were the major responsibilities and duties of the offices:

- attend city council meetings, bid openings, public hearings and other meetings which require an official city record; (A.C.A. § 14-43-506);
- prepare minutes and official journals of public meetings requiring such records and properly file them; (*Id.*);
- properly record and publish city ordinances, resolutions and records as required by law; (*See generally*, A.C.A. § 14-55-101 et seq.; A.C.A. § 14-59-101 et seq.);
- prepare and publish annual financial statements as of April 1 for each preceding year; (A.C.A. § 14-59-116);
- prepare and maintain privilege license records, bill businesses for city fees and taxes, collect these funds and collect delinquent taxes;

- process city employee and city official hospitalization, medical and worker's compensation claims;
- prepare, file and properly submit insurance and retirement reports and claims; (A.C.A. § 24-11-813);
- prepare federal, state and social security reports as required by the state and federal law;
- control and account for cash on hand and cash transactions;
- make deposits and maintain accounting records;
- prepare census and other reports in accordance with the state and federal law;
- serve as *ex-officio* secretary of the firefighter's relief and pension board, if the city has one; (A.C.A. § 24-11-801);
- as city treasurer, serve as treasurer on the police officer's pension and relief board if one exists (A.C.A. § 24-11-405);
- execute and countersign contracts, leases, bonds and debentures; (A.C.A. §§ 14-54-302, 14-170-207; 14-204-106; 14-232-105; 14-267-107; 14-269-106);

- review bills, properly code and issue checks in payment upon city council authorization;
- bill the county for expenses incurred involving personnel, supplies or other expenses that are shared by the county and the city;
- maintain a file of city officials' financial statements and statements of code of ethics; (A.C.A. §21-8-703);
- provide other clerical, record-keeping and financial services as well as other services and duties required by law or at the request of the city council, mayor or as directed by ordinance, and by informal or formal requests.

As you can see, the clerk or recorder performs a wide variety of duties and tasks. It is therefore critical that the city clerk or recorder use proven management techniques and procedures to provide effective delivery of services and ensure cost accountability.

B. Annual Calendar of Events

A city clerk or recorder's preparation of an annual calendar of events for office use, the city council and the city can simplify a clerk or recorder's life. The calendar shows by month the important activities that need to be accomplished, such as filing census reports, adopting the annual operating budget and timing various certifications, reports and preparation of documents.

City clerks and recorders will find that the activities of the city affecting the clerk's or recorder's office are generally the same year-in, year-out and are accomplished on the same schedule. Accordingly, your calendar of events, once prepared, will remain accurate for many years with only slight modifications.

See the Arkansas Municipal League's Municipal Accounting Handbook for a sample calendar of events.

C. Filing, Scanning, and Duplicating

The city clerk or recorder, along with other municipal officials, knows the effects of the increase of paper volume in conducting governmental affairs. Not only have municipal activities increased, but there has also been a corresponding increase in the role of state and federal governments in municipal affairs. Combined, these factors result in an extraordinary increase in administrative record-keeping. As record-keeper for the municipality, the clerk or recorder is confronted with an ever-growing task of processing and storing large volumes of minutes, resolutions, ordinances, licenses and other records associated with municipal duties. In order to conserve time and increase efficiency, the clerk or recorder must constantly be alert for ways to simplify and expedite the manner in which information is developed, filed, retrieved and distributed.

The first step, and by far the most important one in the management of paperwork, is to develop a strict set of controls over the creation of paperwork. Municipal clerks and recorders should engage in a periodic review of forms, reports, documents and correspondence to identify unnecessary duplication, excessive distribution and over-usage of city documents. The clerk or recorder should make

every effort to eliminate, combine and simplify paperwork. A working knowledge of up-to-date office management techniques, office equipment and procedures is also helpful. Strive to reduce the number of copies made at the origin of paperwork and limit the number of desk copies and information-only copies. Restrict distribution to individuals who either have an actual need for the information or request it under the Freedom of Information Act (FOIA). Periodically survey the recipients to determine if copies of reports and records are being used and are still required. There is no point in expending the time, energy and resources distributing materials to someone who will just place them in the "round file." Clerks and recorders may find it beneficial to circulate a single copy of a document or letter asking each recipient to initial it and return it to the sender or pass it along instead of duplicating copies or memos for each recipient. Alternatively, scanning documents and creating email distribution lists will allow you to send documents to most recipients with the push of a button. Evaluate the merits of different practices in terms of circulation time, paper-saving and other administrative costs.

The city clerk or recorder should maintain stringent controls over copying and duplicating equipment. Controls also apply to the public although the state Freedom of Information Act (FOIA) tells us "all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of records." (A.C.A. § 25-19-105(a)(1)(A)). Moreover, the city clerk or recorder may photocopy, duplicate and scan public records in terms of applicable law. The Arkansas Code states that the clerk "may cause any or all records . . . to be photographed, microfilmed, photostated, or reproduced on film [and] [a]t the time of reproduction, he or she shall attach his or

her certificate . . . certifying that it is the original record, and the certificate shall be reproduced with the original." (A.C.A. §25-18-101(b)(1); see also A.C.A. § 14-2-201). Further, A.C.A. §§ 16-46-101 and 13-4-204, respectively, provide authorization for municipal clerks and recorders to use "an approved system of photographic recording, photostatic recording, microfilm, microcard, miniature photographic recording, optical disc, or other process which accurately reproduces or forms a durable medium for reproducing the original when provided with equipment necessary for such method of recording" to maintain documents. (A.C.A. § 16-46-101(a)(2)(A)). Additionally, when any document is recorded by the means authorized by these statutes, the original document may be destroyed unless the document is over fifty (50) years old and handwritten or its preservation is otherwise required by law. (See, e.g., A.C.A. §§ 13-4-204(a); 16-46-101(a)(2)(B)).

If the city clerk is requested by a court of law or administrative law agency to submit an "original" transcript of the actions of the city council, or a copy of an ordinance, resolution or order of said city council, this may be done by duplicating through photostatic or photographic process the original document and thereafter manually signing and certifying it as authentic and applying the city's seal. The submission of a duplicated copy meeting the state standards is acceptable as evidence in a court of law or in an administrative law agency hearing. (A.C.A. §§ 14-2-201; 16-46-101; 25-18-101).

Never allow the originals to be taken from the clerk's office. Never! When working from home, take copies, or send them home electronically.

Human nature makes many of us want to retain everything, and this is particularly the case among newly appointed or elected city clerks, recorders, and other municipal officials. Good housekeeping, however, is good office management. Many times office personnel feel that if their desk is clear at the close of the workday, this is efficient; however, if this has been accomplished by merely shoving everything into a drawer, this practice usually results in considerable loss of time and searching through papers to locate lost items.

Clerks and recorders should condense reports into fewer pages by using the "short note reply technique." This involves writing answers to written queries on the bottom of incoming documents, photocopying them, distributing the copy and filing the originals. You should use the telephone and routing slips to reduce the creation of routine instructional memoranda.

Restricting memoranda to one subject and reducing length by using well-designed forms can simplify file management. Efficient form design can reduce the need to recopy information after it has been recorded. Needless copying can be avoided by the proper arrangement of information on the form for a particular communication.

To perform duties effectively, the clerk or recorder must create only essential documents, must do so as economically as possible and must efficiently manage essential documents from the moment of creation until final disposition. A sound document management program should result in reduced handling, faster action,

reduced costs in quantity and better service to the taxpayers and to the governing body.

Install your filing system with facilities and format to provide for the accurate filing of information in a minimum amount of time. It is most important to develop a filing system by remembering that non-retrievable information is the equivalent of information lost. In other words, the key to the filing system is the ease of retrieval.

In developing a filing system, you have several choices. Among these are an alphabetical system, a chronological system, a numerical system and a subject system. No one of these will suit all your needs, as each has inherent limitations. In common practice, it is likely that you will use more than one filing system. The selection of the system or combination of systems should anticipate that it will provide sufficient latitude to move older, less active portions to the archives, to be retained forever or to the dead storage area for eventual destruction. Easily accessible drawers should be used in the file cabinet for the most active files. You may also want to use color-coded file inserts, tabs and folders. Several brands are available from your local stationery or office supply houses.

As described earlier, it is desirable to develop three (3) file books to retain the local governing body actions. One is the minutes book, while the others are separate books for the numerical/chronological filing of ordinances and resolutions. In addition to these, you may want to develop and maintain a scrapbook of newspaper articles of city events and particularly actions of the city council. The

scrapbook should be organized chronologically instead of by subject or by some other filing system.

D. Records Management

This section contains helpful hints and statutory requirements affecting records management. The records management portion does not affect the clerk or recorder as secretary of the governing body. That procedure was described earlier. Nor does this section include records management for the financial administration of the city. This is the subject of Chapter VI.

In cities of the first and second class, where numerous boards and commissions are appointed by the city council or board of directors, it is the duty of the city clerk or recorder to maintain a record of these appointments. They can be kept in a loose-leaf binder with sections alphabetized by commission and showing the members appointed and their expiration terms. The city clerk or recorder may be directed by city council ordinance or resolution to serve as the secretary of various boards or commissions; or, as a minimum, the clerk may be called to develop a filing system for recording the actions, orders and determinations of the various boards and commissions.

The city clerk or recorder also keeps records of abandoned and vacated streets, alleys and public rights-of-way. The Arkansas Code permits cities and towns to abandon and vacate streets, alleys and rights-of-way by following certain procedures, i.e. public hearing and ordinance of the city council or city board of directors. (A.C.A. §§ 14-301-301—306; 14-301-401—405). In addition to supporting

the city council or board of directors in adopting the necessary ordinance upon the abandonment of a street, alley or public right-of-way, the city clerk prepares an indexed record identifying the street, alley or right-of-way that has been closed and files this card in a file for this purpose. The file may be established on an alphabetical basis according to the street name. Alley closures can be filed in the alphabetical order of the addition or subdivision in which they are located. Easements or utility rights-of-way may be handled in the same manner. The use of an index card system or computer database facilitates reference and review by residents and city departments needing such information.

An important duty of the city clerk or recorder is that he or she develops and maintains the city's fixed asset record. As required by A.C.A. §§ 14-59-101—118, the "*Arkansas Municipal Accounting Law*," "[a]ll municipalities shall establish by major category and maintain, as a minimum, a listing of all fixed assets owned by the municipality. (A.C.A. § 14-59-107(b)(1)). Additionally, the municipality's "governing body shall adopt a policy defining fixed assets." (A.C.A. § 14-59-107(a)).

The categories of fixed assets shall be the following:

- (1) Land;
- (2) Buildings;
- (3) Motor vehicles, by department;

- (4) Equipment, by department; and
- (5) Other assets. (A.C.A. § 14-59-107(b)(3)).

Such a listing of fixed assets shall contain as a minimum:

- (1) property item number (if used by the municipality);
- (2) brief description;
- (3) serial number, if available;
- (4) date of acquisition; and
- (5) cost of property. (A.C.A. § 14-59-107(c)).

The fixed asset and equipment records developed and maintained by the clerk or recorder, constitute a part of the general records of the municipality, and, accordingly, must be made available for use by the auditor at the time of audit. Additionally, these records must be made available to interested citizens for inspection during the normal business hours of the city clerk or recorder's office. (A.C.A. § 25-19-105). Finally, this record of fixed assets will be essential to the city in its developing sufficient insurance coverage for the cost of replacement for lost, stolen or destroyed equipment; for liability and/or collision coverage and for other insurance purposes.

In regard to insurance, it is the duty of the city clerk to assure that the city has engaged the proper kinds of insurance as required by Arkansas law and by good municipal management practice. Insurance types include:

- (1) worker's compensation;
- (2) liability coverage on vehicles;
- (3) group accident/death insurance - firefighters;
- (4) group insurance: life, disability, and/or medical - all employees;

- (5) property coverage for buildings and equipment;
- (6) fire and casualty insurance.

Cities and towns in Arkansas are required to carry liability coverage on vehicles (A.C.A. § 21-9-303) and to provide workers' compensation coverage for employees, elected officials and volunteer firefighters.¹ (A.C.A. § 14-60-103). Generally, cities and towns are immune from tort liability, (A.C.A. 21-9-301) although cities and towns are authorized to hear and to settle tort claims. (A.C.A. § 21-9-302). Your city may find it desirable to have some kind of protection from lawsuits based in tort because case law on tort liability for cities is constantly changing.

Arkansas law provides that the board of trustees of the firemen's relief and pension fund of a city or town shall have the power in its discretion to expend monies from its firemen's pension and relief fund for paying premiums and purchasing group insurance covering the members of the fire department of the city or town against accidental injury or death occurring within the line of duty of the firefighters. (A.C.A. § 24-11-803(c)). This, apparently, is permissive now, but the purchase and retention of accidental death insurance for firefighters may soon become mandatory. The city clerk or recorder's job here is to be the secretary of the board of trustees of the firemen's relief and pension fund. (A.C.A. § 24-11-801(a)(2)).

¹ See Tort Immunity, MLDP and MLP brochures and the AML Website for more information.

The other kinds of insurance described above are optional, not mandated by state law. However, as for group hospitalization, general civil rights law provides that if the city provides for medical and hospitalization coverage for one (1) group of city

employees, it shall provide it for all. The same goes for a pension plan for police and fire employees covered under a local plan: if the city provides it for any, it must be for all. (A.C.A. § 24-10-302). Finally, the amount of insurance coverage for buildings and equipment in terms of fire, casualty and surety coverage should be developed with good municipal management practices.

In 1987, the Arkansas General Assembly codified A.C.A. § 21-2-701 through 711, which found and determined that Arkansas municipalities were expending large sums of money each year for premiums on blanket bonds for officers and employees . . . and that considerable savings might be effected by the establishment of a self-insured fidelity bond program for municipal officials and employees. The Arkansas Code, at A.C.A. 21-2-701 *et seq.*, established a governmental bonding board to develop a self-insured fidelity bond program for municipal officials and employees to provide that self-insured fidelity bonds would be in lieu of the various blanket bonds which were then required. This section of the Code also provides that if coverage under the fidelity bond program should cease, then the laws previously requiring surety or blanket bonds would again become applicable. (A.C.A. § 21-7-203(b)). If you have any questions about surety bonds contact the Arkansas Insurance Department.

Cities and towns are authorized by the Arkansas Code to establish occupational taxes or privilege license fees for persons, firms, individuals, corporations and others doing business within the corporate limits of the city or town. A.C.A. § 26-77-102. A municipality may accomplish this through adoption of an ordinance by

two-thirds (2/3) vote of the members elected to the governing body. *Id.* The statute is comprehensive, but the important implications for the city clerk or recorder are:

- (1) the city clerk or recorder may be given the duty of issuing occupational or privilege licenses and collecting the occupation taxes or privilege license fees, the ordinance of the city council or board of directors would establish this; (A.C.A. §§ 14-43-313, 14-44-109, 14-45-109);
- (2) the city clerk or recorder may be responsible for arranging for publication of an ordinance of this nature; before any ordinance that establishes an occupation tax or privilege license fee becomes effective, it must be published in a newspaper of bona fide circulation in the city or town one (1) time and the publication shall not be later than one (1) week after the passage of the ordinance; (A.C.A. § 26-77-104);
- (3) the clerk or recorder will, in all likelihood, be responsible for filing the ordinance in the permanent records of the actions of the city council or board of directors.

Cities and towns are also authorized to levy a vehicle tax, if certain conditions are met. (A.C.A. §§ 26-78-101-119). Again, the responsibility of the city clerk or recorder is publishing ordinances and possibly in collecting taxes and issuing vehicle tax decals.

The city clerk or recorder also issues licenses, collects license fees and applications, and publishes ordinances that license crafts, trades and professionals.

E. Retention and Destruction of Public Records

The subject of retention and destruction of public records is one of concern to a city clerk or recorder for a wide variety of reasons. Many records have historical value, while others are required to be kept for certain duration because of statutory requirements. Still others should be kept because they represent the most important evidence of a defense to particular lawsuits. Bear in mind that those records in your city files are not necessarily yours. They belong to your municipality, the State of Arkansas and its citizens. There is an established procedure for retaining, destroying or replacing these public records. Until you are thoroughly familiar with the various statutes/public records acts, and the rules and regulations that go along with public records, do not eliminate records. When you plan for the destruction of municipal records, consult with your city attorney, become comfortable with operating within the framework of laws surrounding public documents, and consider seeking assistance from the State History Commission, if needed. Then proceed with caution.

As noted earlier in this chapter, A.C.A. §§ 16-46-101 et seq., and 13-4-201 et seq. provide that original documents may be destroyed if the original document had been accurately reproduced or placed in a durable form for reproducing the original when provided with equipment necessary so long as the document is not over fifty (50) years old and handwritten or so long as its preservation is not otherwise required by law. Specific law governing destruction of financial or accounting records is in Chapter VI. The maintenance and destruction of personnel records is in Chapter VII. Of interest to municipal clerks and recorders is Title 13, Subchapter 4 of the Code. A.C.A. § 13-4-203 was amended in 1997 to mandate that

a municipal clerk or recorder serve on the Records Retention Committee to aid them in the study, development and issuance of standards consistent with the guidelines enumerated in § 13-4-202 as pertains to existing and future recording systems. Additionally, A.C.A. §13-4-202 requires that equipment necessary for converting court records into photographic, photostatic, microfilm, micro card, miniature photographic, digital compact disc, optical disc, or other formats, meet all of the following requirements:

- (1) The information retained shall be in a usable and accessible format capable of accurately reproducing the original over the time periods required by law;
- (2) Operational procedures shall ensure that the authenticity, confidentiality, accuracy, reliability, and appropriate level of security are provided to safeguard the integrity of the information;
- (3) Procedures shall be available for the backup, recovery, and storage of records to protect those records against media destruction or deterioration and information loss; and
- (4) A retention conversion-review schedule shall be established to ensure that electronically or optically stored information is reviewed for data conversion or re-certification at least once every five (5) years or more frequently when necessary to prevent the physical loss of data or technological obsolescence of the medium needed.

The Arkansas Municipal League legal staff has prepared a document entitled *RECORD RETENTION LAWS FOR ARKANSAS MUNICIPALITIES*, which is available in the Legal FAQs section of the League's website at the following URL: <http://www.arml.org/resources/legal-faqs/>

F. Required Reports

The required financial reports that the city clerk must prepare as treasurer or clerk-treasurer or recorder-treasurer are described in Chapter VI. In addition to these, there are several other periodic reports that the clerk or recorder must file, and these are described in this concluding section of Chapter IV.

To County Assessor

The city clerk or recorder of all cities, towns and incorporated towns shall prepare and file with the county assessor of the county in which each is located a list of building permits issued each year. (A.C.A. § 26-26-707). The list shall be alphabetically arranged, showing the value of the improvements to be made, and the names and addresses of the persons making the improvements. *Id.* The legal descriptions of the properties are to be provided in the list. While the code provision calls for a list "each year," your county assessor may prefer to receive this list monthly or quarterly. In fact, it would be to the clerk or recorder's advantage to file this report each month or quarterly, thereby avoiding a time-consuming records search to prepare a once-a-year report. This report is mandatory.

To Census Bureau

The Bureau of the Census, U.S. Department of Commerce expects from the city clerk or recorder a periodic report indicating building permit records for new housing starts, the number of dwelling units, the value of construction and other information. You will receive forms from the census bureau for this report.

Other

By December 31 of each year a report to the Arkansas Fire and Police Pension Review Board stating the number of firefighters, their names, dates of appointment, dates of retirement, birth dates, amounts of pensions paid, and other information as required by the Pension Review Board. (A.C.A. § 24-11-813). Review the calendar of events referenced in Section B of this chapter.

V. ELECTIONS

The role of the Arkansas city clerk or recorder in the conduct of elections is not pivotal since most Arkansas elections are conducted by county election commissions. The material in this chapter is included for the sake of completeness and to inform city clerks and recorders, in the event that they should have to answer questions regarding elections. Questions may come from potential candidates, interested citizens and current city officials. With the exception of the city clerk's constitutional duty in referred and initiated ordinances, the city clerk is, for the most part, an observer of the election process. Consequently, the following is offered for the clerk or recorder's information.

I. Initiatives and Referenda

Article 5, Section 1 of the Arkansas Constitution (formerly Amendment 7) reserves to the people the right to initiate local ordinances or to refer ordinances adopted by the city council. In either case, an election must be held on the measure, assuming that the proper petition procedures (described below) have been followed. The power of initiative and referendum is obtained through petitioning by registered voters. (Referral may also be made by the governing body as described below). In municipalities and counties, the time for filing an initiative petition shall not be fixed at less than sixty (60) days nor more than ninety (90) days before the election at which it is to be voted upon; for a referendum petition at not less than thirty (30) days nor more than ninety (90) days after the passage of such measure by a municipal council. (Ark. Const., Art. 5, § 1; A.C.A. § 14-55-

203(c)(1)(B)). Municipalities may provide for the exercise of the initiative and referendum as to their local legislation and may fix the time for filing petitions. (*Id.*).

The number of days that a city or town establishes by ordinance for the filing of a referendum petition will also be the number of days after which an ordinance without an emergency clause will go into effect. (A.C.A. § 14-55-203(c)). Note, however, that A.C.A. § 14-55-304 gives a sponsor sixty (60) days to circulate a municipal referendum petition, unless it concerns a municipal bond. The constitutionality of this statute is on appeal to the Arkansas Supreme Court as of this writing.

Fifteen per cent (15%) of the legal voters of any municipality or county may order the referendum, or invoke the initiative upon any local measures. In municipalities the number of signatures required upon any petition shall be computed upon the total vote cast for the office of mayor at the last preceding general election (Ark. Const., Art. 5, § 1); however, in municipalities with the city manager form of government, the number of signatures required “shall be computed upon the highest vote cast at the preceding general election for any position on the board of directors of the municipality.” (A.C.A. §14-47-124(b)).

While initiatives and referenda are often grouped together, it is important to understand that there are both conceptual and procedural differences between the two. Initiatives are measures initiated by the people. They begin with one or more citizens circulating petitions to get a certain measure on a ballot. By contrast, referenda come in essentially two varieties: (a) they may be referred to the voters

by the legislative body, such as a city or town council, or board of directors, (A.C.A § 14-55-302); or (b) they may be started by a petition circulated among voters in response to an action by the legislative body (Ark. Const., Art. 5, § 1).

Measures initiated by the people may be submitted only at the regular elections, either State, Congressional or municipal, but referendum petitions may be referred to the people at special elections to be called by the proper official. Every extension, enlargement, grant, or conveyance of a franchise or any rights, property, easement, lease, or occupation of or in any road, street, alley or any part thereof in real property or interest in real property owned by municipalities, exceeding in value three hundred dollars (\$300.00), whether the same be by statute, ordinance, resolution, or otherwise, shall be subject to referendum and shall not be subject to emergency legislation. (Ark. Const., Art. 5, § 1).

The word "measure" includes legislative enactments of any character: bills, laws, resolutions, ordinances, charters, constitutional amendments or legislative proposals. (*Id.*). Legislative actions of the city council, such as the enactment of a sewer ordinance, are subject to a referendum and the vote of all the electorate of a city under Article 5, § 1 of the Arkansas constitution. When such a measure is referred to the people by referendum petition, it remains in abeyance until a vote on the referendum petition is taken, unless the ordinance was passed with an emergency clause. (Ark. Const., Art. 5, § 1). Note that the provisions of Article 5, § 1 do not extend to "administrative matters" handled by the city council. However, exactly what constitutes an "administrative" action exempt from Art. 5, § 1, as opposed to a "legislative" action, which would be subject to Art. 5, § 1, is a very

complex matter and beyond the scope of this Handbook. If you have any doubt as to whether a given enactment would be administrative or legislative, consult your city attorney.

The result of the vote upon any municipal measure must be canvassed and declared by the County Election Commissioners or legal substitute for the County Election Commissioners. Any measure submitted to the people provided for by Ark. Const., Art. 5, § 1 takes effect and becomes law when approved by a majority of the votes cast upon such measure. Such measures are not required to receive a majority of the electors voting at such elections. (*Id.*). They become operative on and after the 30th day after the election in which the measure is approved, unless otherwise specified in the act (such as with an emergency clause or other provision setting a different time). (*Id.*). In the event that conflicting measures initiated or referred to the people are approved by a majority of the votes cast for and against the same at one (1) election, the one (1) receiving the *highest number of affirmative votes* shall become law. (*Id.*).

The veto power of the Mayor does not extend to measures initiated by or referred to the people. (*Id.*). Finally, no measure approved by a vote of the people shall be amended or repealed by any City Council, except upon a yea and nay vote on roll call of two-thirds (2/3) of all the members elected to the city council. (*Id.*). Note also that mayors may not vote to amend or repeal an initiative measure enacted by a vote of the people. (*See Thompson v. Younts*, 282 Ark. 524, 669 S.W.2d 471 (1984)).

A. The Petition – Generally

At the time of filing petitions the exact title to be used on the ballot must be submitted by the petitioner with the petition to the County Election Board and shall by said board be placed upon the ballot in such municipal election. (Ark. Const. Art. 5, § 1). No limitation is to be placed upon the number of measures which may be proposed and submitted to the people by either initiative or referendum petition as provided in Art. 5, § 1. (*Id.*). No petition is to be held invalid because it contains a greater number of signatures than required. (*Id.*). Only legal votes are to be counted upon petitions. (*Id.*). Petitions may be circulated and presented in parts, but each part of any petition must have the affidavit of the person who circulated the petitions, attesting to the following: (1) that all signatures thereon were made in the presence of the affiant; (2) that to the best of the affiant's knowledge and belief each signature is genuine; and (3) that the person signing is a legal voter. (*Id.*). No other affidavit or verification is to be required to establish the genuineness of petition signatures. (*Id.*). Additionally, to each and every petition for initiative or referendum, a full copy of the measure at issue must be attached. (A.C.A. § 7-9-106). A sample verification form is included in the Appendix to this *Handbook*, as are sample initiative and referendum petitions.

The sufficiency of all local petitions must be decided in the first instance by the county clerk, city clerk or city recorder as the case may be, subject to review by the Circuit Court. Sufficiency is of no importance however, once the question has been submitted to the voters and voted upon. (Ark. Const., Art. 5, § 1). The city clerk should determine the sufficiency of the petition with the assistance of the voter registration representatives of the county clerk's office, using voter registration

lists or computer printouts. The voter registration files, including signature cards, are retained in the county clerk's office. (A.C.A. § 7-5-109). The city clerk may perform this duty only in concert with the county clerk, who must help the city clerk verify the voter registration of the petition signers. With the county clerk's information, the city clerk can determine the sufficiency of the petition signers as required. (See also, A.C.A. §§7-9-103 through 106; 7-9-120).

McQuillin's treatise on municipal corporations says that it is the function of an officer to whom an initiative or referendum petition is presented or filed to inspect it, pass on its sufficiency, determine whether it has been signed by the requisite number of qualified voters, exclude names of unqualified voters and certify or refuse to certify it without regard to his or her views concerning the legal sufficiency of the petition's subject matter. The clerk or recorder's function is said to be purely ministerial and not judicial, although its exercise may be compelled by legal action. "Generally, it suffices in the exercise of this function that the officer acts in good faith." 5 McQuillin Mun. Corp. § 16:64 (3rd ed.)

If the city clerk or recorder decides that any petition is insufficient, he or she must notify the sponsors of such petition without delay and permit thirty (30) days from the date of such notification for correction or amendment. (See A.C.A. §7-9-111(d)). Arkansas courts have held that if the sufficiency of any petition is challenged such cause shall be a preference case and shall be tried at once, but the failure of the courts to decide prior to the election as to the sufficiency of any such petition shall not prevent the question from being placed upon the ballot at the election named in such petition, nor militate against the validity of such measure,

if it shall have been approved by a vote of the people. (See *Brown v. Davis*, 226 Ark. 843, 294 S.W.2d 481 (1956)). In other words, just because the sufficiency of a petition is challenged, that does not mean that the measure won't make it onto the ballot, nor does it mean that the measure is substantively invalid. (*Id.*)

B. Form of Verification

Each petition containing the signatures for initiative or referendum must be verified in substantially similar form. A copy of the verification form to be used with petitions is included in the Appendix to this *Handbook*. The form given in the Appendix is not strictly mandatory, and if substantially followed in any petition it will be acceptable, disregarding clerical and merely technical errors. (A.C.A. §7-9-109(b)).

C. Model Referendum Ordinance

It is extremely important that every city and town in the State of Arkansas adopt an ordinance providing for the Referendum of Ordinances. You never know when the people of your city or town will desire to refer an ordinance to the vote of the people. An ordinance of this nature will prevent a great deal of confusion when this happens. It will also fix the time in which such referendum must be filed. Moreover, the effective date of ordinances passed by your legislative body depends on the referendum deadline fixed by your city. (A.C.A. § 14-55-203). Many cities and towns have passed an ordinance of this nature, but some have not. A sample Referendum Petition Ordinance is included in the Appendix to this *Handbook*, as are samples of a Petition for Referendum and a Petition for Initiative.

II: Registration

In order to sign referendum or initiative petitions, as well as to vote, a person must be qualified and registered to vote. The qualifications for voting are listed in Chapter 2.

III: Date and Year for Holding Elections

The provisions for the timing of municipal elections are set forth as follows:

1. The general election for municipal officials in all cities and incorporated towns is to be held on the Tuesday following the first Monday in November; (A.C.A. § 14-42-201(a));
2. All municipal officials of the cities and towns in Arkansas take office on January 1 of the year following their election. (A.C.A. § 14-42-201(b));
3. In cities of the first class, mayors and city clerks are elected every four (4) years. (A.C.A. §§ 14-43-303 and 14-43-305 (mayors); A.C.A. §§ 14-43-303 and 14-43-316 (city clerks)).
4. In cities of the first class with over 50,000 population, aldermen serve four-year terms, A.C.A. § 14-43-303; in those cities of under 50,000 population, aldermen serve two-year terms. (A.C.A § 14-43-312).
5. In cities of the second class, mayors and recorders and recorder-treasurers are elected to four-year terms. (A.C.A. §§ 14-44-105; 14-44-115) Aldermen serve two-year terms. (A.C.A. § 14-44-103(a)(1)).
6. In incorporation towns, the mayor and recorder-treasurer are elected for four (4) years. (A.C.A. §§ 14-45-104 and 14-45-108).
7. In incorporated towns, aldermen are elected for two-year terms. (A.C.A. §§ 14-45-108; 14-45-102).

8. Aldermen may be elected to staggered four (4) year terms if approved by the voters. (A.C.A. §§ 14-43-312; 14-44-103; 14-45-102).

IV: Candidacy for Municipal Office

In order for a candidate's name to appear on a ballot in an election, the candidate must be certified as a nominee for that office. (A.C.A. § 7-7-101). To be certified as a nominee, the following guidelines apply. Note, however that the deadlines discussed in this section are frequently amended by the state legislature. Therefore, it is extremely important to look up the most recent version of the law before relying on particular dates or deadlines.

1. Petition for Nomination.

Independent candidates for municipal office in cities or towns with the mayor-council form of government shall file their petition of nomination with the county clerk of the county within the time periods set by law. (A.C.A. §14-42-206(b). Filing procedures in city manager and city administrator forms of government are spelled out in A.C.A. §§ 14-47-110 (city manager form) and 14-48-109 (city administrator form). Pursuant to A.C.A. § 14-42-206(d)(1)(A), the governing body of any first class city, second class city, or incorporated town may enact an ordinance requiring independent candidates for municipal office to file petitions for nomination as independent candidates with the county clerk no earlier than twenty (20) days prior to the preferential primary election and no later than noon on the day before the preferential primary election. If a municipality's governing body wishes to enact such an ordinance, it must do so no later than ninety

(90) days prior to the filing deadline. It must also publish the ordinance at least once a week for two (2) consecutive weeks immediately following adoption of the ordinance in a newspaper having general circulation in the city.

Independent candidates for municipal office may qualify by petition of not less than ten (10) electors for incorporated towns and cities of the second class and not less than thirty (30) electors for cities of the first class of the ward or city in which the election is to be held. (A.C.A. § 14-42-206). City Manager cities require at least fifty (50) signatures as do City Administrator cities. (A.C.A. §14-47-110(a)(3); 14-48-109(a)(5)). The county clerk must determine whether the petition contains a sufficient number of qualified electors.

2. Statement of Financial Interest:

Any person holding an elective office, whether elected or appointed, must file a statement of financial interest by January 31 of each year; except that a candidate for elective office must file the statement of financial interest within thirty (30) days after the deadline for filing for the office. (A.C.A. § 21-8-701(c)). Any incumbent office holder who filed the statement of financial interest by January 31 of the year in which the election is held shall not be required to file an additional statement upon becoming a candidate for reelection or election to another office at any election held during the year. (*Id.*). Municipal public officials file with the city clerk or recorder, as the case may be. (A.C.A. § 21-8-703(a)(3)).

3. Financial Disclosure Statements:

Persons appointed to one (1) of the following types of municipal boards or commissions must also file a statement of financial interest:

- A. planning board or commission;
- B. airport board or commission;
- C. water or sewer board or commission;
- D. utility board or commission;
- E. civil service commission;
- F. advertising and promotion commission; and
- G. research park authority board

(A.C.A. § 21-8-701(a)(9)).

4. Political Practices Pledge:

Arkansas law also requires candidates to file what is known as a "Political Practices Pledge." (A.C.A. § 7-6-102). This pledge certifies that the candidate is familiar with the political practices regulated under A.C.A. §§ 7-1-103, 7-1-104, 7-3-108 7-6-101 & 102, 7-6-103, 7-6-104, and that the candidate will, in good faith, comply with their terms. (A.C.A. § 7-6-102(b)(3)). It further must contain a statement that the candidate for municipal offices has never been convicted of a felony. (*Id.* at 102(b)). Independent candidates file at the time of filing the petition for nomination. (A.C.A. § 14-42-206(b)). Candidates in partisan races must file during the filing period set forth in (A.C.A § 7-7-203(c)). The county clerk must notify candidates who have failed to file timely political practices pledges in accordance with the procedures in A.C.A § 7-6-102(e)(2).

5. General and Preferential Primaries:

These shall be held on the dates specified in A.C.A. § 7-7-203.

V: Voting

Candidacy requirements, filings, and so forth may vary according to your municipality's classification, but once the candidates have been determined and the ballots printed, the election procedures themselves become relatively standard. The procedures for conducting elections are all spelled out in the Arkansas Code, primarily in Title 7. Here's a summary:

A. Poll Hours

1. Polls open at 7:30 A.M and close at 7:30 P.M. though persons waiting in line must be permitted to vote. (A.C.A. § 7-5-304). Upon termination of voting the poll workers must announce the polls have closed and in the presence of all duly authorized persons present, shall remove the activation packs or devices from the voting machines to make them inaccessible to further voting. (A.C.A. § 7-5-526(a)).

B. Order at the Polls

1. According to A.C.A. § 7-1-103, "No election official acting in his or her official capacity shall do any electioneering on any election day or any day on which early voting is allowed. Except as provided in subdivisions (a)(9)(B) and (C) of this section, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit

signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling place on election day." (A.C.A. § 7-1-103(9)(a)).

2. A.C.A. § 7-1-103 regulates the conduct of elections and provides that violation of its provisions shall be a Class A misdemeanor. For example:

3. No person shall, during any election, tear down or destroy any booths or supplies, or other conveniences placed in any booth or polling site for the purpose of enabling the voter to prepare his or her ballot. (A.C.A. § 7-1-103(a)(13)). No person shall take, carry or have in his possession outside the polling place, any ballot obtained from any election official. (*Id.* at 103(a)(14))

4. It is unlawful for any public officer, deputy, or assistant to devote any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office. (A.C.A. § 7-1-103(a)(2)(A)(i)).

5. It is unlawful for any public officer or public employee of the State of Arkansas or of any county or municipality of this state to circulate an initiative or referendum petition or to solicit signatures on

an initiative or referendum petition in any public office of the state, county, or municipal governments of Arkansas or during the usual office hours or while on duty for any state agency or any county or municipal government in Arkansas. (*Id.* at 103(a)(2)(B)).

6. It shall be unlawful for any campaign banners, campaign signs, or other campaign literature to be placed on any cars, trucks, tractors, or other vehicles belonging to the State of Arkansas or any municipality, county, or school district in the state. (*Id.* at 103(a)(6)). These are just a sample of the offenses listed in the statute. Others may be found by reviewing the statute.

C. Run-Off Elections

Run-off Elections are governed by A.C.A. § 7-5-106.

D. Recall Laws

Historically, no recall provisions existed for the Mayor-Council form of government in Arkansas. However, Act 362 of 2009 enacted a new provision, codified at A.C.A. §14-42-119. The new law provides:

(1) A person who holds an elected office in a municipality for a term of four (4) years in a mayor-council form of government is subject to removal from the office by the electors qualified to vote for a successor of the incumbent.

(2) The procedure for the removal of a person holding the office is as follows:

(a) When a petition requesting the removal of an officer under this section, signed by a number of qualified electors equal to twenty-five percent (25%), is filed with the city clerk, the city clerk shall determine the sufficiency of the petition within ten (10) days from the date of the filing.

(b) A petition shall be filed by 12:00 noon not more than one hundred five (105) days nor less than ninety-one (91) days before the next general election following the election at which the officer was elected;

(c) If the petition is deemed sufficient, the city clerk shall certify it to the county board of election commissioners;

(d) At the election, the question shall be submitted to the qualified electors in substantially the following form:

*"FOR the removal of (name of officer).....
from the office of (name of office)"..... []*

*"AGAINST the removal of (name of officer).....
from the office of (name of office)"..... [];*

and

(3) If a majority of the qualified electors voting on the question at the election vote for the removal of the officer, a vacancy shall exist in the office. The officer shall vacate the office immediately upon certification of the election.

(4) If a majority of the qualified electors voting on the question at the election vote against the removal of the officer, the officer shall continue to serve during the term for which he or she was elected.

In addition, the law provides for the recall of elected officials in both the City Manager and City Administrator forms of government. In City-Manager cities city directors are subject to removal by the electors according to the provisions in A.C.A. 14-47-112.

E. Special Elections for Municipal Officials

In 2009, the General Assembly amended Arkansas law to clarify the time and procedures for special elections to fill a mayoral vacancy in cities of the first and second class. The law provides that the city council shall be called by proclamation, ordinance, resolution, order, or other authorized document of the appropriate constituted authority. (A.C.A. § 7-11-101).

A.C.A. § 14-44-106 provides for filling a vacancy in the office of mayor for cities of the second class:

Whenever a vacancy occurs in the office of mayor in any city of the second class, at the first regular meeting after the occurrence of the vacancy, the city council shall proceed to either elect by a majority vote of the aldermen a mayor to serve the unexpired term or call for a special election to be held in accordance with § 7-11-101 et seq. [that is, “and following” sections] to fill the vacancy. At this election, a mayor shall be elected to fill out the unexpired term.

For cities of the first class, filling a vacancy in the mayor's office depends in large part on how much time remains in the mayor's unexpired term. (A.C.A. § 14-43-401). If the time is less than one (1) year, the city council may appoint a person to serve out the remainder of the term. If the time is more than one (1) year, the council must call a special election. (*Id.*).

Because A. C. A. § 14-42-206 establishes a time frame for filing of the petition of nomination and other matters, the time line for a special election will be quite similar to the process used in holding the general election.

F. Redistricting of Wards

Arkansas law provides for redistricting of wards in cities of the first and second classes. (A.C.A. §§ 14-43-311; 14-44-101, respectively). The city has the following powers under these statutes. 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. (A.C.A. § 14-43-311(a). 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.” (*Id.* at 311(a)(1)(B). However, the United States Constitution applies a somewhat more exacting standard:

In order to comply with the equal protection clause of the federal 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.

However, an apportionment plan based on registered voters will satisfy the equal protection clause provided it produces districts containing roughly equal numbers of persons.

When determining a legislative redistricting plan's compliance with the federal 'one (1) person, one (1) vote requirement', the supreme court first looks to a particular plan's overall maximum population deviation; if the maximum population deviation is less than 10%, the plan is presumptively constitutional under the Federal Constitution.

2A McQuillin, Municipal Corporations § 7:70 (3rd ed.) (footnotes omitted).

“Within ninety (90) days after redistricting, if one hundred (100) or more qualified electors in said 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 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.” (A.C.A. §§ 14-43-311(a)(2)(A)-(B)).

All clerk's cost and other costs incurred in the proceedings for change in ward boundaries shall be paid by the persons at whose instance the services were rendered, but, in case such proceedings result in the division of the city into

new wards, the compensation of the commissioners making the division shall be fixed by the circuit judge and certified to the city council and paid out of the city treasury, but shall not exceed the sum of twenty-five dollars (\$25.00) each. (A.C.A. § 14-43-311(d)(2)).

City councils in cities of the second class, as soon as practicable after the city obtains second class status, shall form the city into a number of wards that to them will seem to best serve city interests. (A.C.A. § 14-44-101(a)). Each ward should have as nearly an equal population as would best serve the interests of the taxpayer. (*Id.* at 101(b)). City councils in cities of the second class shall have the authority to redistrict the wards of 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. (A.C.A. § 14-44-102(a)).

Within ninety (90) days after redistricting, if fifty (50) or more qualified electors in said city are dissatisfied with the division of the city into wards, they shall have the authority to petition the circuit court which, after due hearing, shall have 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. (A.C.A. § 14-44-102(a)). Note that any redistricting done by your municipality must comply with both Arkansas and federal law. Federal law prohibits redistricting that would have the effect of diluting the effectiveness of minority voting in certain cases. The three (3) elements of a vote dilution claim are that (1) the minority group is large

enough and geographically compact enough to constitute a majority in a single-member district; (2) the minority group is politically cohesive; and (3) a bloc-voting white majority usually defeats the minority's preferred candidate. 3 McQuillin Municipal Corporations § 12.17 (Third ed.) This is a complex topic and beyond the scope of this *Handbook*. If you believe that the listed considerations may come into play, please contact your city attorney or the Municipal League legal staff if your city is a member of the Municipal Legal Defense Program (MLDP).

VI. FINANCIAL ADMINISTRATION

This chapter of the Handbook principally addresses the duties of treasurers. However, city clerks and recorders who do not have any assigned treasurer's responsibilities should also become familiar with the administrative requirements pertaining to the municipality's treasury.

The subjects of this chapter are the financial control over the treasury by the municipality's governing body, including the adoption of annual budgets and the authorization of expenditures; purchasing and procurement of goods and services; accounting and financial reporting; auditing; issuance of bonds, notes, and debentures; pension fund duties and related financial administrative procedures and techniques.

A. Control of the Governing Body

Article 12, Section 4 of the Arkansas Constitution directs Arkansas municipalities: "The fiscal affairs of counties, cities and incorporated towns shall be conducted on a sound financial basis, . . . nor shall any city council, board of aldermen, . . . or commissioners, of any city of the first or second class, or any incorporated town, enter into any contract or make any allowance for any purpose whatsoever, or authorize the issuance of any contract or warrants, scrip or other evidences of indebtedness in excess of the revenue for such city or town for the current fiscal year; nor shall any mayor, city clerk or recorder, or any other officer or officers, however designated, of any city of the first or second class or incorporated town sign

or issue scrip, warrant or other certificate of indebtedness of excess of the revenue from all sources for the current fiscal year."

Since the Arkansas Constitution does not allow cities to spend more money than they accrue during a year, including carry-over funds from the preceding year, the treasurer is not to countersign any check or warrant that would result in unlawful deficit spending, unless the law provides a specific exception. As the city official responsible for financial administration, it is the treasurer's duty either to prevent the city from unlawfully going into the red, or at a minimum, to forewarn the decision-makers, i.e. the mayor and the city council, that the consequence of certain choices might result in unpermitted deficit financing. With a few exceptions, such as short term financing, (Ark. Const. amend. 78 § 2), and various types of bonds provided for in the state constitution, deficit financing is contrary to Arkansas law for municipalities.

Arkansas municipalities are directed to assure that city expenditures are in accordance with an annual budget submitted by the mayor on or before December 1 of each year and approved by the city council or board of directors on or by February 1 of the following year. (A.C.A. §§ 14-58-201 through 202). The approval of the budget serves as an appropriation of funds to be expended on the items contained on the budget. (A.C.A. § 14-58-203). Consequently, the clerk-treasurer or recorder-treasurer and all others involved in purchasing, expenditures, and decisions affecting expenditures must act in accordance with the governing body's approved budget for the annual operation of the city or town.

Must the budget be passed by an ordinance? According to Act 622 of 2011, which amended A.C.A. § 14-58-202, the budget may be enacted either by an ordinance or a resolution.

Of course, the council may periodically alter or revise the budget. Moreover, any unpledged funds appropriated by the governing body for any purpose may subsequently, by action of the governing body, be appropriated to another purpose, subject to these exceptions:

- (1) Funds resulting from taxes levied under statutes or ordinances for specific purposes may not be diverted to another purpose;
- (2) Appropriating funds may not be diverted to another purpose as to prejudice a creditor of the municipality.

(A.C.A. §§ 14-58-201 to 203; 14-47-125; 14-48-122). Please note, however, that “it takes an ordinance to amend an ordinance,” so a resolution to amend the budget will not suffice to amend a budget that was initially enacted by ordinance.

But the important aspects of the treasurer’s duties in expenditure control are to help the mayor and the governing body prepare and adopt a sufficiently clear and detailed annual budget as to truly meet the standard of "appropriation of municipal funds" that is essential to sound municipal financial management; and to be certain that all expenditures of the city or town agree with the adopted budget to the extent possible.

Many clerks and recorders in the past presented lists of routine bills, such as the monthly utilities, to the monthly meeting of the governing body requesting specific authorization to "pay the bills," but this practice is not required since Arkansas law mandates the adoption of an annual budget with authority for the mayor to act and spend funds within the established financial limits. (A.C.A. §§ 14-58-201 to 203; see also Ark. Op. Atty. Gen. No. 93-332 (mayor need not obtain council's approval to spend for budgeted items, but see 14-54-302(c) (council must approve contracts for purchase, sale or lease of real or personal property and 14-58-305 (council in first class city establishes maximum amount that may be paid without council approval)). The clerk or recorder may present for informational purposes a list of checks written or bills paid. Note that the term "routine bills," is intended to include such items as electricity, gas, and other items that occur on a monthly basis.

First class cities with city management and/or city administrator forms of government also must follow required procedures. (A.C.A. §§ 14-47-125; 14-48-122). The principal administrative responsibility belongs to the city manager or the city administrator.

B. Purchasing

Municipalities must purchase a great many goods and services: electricity, police cars, mosquito spraying, janitorial services, and paper, just to name a few. Purchasing standards are governed by state law. The Arkansas Code, at A.C.A. § 14-58-303, makes the mayor the effective purchasing agent for the municipality. Nonetheless, the treasurer should be familiar with purchasing procedures.

Treasurers often sign checks and warrants on expenditures that must be made in accordance with Arkansas purchasing law.

In fact, the statute allows the mayor to designate a "duly authorized representative" to be the purchasing agent and to purchase for the city. In this regard, mayors may designate purchasing agents or assign this responsibility to treasurers. Thus, familiarity with the essentials of purchasing law for municipalities is valuable to treasurers. The principal elements are:

- (1) The mayor or his duly authorized representative has the exclusive power and responsibility to make purchases of all supplies, apparatus, equipment, materials and other things requisite for public purposes in and for the city, and to make all necessary contracts for work or labor to be done, or material or other necessary things to be furnished for the benefit of the city or town, or in carrying out any work or undertaking of a public nature therein. (A.C.A. § 14-58-303(a)).

- (2) In cities of the first class, the governing body must provide by ordinance the procedure for making all purchases which do not exceed the sum of twenty thousand dollars (\$20,000), such as written quotations, telephone quotations, maintenance of price lists, telephone solicitations and similar safeguards. (*Id.*) In cities of the second class and incorporated towns, the governing body may provide by ordinance the procedure for making all purchases. (*Id.*).

- (3) Cities of the second class and incorporated towns do not have a bidding requirement imposed by A.C.A § 14-58-303. The council should establish any desired procedures, of which bidding might be one. On the other hand, cities of the first class, second class and incorporated towns must take bids for any public improvements, which include the major repair or alteration or the erection of buildings or other structures or other permanent improvements, exceeding \$20,000 in costs. This law is found at A.C.A § 22-9-203, which also contains the procedure for taking bids for contracts for public improvements which exceed \$20,000.

- (4) In cities of the first class, where the amount of expenditure for any purpose or contract exceeds the sum of twenty thousand dollars (\$20,000), the mayor or his duly authorized representative must invite competitive bidding thereon by legal advertisement in any local newspaper. A.C.A. § 14-58-303(b)(2)(A)(i). Bids received pursuant to the advertisement shall be opened and read on the date set for receiving the bids in the presence of the mayor or the mayor's authorized representative. *Id.* at 303(b)(2)(A)(ii). The mayor or the mayor's authorized representative shall have exclusive power to award the bid to the lowest responsible bidder, but may reject any and all bids received. *Id.* at 303(b)(2)(A)(iii).

- (5) The governing body by ordinance may waive the requirements of competitive bidding in exceptional situations where such procedure is deemed not feasible or practical. *Id.* at 303(b)(2)(B). However, A.C.A § 22-9-203, which also contains the procedure for taking bids for contract[s] for the

making of major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements which exceed \$20,000, does not contain a provision allowing for the waiver of bidding.

- (6) Exceptions to bidding exist for purchasing the following: motor fuels, oil, asphalt or natural gas; or new motor vehicles from a dealer licensed under the Arkansas Motor Vehicle Commission Act. (A.C.A. § 14-58-104).
- (7) In certain situations, such as where bids are received from in-state and out-of-state bidders, the Arkansas Procurement Law, found at A.C.A. §§ 19-11-201 et seq., may come in to play. Arkansas law, specifically at A.C.A. § 19-11-259, requires municipalities to give preference to in-state vendors in the purchase of commodities where: (a) a vendor requests preference under the statute at the time of bidding; (b) the lowest in-state vendor's bid does not exceed the lowest out-of-state by more than 5% and (c) the project is designed to provide utility needs of the city.
- (8) In first class cities, the mayor, or his duly authorized representative, may approve for payment out of funds previously appropriated for that purpose, or disapprove any bills, debts, or liabilities asserted as claims against the city or town. A.C.A. § 14-58-305(a). The governing body shall by ordinance establish in that connection a maximum amount, and the payment or disapproval of such bills, debts or liability exceeding such amount shall require the confirmation of the governing body. *Id.* at 305(b).

- (9) The mayor of a first class city or his duly authorized representative may sell or exchange any municipal supplies, materials, or equipment, provided that the value of such supplies does not exceed \$20,000. However, the governing body may establish a lower amount than \$20,000 by ordinance. (A.C.A. § 14-58-306(a)).
- (10) A.C.A § 14-58-306 was amended by Act 661, § 1 of 2007 to further provide:
- (1) (c)(1) If an item of personal property belonging to a municipality becomes obsolete or is no longer used by a municipality, it may be:
- (a) Sold at public auction;
 - (b) Sent to the Marketing and Redistribution Section of the Office of State Procurement of the Department of Finance and Administration; or
 - (c) Transferred to another governmental entity within the state.
- (2) If an item is not disposed of under subdivision (c)(1) of this section, the item may be disposed of in the landfill used by the municipality if the mayor or his or her authorized representative certifies in writing and the governing body of the municipality approves that it has:
- (a) Been rendered worthless by damage or prolonged use; or
 - (b) (i) Only residual value; and
 - (ii) Been through public auction and not sold.

Note that in the case of an auction, public agencies such as cities are not required to use a licensed auctioneer. A.C.A § 17-17-104.

- (11) A.C.A. § 19-11-249 permits “[a]ny public procurement unit [to]... participate in . . . a cooperative purchasing agreement for the acquisition of any commodities or services with one (1) or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants.” A.C.A. § 19-11-206(3)(A) defines a local public procurement unit as “[a]ny county, city, town, state agency, and any other subdivision of the state or public agency thereof.”
- (12) A.C.A § 14-54-302 adds further requirements in situations where the city enters into a contract, conveyance, or lease to purchase or sell any real or personal property. (“Real” property is real estate, i.e., land and buildings. “Personal” property refers to any other items such as vehicles, computers, furniture, equipment, and the like). The procedure set forth in that statute requires that the mayor and the city clerk or recorder enter into a contract to sell or lease property. (Subsection c). The contract or lease must be approved by a majority of the city council "present and participating," in writing, in the form of a resolution. *Id.* No requirement exists that bids be taken for the sale or lease of municipally-owned real property. See Attorney General’s Opinion No. 2003-206 if, however, you have an ordinance requiring such bidding, then make sure that those procedures are followed.
- (13) In addition, the legislature has authorized city advertising and promotion commissions to purchase and transfer real property. (A.C.A 26-75-606(a)(3)(A), as amended by Act 390 of 2007).

(14) A.C.A § 14-54-304 provides:

“Municipalities are authorized to exchange properties, real or personal, with other municipalities or with counties. Provided, any such exchange shall be approved by ordinance of the governing body of the municipality and shall be accomplished in accordance with procedures prescribed by the governing body.”

Similarly, the legislature in Act 433 of 2007 authorized police departments to exchange real or personal property with other municipal police departments if approved by the governing body. (A.C.A. § 14-52-113).

When it comes to “major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements,” (A.C.A. § 22-9-203), the municipality must publish notice of its intention to receive bids once per week for at least two (2) weeks before beginning the actual bidding process. Note that, in such an event that the notices of intention to receive bids must contain: (a) a brief description of the project; (b) the approximate location of the project; (c) the place where prospective bidders may obtain the plans and specifications; (d) the date, time and place where sealed bids will be received; (e) the amount of the bid bond required, which may be stated a percentage; (f) a statement of the municipality's right to reject any and all bids and to waive any formalities; and (g) other pertinent information that may be necessary or desirable to include. (A.C.A. § 22-9-203(c)(1)). It will likely be the clerk or recorder's responsibility to prepare notices under this section, as well as to get them published and get the publisher's affidavit evidencing that publication.

(15) When a municipality is purchasing commodities or services by competitive bidding, it may enact an ordinance granting a preference of up to five percent (5%) to the lowest qualified bid from a firm resident in the municipality. Act 1059 of 2015; ACA § 14-58-105 (b)(1)(A). A "Firm Resident" is defined as "any individual, partnership, association, or corporation," that: 1) maintains at least one (1) staffed place of business within the corporate limits of the municipality; and 2) has paid taxes, for at least two (2) successive years before submitting a bid, to the county that benefit the municipality on property either used or intended to be used in connection with the firm's business. ACA § 14-58-105 (a)(2). A municipality may also place a specific dollar cap on the total amount of preference granted, regardless of the percentage designated in the ordinance. ACA § 14-58-105 (b)(1)(B).

To calculate the preference allowed, the municipality's procurement officials must take the total amount of each bid from a firm resident claiming the preference and deduct the percentage mandated by the ordinance from the total amount. ACA § 14-58-105 (b)(1)(D)(i). After the deductions have been calculated, if the bid of a firm resident is lower than a bid from a nonresident, then the municipality must award the bid to the firm resident who submitted the lowest bid, regardless of whether or not that particular firm resident claimed the preference. ACA § 14-58-105 (b)(1)(D)(ii)

The preference only applies when a municipality is comparing bids between one (1) or more firm residents and other bids by nonresidents. ACA § 14-58-105 (b)(2)(A). It does not apply when all the bids are from firm residents. ACA § 14-58-

105 (b)(2)(B). The preference will not apply when federal or state rules or regulations conflict. (ACA 14-58-105).

The city manager or city administrator is designated as the responsible party for purchasing in cities having those forms of government. (A.C.A. §§ 14-47-120; 14-48-117).

Note that the purchasing procedures previously outlined do not apply to the procurement of professional services such as legal, architectural, engineering construction management and land surveying services. That is covered under A.C.A. §§ 19-11-801 through 805, which prohibit cities and towns from using competitive bidding to obtain contracts for these professional services. Other types of professional services may be designated by a two-thirds (2/3) vote of the city or town's governing body. A.C.A § 19-11-802. Consult the *Arkansas Municipal League Handbook for Arkansas Municipal Officials* for additional information.

In order to meet all of the obligations and requirements outlined above, it will be helpful to understand the basics of accounting and the statutory requirements for municipal accounting. Below is a description of the statutory requirements for municipal book-keeping.

C. Accounting and Reporting

The duties of the city clerk or recorder and treasurer in accounting and reporting are governed by the Arkansas Municipal Accounting Law of 1973. (A.C.A. §§ 14

59-101 through 118). The essentials of this Act affecting the offices of clerk treasurer or recorder-treasurer are:

1. Bank Accounts - All municipalities and incorporated towns receiving state aid turnback of general revenues or highway revenues must maintain all funds in depositories approved for this purpose and in the name of the municipality, separating the bank accounts into general fund and street fund. (A.C.A. § 14-59-104).
2. Prenumbered Receipts - All funds received are to be formally receipted at the time of collection or the earliest opportunity by the use of prenumbered receipts or mechanical receipting devices (A.C.A. § 14-59-109). Please refer to the statute for additional details.
 - (a) If manual receipts are used the original receipt shall be given to the party making payment. One (1) duplicate copy of the receipt shall be maintained in numerical order in the receipt book, and this shall be made available to the auditors during the annual audit. Additional copies of the receipt are optional for the municipality and may be used for any legitimate purpose. (A.C.A. § 14-59-109).
3. If electronic receipting system is used, the system shall be in compliance with the Information Systems Best Practices Checklist provided by the Legislative Joint Auditing Committee. (*Id.*).
4. Prenumbered Checks - Electronic Fund Transfers. All disbursements in municipal funds, except those described herein and as noted for petty cash funds, are to be made by prenumbered checks drawn upon the bank account of that municipality. Such checks shall be of the form normally provided by commercial banking institutions and shall contain at least the following

information: date of issue, check number, payee, amount, and signature of two (2) authorized disbursing officers of the city. (A.C.A. § 14-59-105). In 1997, the General Assembly amended A.C.A. § 14-59-105 to allow for Electronic funds transfer (EFT) of municipal funds used for payments of salaries and wages of municipal officials and employees. The statute also allows for electronic disbursements to state and federal government entities and for other purposes if adequate controls and documentation exist and the Legislative Joint Auditing Committee has approved the method used.

5. Petty Cash Funds – Municipalities are permitted to have petty cash funds as long as the establishment of fund is approved by the city council. Paid-out slips should be prepared for each expenditure from this fund and signed by the person receiving the money and maintained in the petty cash fund record. (A.C.A. § 14-59-106). This fund should not be used to cash employees' personal checks, buy lunch for employees, or make personal purchases.
6. Fixed Asset Records – ACA § 14-59-107 requires that municipalities maintain certain records regarding fixed assets belonging to the municipality.

The governing body must adopt a fixed asset policy that, at minimum, shall set forth the dollar amount and useful life necessary to qualify as a fixed asset. All municipalities shall establish by major category and maintain, as a minimum, a listing of all fixed assets and equipment owned by the municipality. (A.C.A. § 14-59-107). Such listing must contain at least the following information:

- a: Property item number, if used by the municipality;
- b: Brief description;

- c: Serial number, if available;
- d: Date of acquisition; and
- e: Cost of property.

Additionally, the listing shall be totaled by category, and the categories shall include the major types, such as:

- a) Land;
- b) Buildings;
- c) Motor vehicles, by department;
- d) Equipment, by department; and
- e) Other assets

(Id.) It is not recommended that municipalities pass a resolution placing items with a value of less than five hundred dollars (\$500.00) on their Fixed Asset Listings. A sample fixed asset policy is included in the Appendix to this *Handbook*.

7. Cash Receipts Journal – All municipalities shall establish cash receipts journals or an electronic receipts listing (A.C.A. § 14-59-110), that shall include the major sources of revenue, such as:

- a: State revenues;
- b: Property taxes;
- c: Sales taxes;
- d: Fines, forfeitures, and costs;
- e: Franchise fees;
- f: Transfers in; and
- g: Other.

Prior to the repeal of A.C.A. § 14-59-112 and 14-59-113 in 2001, municipalities were required to keep separate journals for general funds and street funds. Given that general funds and street funds must still be kept segregated, it is still recommended that separate journals be kept for the two (2) types of funds.

8. Cash Disbursements Journal: All municipalities shall also maintain a cash disbursements journal or electronic register, which must include the major categories of expenditures, such as:
 - a: Personal Services;
 - b: Supplies;
 - c: Other Services and charges;
 - d: Capital outlay;
 - e: Debt service; and
 - f: Transfers out.(A.C.A. § 14-59-111).
9. Reconciliation of Bank Accounts -- All municipalities should reconcile all bank accounts on a monthly basis. This requires that all cash receipts and cash disbursements be balanced to the amount on deposit at the banks. The reconciliation shall be approved by a municipal officer or employee, other than the person preparing the reconciliation as designated by the chief executive officer of the municipality. (A.C.A. § 14-59-108).
10. Submission of Reports - Each municipal treasurer must submit a monthly financial report to the council or board of directors. (A.C.A. § 14-59-115).
11. Maintenance of Accounting Records - The city or town must maintain three

(3) groups of accounting records: (1) support documents (2) semi-permanent records, and (3) permanent records. (A.C.A. § 14-59-114). The support documents consist primarily of cancelled checks, invoices, bank statements, receipts, deposit slips, bank reconciliations, check book register or listing, receipts listing, monthly financial reports, payroll records, budget documents, and bids, quotes, and related documentation which shall be maintained for a period of at least four (4) years and in no event shall be disposed of before being audited for the period in question. (*Id.*). 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 shall be maintained for a period not less than seven (7) years and in no event shall be disposed of before being audited for the period in question. Permanent records consist of city or town council minutes, ordinance, resolutions, employee retirement documents, and annual financial audits. These records must be maintained permanently. (*Id.*). 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. (*Id.*) This affidavit must be signed additionally by one (1) member of the city or town council. The destruction of documents must also be approved by the city or town council and recorded in the minutes. (*Id.*)

12. Annual Publication of Financial Report -- The clerk-treasurer or recorder-treasurer is to prepare for the council's use and dissemination an annual financial statement of the municipality including the receipts and

expenditures for that period and a statement of the indebtedness and financial condition of said municipality. (A.C.A. § 14-59-116). The financial statement must be published one (1) time in one (1) newspaper published in the municipality and must be at least as detailed as the minimum record of accounts. The financial statement shall be published by April 1 of the following year. (*Id.*).

In municipalities where no newspaper is published, the financial statement shall be posted in two (2) of the most public places in the municipality. (A.C.A. § 14-59-116).

Additionally, the mayor of a city of the first class must prepare the following reports:

A.C.A § 14-43-504

(d) The mayor shall report, within the first ninety (90) days of each year and at such other times as he or she shall deem expedient, to the council the municipal affairs of the city and recommend such measures as may seem advisable.

This statute was amended to delete the language “at the second regular meeting” and to replace it with “within the first ninety (90) days.” Act 161 of 2009.

A.C.A § 14-58-302

- (a) The mayor of a first class city shall prepare and submit to the municipal governing body within the first ninety (90) days of each year a complete report on the finances and administrative activities of the city during the previous year.

This statute was amended to change the time period from 60 to 90 days by Act 161 of 2009.

The clerk-treasurer or recorder-treasurer should assist the mayor in preparing this report at least insofar as a description of financial activities is concerned. Basically, the annual report may be a compilation of the two (2) semiannual reports described above.

Clerk-treasurers or recorder-treasurers who also maintain the books of account for the water or sewer commission must follow a similar course of accounting and reporting, as provided in the *Arkansas Municipal Water and Sewer Department Accounting Law*, A.C.A. §§ 14-237-101 through 113. Basically these duties require bank accounts, prenumbered receipts, prenumbered checks, books of account and periodic reports in the same manner as the general municipal accounting laws.

Turning next to audits, A.C.A. § 10-4-403, enacted in 2005, establishes the basic audit provisions effective for Arkansas cities and towns. It gives the authority to the director of the Division of Legislative Audit to make audits of the records and accounts of all officers and employees of cities and incorporated towns. (A.C.A. § 10-4-403). A municipality may employ accountants of its choice to make audits.

A.C.A § 10-4-411. A certified copy of each such audit report shall be filed with the division.

One (1) copy of the audit must be filed in the office of clerk or recorder and shall be a public document and made available for the inspection of any interested taxpayer or resident. (A.C.A. § 10-4-422).

D. Miscellaneous Financial Matters

In addition to all of the foregoing, there are a great many other financial matters that municipalities must deal with: bond issues, various agreements with counties, boards, commissions, improvement districts and the like. Since these do not fit neatly into any of the above categories, they are discussed in this section.

1. Contractual Agreements Between Cities and Fire Protection Districts

Fire protection improvement districts may contract with a city or town to provide fire protection under A.C.A. § 14-284-122; § 14-284-223. For further detailed information refer to the *Municipal League Handbook*.

2. Reserving Local Funds for Future Improvements

Under A.C.A. §§ 14-73-101 through 104, local governments are authorized to enter into agreements to place funds in reserve for future construction or expansion of public improvements. The establishment of such a reserve must be authorized by a resolution of the governing body. (A.C.A. § 14-73-102). For further detailed information please refer to the *Municipal League Handbook*.

3. City Match into Firefighters' Pension Fund

Under A.C.A. § 24-11-816, municipalities and fire protection districts in which firefighters' pension and relief funds are established must contribute to that fund.

4. Alcoholic Beverage Tax

If your municipality has establishments that sell alcoholic beverages, it may levy supplemental taxes on those beverages pursuant to A.C.A. §§ 3-9-213 and 214. For more detailed information, please refer to the *Municipal League Handbook*.

E. Tips on Documentation

While the amount of information in this *Handbook* may seem overwhelming, particularly in the financial arena, a clear, orderly system of documentation can alleviate a great deal of confusion that might otherwise accompany the duties of the clerk, recorder or treasurer.

Suggested Bookkeeping Procedures for Clerk and Recorder-Treasurer

Daily

- (a) Write receipts.
- (b) Makes deposits.
- (c) Organize and file receipts for future retrieval. Keeping them organized on a daily basis will make the monthly and quarterly duties easier.

Monthly

- (a) Post cash receipts and cash disbursements journal (possibly more often if volume dictates).

- (b) Footnote and cross-footnote journal indicating monthly and year-to-date totals.
- (c) Reconcile bank accounts using cash receipts and cash disbursements journals and submit to council (during) meeting.
- (d) File invoices during month by fund.
- (e) Update fixed asset file, if applicable.
- (f) Pay and cancel invoices.
- (g) Compare budget to actual expenditures and income and inform mayor if adjustments are necessary.

Quarterly (first class cities only)

- (a) File report and detailed statement of the financial conditions of the city. (A.C.A. § 14-43-506).

Annually

Publish annual financial statements by April 1.

Also:

- (a) Annual report showing condition of firefighters' pension fund.
- (b) Reconcile fixed assets on hand to card file.
- (c) Issue W-2 and/or 1099 forms to employees.
- (d) Prepare budget. (To assist in this task, see *A Budget Manual for Small Arkansas Cities and Towns* from the Arkansas Municipal League.)

Suggested Bookkeeping Procedures for District Court Clerk

(See A.C.A. §16-10-209).

Daily

- (a) Enter receipt numbers on bank deposit slips.

- (b) Organize and file receipts for future retrieval.
- (c) Maintain partial payment cards current.

Monthly

- (a) Post cash receipts and cash disbursements journals (city and county cases).
- (b) Footnote and cross-footnote journals indicating monthly and year-to-date totals.
- (c) Identify balance remaining in the bank with receipts issued but not yet extended on the court report.
- (d) Summarize court reports at least monthly.
- (e) Make direct monetary settlement on or before tenth (10th) day of following month.
- (f) Reconcile bank accounts with copy going to presiding judge.
- (g) Reconcile control total for time payments with individual accounts.
- (h) List unpaid time payment accounts
- (i) Furnish copy to the presiding judge and police department.
- (j) Separate court report for all time-payment accounts paid in full. Monetary settlement due on tenth 10th day of following month. A.C.A § 16-10-209.

Quarterly

- (a) Reconcile individual tickets in completed ticket books to individual tickets as reflected on the arrest reports.

Court Date

- (a) Prepare and submit court report.

Suggested Bookkeeping Procedures for Police

Daily

- (a) Enter receipt numbers on all bank deposit slips and receipts with deposits made.
- (b) Post entries to the arrest reports (separate for county and city cases).

Monthly

- (a) Identify balance remaining in the bank with receipts issued but not yet entered on the arrest report.
- (b) Reconcile bank accounts, if applicable.

Most Frequent Audit Exceptions (Errors)

First Class Cities

- a. Cash disbursements journal not maintained for each separate fund.
- b. Journals not footnoted and cross-footnoted.
- c. Noncompliance with A.C.A. §§ 16-10-201 to 210. (*The Arkansas District Courts and City Courts Accounting Law*).
- d. Bank reconciliation not furnished to city council.
- e. Prenumbered receipts not issued for all items of revenue.
- f. City expenditures exceeded budget appropriations.
- g. Deposits did not contain range of receipt numbers.
- h. City entered into interest-bearing agreement.
- i. Firefighters' pension fund quarterly meetings not held.
- j. Mayor did not submit yearly financial report.
- k. Fixed assets record not maintained properly.

Second Class Cities

- a. Cash receipts journal not maintained on all funds.
- b. Cash disbursements journals not maintained on all funds.
- c. Bank reconciliation not prepared monthly.
- d. Journals not reconciled with bank statement monthly.
- e. Journals not cross-footnoted and maintained properly.
- f. Prenumbered cash receipts not used.
- g. Noncompliance with A.C.A. §§ 16-10-201 to 210. (*The Arkansas District Courts and City Courts Accounting Law*).
- h. Receipt numbers not entered in cash receipts journal.
- i. City did not publish financial statement.
- j. Firefighters' pension fund did not hold quarterly meetings.
- k. Fixed assets records not being maintained.

Incorporated Towns

- a. Bank reconciliation not furnished to town council along with a signed statement of compliance.
- b. Town did not publish financial report.
- c. Pre-numbered receipts not used.
- d. Journals not reconciled to bank statements.
- e. Cash receipts journal not cross-footnoted and maintained properly.
- f. Cash disbursements journal not cross-footnoted and properly maintained.
- g. Revenues deposited into wrong fund.
- h. Fixed assets records not being maintained.

- i. Noncompliance with A.C.A. §§ 16-10-201 to 210. (*The Arkansas District Courts and City Courts Accounting Law*).
- j. All invoices not retained.
- k. Separate journals not maintained for each fund.
- l. Prenumbered checks not used.

Legislative Joint Audit Committee Suggestions

Just as there are common mistakes, there are common suggestions that have been made by the Legislative Joint Audit Committee to help everyone avoid those mistakes.

- a. Write a receipt promptly, in duplicate, for every check received and for cash received, clearly showing the source of revenue on the receipt.
- b. Use a separate receipt book for general fund, for street fund, or any other special funds such as the firefighters' pension fund.
- c. Use pre-numbered receipt books.
- d. Give original receipt to a person or firm paying you in currency.
- e. Make bank deposits regularly so that all money received in any one (1) month will all be deposited before the end of that month. It is strongly recommended that you do not keep checks and cash on hand but make deposits frequently throughout the month.
- f. Use pre-numbered checks for each separate fund checking account.
- g. Establish a separate checking account for general funds, street funds and each pension fund.
- h. Pay invoices or statements promptly after approval to pay.

- i. Keep all paid invoices and statements filed in a separate file in date order or by vendor by fund.
- j. Post all entries in ink. You may use pencil for month and year-to-date totals in journals.

Do not do the following

- a. Mail a copy of a receipt to the state treasurer for the receipt of monthly turnback funds.
- b. Mail an original copy of a receipt to the payer unless asked to do so by the sender of the check. Keep original duplicate receipts intact in your receipt books.
- c. Pay both the invoice and the statement. This will result in a duplication of payment.
- d. Hold checks and cash (currency) on hand from one (1) month to another. This is not a good accounting procedure and you do not want to keep large amounts of cash on hand.
- e. Postpone posting of your revenues and expenditures.
- f. Destroy any paid invoices and statements. These must be filed because they substantiate your check payment. Also, they will be needed at time of audit.
- g. Enter into interest-bearing agreements such as purchase of a police car on an installment plan, (Ark. Const. Art. 12 § 4 & 16, § 1), for longer than five (5) years as authorized by Ark. Const. amend 78 § 2.

F. Other Activities

Some of the other financial & administrative activities of the clerk or recorder are described briefly below:

State Blanket Bond for Public Officials

Please refer to information provided in Chapter IV of this *Handbook* and in the *Municipal League Handbook*.

Pension Fund Duties

The city clerk or recorder is a member and is ex-officio secretary of the firefighters' pension and relief fund, in those cities where one has been established. (A.C.A. § 24-11-801). Expenditures and check signing authority is given to the chairman and to the treasurer, who is an ex officio member of the fund's board, even though the chairman and treasurer may not be the clerk or recorder. The secretary and treasurer of each board of trustees shall report annually, at the same time annual reports are required as clerk, recorder, or treasurer, the precise status of the firemen's relief and pension fund, showing all receipts and disbursements on account with a full and complete list of all beneficiaries of the fund and the amount paid each beneficiary. The city treasurer in cities of the first class is a member of the board of trustees of the policemen's pension and relief fund and serves as the treasurer of the board. A.C.A. § 24-11-405.

Depository Board

The city clerk or recorder serves on the municipal depository board, which decides from time to time where the municipal accounts shall be deposited. (A.C.A. § 19-8-

106(b)). The statute now provides, however, that the council may appoint another official to serve on the board.

Bond Issues

In Arkansas, bond issues are generally characterized as either *tax supported bonds* or *revenue bonds*. In most cases, a tax supported bond (such as with sales or property taxes) must be approved by voters whereas revenue bonds can be issued without an election. For more information on procedures in enacting a bond, please consult an attorney who practices in this area of the law. For more information on bond issues in general, see the *Arkansas Municipal League's Municipal Accounting Handbook*.

VII. PERSONNEL ADMINISTRATION

Arkansas law does not specifically stipulate that the clerk or recorder is to be the city's personnel officer. However, the clerk or recorder often serves in this capacity, as well as the many others that have already been mentioned. To the extent that Arkansas law requires the maintenance of employee records, the clerk or recorder, being the principal record keeper of the municipality, is the logical person to handle this task. Personnel administration also involves the arrangement of various forms of insurance, retirement, and other benefits which require paperwork and expenditures. Since the clerk or recorder administers check-writing and expenditures and maintains files and paperwork, this is the logical city official to handle records of employee benefits, although these duties may also be assigned to a human resources officer. The clerk or recorder may serve also as secretary of the civil service commission, although the commission's designation of this capacity is not mandatory. Finally, various auditors and federal monitors occasionally visit the clerk's office requesting the written personnel policies and procedures of the city and the city's records demonstrating compliance with federal law. Thus, the clerk or recorder should be assured that such policies have been prepared and that adequate records exist to reflect equal employment opportunities. Consequently, the present chapter on personnel administration is included in recognition of the increasing number of clerks and recorders who serve as personnel directors. This chapter deals with employee records system, fringe benefits, civil service, written personnel policies and procedures, and equal employment opportunity requirements. However, the subject of personnel law itself is too unwieldy a topic

to treat in detail here. Reference to materials published by the Arkansas Municipal League and other sources will provide a broader overview of the subject.

A. Employee Records System

The employee records system consists of the various employee applications, wage withholding forms, personnel files of current and former employees, insurance coverage, processing insurance claims and the delivery of retirement benefits.

Applications for employment should be in writing and on a standard application form developed by the city. In writing an application form remember the admonitions of the Equal Employment Opportunity Commission and other regulatory bodies that the application form, the questions and the city must be non-discriminatory. Also be aware that federal personnel law and regulations change periodically.

Be very careful not to store health or medical information in the personnel files! For purposes of this discussion, when the term "personnel file" is used, it refers to the file kept on every employee which includes things like application, tax information, and the like. If the term "medical personnel file" is used, then this *Handbook* is referring to a separate file which would include medical or health information, such as doctor's notes, diagnoses, and the like.

All written applications on the standard form should be retained in the city files for employees who are hired and applicants who were not employed. The files should be kept in the permanent records of the city. These records can answer questions

about the city's promotions of equal employment opportunities and may settle disputes arising over the city's rejection of a specific applicant.

The application forms of employees who are hired by the city should be kept in the personnel file of each employee. The personnel file, should also have the employee's description, classification and grade, compensation, sick leave and vacation leave, insurance claims, disciplinary actions such as reprimand, demotion, suspension and others and, ultimately, the date of separation, either voluntary, forced or by retirement. Note however, that a record of the employee's "sick leave," as mentioned above, should never include medical information. It is entirely permissible to have a note in the personnel file that an employee has 8.5 sick hours remaining, and quite another situation to have a note from that employee's doctor that says he or she sought treatment for a contagious disease.

The personnel records of employees should be easily accessible for adding information monthly or more frequently. The personnel files of former employees should be removed to a less active location, even to the city's archives. It is important in moving personnel files to an inactive area that the clerk have an index system alphabetically listing each separated employee's name, date of original employment, date of separation and type of separation, i.e. voluntary, involuntary or retirement.

The index should indicate by some type of identification system the location in the archives or inactive records of the individual's personnel file. One time-consuming activity of the city's personnel officer is in searching for old personnel records of

former employees to verify employment, to assist in processing social security claims and other present-day activities involving an individual who is no longer with the city. The index system indicating the location of each pertinent file will assist the clerk or recorder as personnel officer in retrieving old personnel files.

The third component of the employee records system is the paperwork in maintaining an adequate insurance program, i.e. workers' compensation, disability, medical; processing insurance claims; and handling the city's retirement benefits program. It is in this area that you are most likely to run across paperwork that may belong in the personnel file and may belong in the medical personnel file. Be very careful not to include medical information in the personnel file.

The paperwork and the procedures used by the clerk or recorder in dealing with insurance will vary somewhat from city to city. Differences arise from the type of insurance coverage, retirement programs and insurance carriers. Insurance reporting requirements differ and the processing of claims varies from company to company. Each company has its approved format.

B. Fringe Benefits

The term "fringe benefits" may be a misnomer since many of benefits covered here are mandated by Arkansas law. Others are optional with the cities. Together, however, they constitute what are commonly referred to as fringe benefits. Thus, this section pertains to workers' compensation, retirement, medical and other local option components of the employee benefits package.

Workers' Compensation

In the early 1970s the Arkansas General Assembly mandated that on or after July 1, 1974, the officials and employees of Arkansas municipalities covered for workers' compensation by the state of Arkansas for personal injuries and death arising from employment. The law was amended in 1985, when all municipalities were first required to provide workers' compensation coverage for their officials, employees and municipal volunteer firefighters. (A.C.A. § 14-60-101). Coverage must also be provided for losses incurred while performing work for the municipality. (*Id.*).

Pursuant to A.C.A. § 14-60-104, the Municipal League Worker's Compensation Trust was formed in 1985 to respond to the requirements of Act 866 of 1985. This self-insurance program for Arkansas municipalities is administered by the Arkansas Municipal League. The policies, procedures and activities are determined by the Arkansas Workers' Compensation Commission. The benefits are stipulated by Arkansas workers' compensation law.

Under workers' compensation law, the appropriate municipal official, often the clerk or recorder, shall file with their workers' compensation carrier within ten (10) days after notice of personal injury or death of an employee of the municipality, a report showing the date, time and place of such injury or death, and the circumstances and extent thereof, the name of the injured or deceased person and the names of all witnesses. (A.C.A. § 11-9-529). The report shall be made written on forms approved by the state Workers' Compensation Commission. Upon making an award to an employee the state Worker's Compensation Commission shall notify the affected employee and the municipality, which usually is represented by

the clerk or recorder. (A.C.A. § 11-9-704). It is very important that you begin processing the paperwork for Workers' Compensation claims on the day of injury, if at all possible. There is a five hundred dollar (\$500) penalty for each refusal to provide a timely report. (A.C.A. § 11-9-529).

Retirement Programs

If the municipality has an approved retirement program for its employees, the city clerk or its recorder likely serve as one (1) of the plan's trustees. The duties and responsibilities of the clerk or recorder are described in the retirement program's documents and should leave little or no doubt as to the duties of the clerk or recorder.

Arkansas law describes the clerk's or recorder's duties in administering a local police officers' or firefighters' pension and relief fund. Before the General Assembly enacted the Arkansas Local Police and Fire Retirement System in 1981, a city of the first or second class could have established a local fire and/or police pension and relief fund by majority vote of the electorate at a general or special election. A local pension and relief fund is funded by a one (1) mill tax levied on the assessed value of real and personal property. (A.C.A. §§ 24-11-404, 24-11- 812).

Under the most common form of *police* pension and relief fund still in use, the board of trustees consists of seven (7) members and is composed of the chief executive officer of the city as chairman, the city treasurer who is the treasurer of the fund, five (5) active or retired members of the fund elected by the active pension fund participants. (A.C.A. § 24-11-405). In cities where the clerk or recorder

is the "city treasurer," he or she serves on the board of trustees of the police pension and relief fund. (A.C.A. § 24-11-405).

Likewise, the clerk or recorder serves on the board as trustees of the *firefighters'* pension and relief fund. As stipulated by A.C.A. § 24-11-801, the board of trustees consists of the city chief executive, the city or district clerk or recorder and the chief of the fire department, together with four (4) active or retired members of the pension fund. (A.C.A. § 24-11-801).

The boards of trustees as described must provide for the disbursement of the relief and pension funds. As stated in the finance section of the *Handbook*, cities must match volunteer firefighters' contributions to the pension fund. (A.C.A. § 24-11-816).

The clerk or recorder is the *ex-officio* secretary of the board of trustees for the firefighters' pension and relief fund while the city treasurer is the *ex-officio* treasurer of the board of trustees. Thus, a clerk or recorder who serves on both boards may act as treasurer and secretary of the firefighters' fund board of trustees. Generally, the implications for the clerk or recorder are:

1. Meetings for the boards of trustees for the firefighters' pension and relief funds are called in a manner determined by the board. It must keep a record of its proceedings and that record is a public record. (A.C.A. § 24-11-802).
2. Arkansas law provides retirement benefits based on years of service or total and permanent physical or mental disability. (A.C.A. §§ 24-11-818 - 819).

3. Certificates of disability are necessary. (A.C.A. § 24-11-819).
4. Pensions are paid to dependents upon death of uniformed employees. (A.C.A. § 24-11-820).
5. Pursuant to A.C.A. § 24-11-805, funds in the trust may be invested in interest-bearing bonds of the United States, the state of Arkansas, the city where the board is located, and in certificates of deposit and time deposits in banks duly established and authorized to do business in the state of Arkansas and in savings and loan associations duly established and authorized to do business in the state of Arkansas. If fund assets exceed one hundred thousand dollars (\$100,000) the board of trustees may retain an investment advisor and invest assets as provided by (A.C.A. § 24-10-401 – 409).
6. Payments, annual financial reports, appeals and other administrative actions. (A.C.A. § 24-11-801). Clerks, recorders, and treasurers are urged to be thoroughly familiar with the content of the Arkansas Municipal League's *Handbook for Arkansas Municipal Officials* in regard to the firefighters' pension and relief fund and the police pension and relief fund. Mandatory actions are detailed and lengthy.

Group Medical and Hospitalization

Medical and hospitalization coverage including dental and vision is available through the Arkansas Municipal League and private insurance carriers authorized to do business in the state of Arkansas. The responsibilities of the city clerk or recorder as the chief administrative officer of the group insurance plan will be established in the city's agreement and in the papers established by the Municipal League or the carrier for the administration of the group plan.

Others

The city may have other types of fringe benefits and the clerk or recorder may be called upon to administer them or keep record of recipients. Other benefits might be group life insurance, accident disability or illness income continuation, leaves of absence for education and financial aid to employees approved educational pursuits. The responsibilities and activities of the clerk and recorder vary among cities with the additional fringe benefits.

C. Civil Service

The General Assembly has authorized Arkansas municipalities to establish civil service systems for its employees. Under A.C.A. §§ 14-51-1011 et seq., cities of the first and second class may establish civil service systems for their police and fire departments. (A.C.A. § 14-51-102; Act 530 of 1987, A.C.A. 14-51 (note)1). Cities of the first class having a population of twenty thousand (20,000) or more, but less than seventy-five thousand (75,000), may also establish a civil service commission for non-uniformed employees. (A.C.A. § 14-50-101). Although the city clerk or recorder does not serve as a secretary for these commissions, the clerk or recorder must frequently deal with them. Consequently a brief description of the civil service system follows.

Basic Advantages

The basic advantage in a city's establishing a civil service system is that it removes the opportunity for political abuse and exercise of a "spoils" system by the administration, governing body and to a lesser degree, city department heads. Additionally, it can create an atmosphere of equal treatment and impartiality in

regard to disciplinary measures due to the independent nature of the commission. Furthermore, the system can most likely increase the competence and quality of all affected city employees through the process of competitive examinations for hirings and promotions. Establishment of the civil service system can remove personal bias which might be expressed by supervisors of promotions, transfers or layoffs.

Basic Disadvantages

Civil service systems also have disadvantages and weaknesses. They reduce authority of the administration and the governing body over personnel matters to the point that their control is not comparable to their political accountability. For stability of personnel administration, it is important that the civil service commission maintain good relations and cooperation between the board members, the administration and the governing body. Establishment of the system can reduce the flexibility of the administration and governing body in their addressing particular personnel policies and procedures.

State law governing the civil service commission mandates features that might be undesirable, such as requirements for competitive examinations for initial employment and promotion. Employees are also prohibited from pursuing or becoming involved in political activity.

Implementation of the civil service system for non-uniformed personnel after the system has been established and operating for uniformed personnel might lead to a duplication of staff effort and other potential conflicts, possibly reducing the

efficiency of all city employees in the performance of their duties. Also, because it could increase the workload of the civil service commission and staff, additional staff may be needed.

Establishment of a Board of Civil Service Commissioners

By law, Arkansas cities of the first or second class may establish a board of civil service commissioners for the police and fire departments of their cities. (A.C.A. § 14-51-102). The board shall be composed of five (5) upright and intelligent citizens, although the governing body may, by ordinance, add two (2) more members to its civil service commission. (A.C.A. § 14-51-201). For cities having a population of one hundred thousand (100,000) or more persons the governing body, may, by ordinance, add four (4) more members to its civil service system. (*Id.*). If the city establishes a non-uniformed civil service system pursuant to A.C.A. § 14-50-101, the commission serving uniformed employees shall also be the commission for the system established for non-uniformed employees. (A.C.A. § 14-50-201).

D. Written Personnel Policies and Procedures

Every city or town should have written personnel policies and procedures, and this document should be specifically approved by the governing body. The Arkansas Municipal League publishes a *Sample Personnel Policy Handbook for Arkansas Cities and Towns*. Arkansas municipal officials are advised to continually monitor and update their handbook policy statements in order to ensure their continued viability from both a legal and employee relations standpoint. It is our recommendation that city officials and the city attorney conduct no less than an annual review of all personnel policies. This may be considered a burdensome

administrative task, but it could result in substantial monetary savings if it helps prevent just one lawsuit or administrative complaint from being filed against your city.

A special word about uniformed employees is appropriate. Uniformed departments are governed by numerous Arkansas state statutes. Consequently, municipal employers establish policies for uniformed employees which are different from the policies for non-uniformed employees. For state law governing uniformed police personnel, see A.C.A. § 14-52-101 – 113. For state law pertaining to employed firefighters, see A.C.A. § 14-53-101 – 112. The Arkansas Municipal League's *Understanding Personnel Law and Suggestions for Avoiding Lawsuits* discusses tips on writing employee handbooks; common mistakes in employee handbooks; and avoiding civil rights violations. The booklet also addresses the following personnel issues:

- Sexual Harassment;

- Drug and Alcohol Policies;

- Dealing With Intoxicated Employees;

- Complying with the Americans With Disabilities Act (ADA); Fair Labor Standards Act;

- Title VII; 42 USC §2000(e) et seq; Equal Pay Act of 1963;

- The Immigration Reform and Control Act; Rehabilitation Act of 1973;

- Age Discrimination In Employment Act (ADEA);

- Pregnancy Discrimination Act;

- The 1991 Civil Rights Act;

42 USC §1981, Civil Rights Act of 1866;
42 USC §1983, Ku Klux Klan Act of 1871.

Concluding Remarks:

If the city does not have written personnel policies and procedures, the mayor and city council should establish a committee of officers and employees to prepare them, providing necessary supportive and secretarial services. The clerk should assist the mayor and council in preparing a resolution or ordinance adopting the written personnel manual. The personnel director should supervise the printing, publication, and distribution of the manual, making certain that each new employee of the city obtains and signs for a personal copy. Personnel directors should file a sufficient number of copies in the public records to have them readily available to prospective employees, or authorized representatives of state, federal or relevant private entities.

Personnel law is a vast and rapidly changing area of the law. It is also a fertile field for litigation. Therefore, it is extremely important for the official(s) in charge of handling personnel matters to receive thorough and continuing training in personnel law and administration.

VIII. COMMUNITY DEVELOPMENT

The final chapter of the *Handbook* describes the clerk's or recorder's activities in support of community development. Communities grow and develop through annexation of surrounding territory, city planning and zoning administration, the formation of improvement districts for various purposes and the enforcement of various building and performance codes. These are described herein.

A. Planning and Zoning

Cities and towns are authorized to prepare comprehensive community development plans including the allocation and arrangement of future land uses; the designation and classification of various streets as major thoroughfares; the division of the city into zoning districts with the application of regulations pertaining to the development thereof; and prescribing rules for the subdivision and development of land within the jurisdiction of the city. (A.C.A. §§ 14-56-401 – 425). The duties of the clerk or recorder in the city's preparation of a comprehensive plan, including the zoning ordinance, and in administering the subdivision regulations and the zoning ordinance follow:

1. Before a comprehensive community development plan, zoning ordinance, or subdivision regulations may be adopted by ordinance of the governing body, at least one (1) public hearing shall be held for which a notice of public hearing is to be published in a paper of local general circulation at least fifteen (15) days prior to the date of the public hearing. (A.C.A. § 14-56-422). The city clerk or recorder may be responsible for publishing the notice and, *importantly*, for obtaining the editor's affidavit of proof of publication.

2. After the governing body's adoption of the ordinance, the clerk or recorder publishes it in a single issue of the newspaper of local general circulation, thereafter obtaining the editor's affidavit of proof of publication. (A.C.A. §§ 14-55-206; 16-3-104). If the zoning ordinance or subdivision regulations have been prepared in printed code document form, clerks need only publish the adopting ordinance and not the entire code. (A.C.A. § 14-55-206(b)). Many cities have experienced the court's canceling its zoning ordinance over inadequacies in the publication of the governing body's ordinance adopting it. Consult your city attorney or the legal staff of the Arkansas Municipal League to determine if the city is in compliance with the law.
3. Rezoning petitions and amendments to the city's zoning ordinance, once approved, are adopted through the same process of public hearing and ordinance or by a majority vote of the city council. (A.C.A. § 14-56-423). However, if the city ordinance or zoning code requires a public hearing process, then the city must obey its own ordinance. Often, the clerk or recorder receives the applicant's petition for rezoning request, and should assist in publishing the notice of public hearing in the newspaper at least fifteen (15) days before the scheduled planning commission meeting, if required. (A.C.A. §§ 14-56-422 & 423). The clerk or recorder should also assist in ensuring that the ordinance of the city council is in proper form, properly adopted and properly published thereafter. (*Id.*) As always, obtain the editor's affidavits of proof of publication on every publication. (A.C.A. § 16-3-104).
4. Periodically, the governing body may abandon and vacate public streets or

rights-of-way after a public hearing and adoption of an ordinance. (A.C.A. § 14-301-304). The clerk or recorder maintains a record of vacated or abandoned streets, rights-of-way and easements and, as discussed elsewhere.

5. The city's subdivision regulations stipulate the process through which plats are approved by the city planning commission and filed with the county recorder. (A.C.A. § 14-41-201).
6. The clerk may be called upon to receive filing fees and to file the approved plats for record in the county clerk or circuit clerk's office.
7. The clerk or recorder should maintain a record of appointments to the city planning or city planning and zoning commission, indicating each commissioner's name, date of appointment, and date on which the term expires.

B. Annexation

As annexation proceedings are highly technical legal proceedings, it is important to encourage any group of residents or municipal officials contemplating annexation of territory to retain legal counsel. Generally, Arkansas law authorizes various types of process for annexing territory to an incorporated city or town. These are explained in the Municipal League's publication, *"Municipal Annexation, Incorporation and Other Boundary Changes."*

It is apparent that the role of the city clerk or recorder is associated with all public hearings and ordinances of the city through publication of notices of hearings, assurance of adequate content and procedure on the ordinances, publication of

the ordinances, preparation of minutes, editor's affidavits of proof of publication and filing the permanent records of the city. The value of these services cannot be overstated. They are absolutely essential to the proper functioning of your city or town.

C. Code Enforcement

As described elsewhere in the *Handbook*, cities may adopt by reference various published or printed technical codes involving building, plumbing, electrical, fire prevention, housing, zoning and the like. (A.C.A. § 14-55-207). The adoption of these codes by reference means that only the city council's adopting ordinance must be read on three (3) separate occasions and published after adoption. It is not necessary or required to publish the entire code. However, Arkansas law requires that at least three (3) copies of the published code document be available in the clerk's or recorder's office after the city council's passage of the adopting ordinance. (A.C.A. § 14-55-206). Amendments to these laws, however, permit the use of electronic access to the documents.

Generally, the city staff will include a building permit or code enforcement official who will receive applications for building permits or permits under the electrical or plumbing codes. The city may have a collector receive such permit fees. However, many other cities will use the clerk or recorder to receive applications and fees for various permits. The procedure for issuing permits and for certificates of completion under the various codes are established by the particular code. Thus, the role of the clerk or recorder in code enforcement is to provide essential office support including collection of fees and filing of applications, petitions and papers

for the city employee who has been given the responsibility of enforcing various city codes.

Additionally, the clerk or recorder is to submit a report not less than annually to the county assessor describing all building permits issued during the year, indicating the name of the recipient, the street address and legal address, the type of improvement made, and the estimated amount of expenditure. (A.C.A. § 26-26-707). Although this report is required on at least an annual basis, most clerks and recorders feel that it is preferable to submit this report quarterly or monthly. Quarterly or monthly reporting is a way of avoiding the increased research necessary in preparing a yearly report to be transmitted to the county assessor.

Moreover, the census bureau requires periodic reports on construction activities within the community. The clerk or recorder is responsible for submitting these reports in accordance with the regulations and requirements attached to them.

D. Improvement Districts

Arkansas has a general improvement districts law which allows a majority of real estate owners within an area to voluntarily join for a common purpose of making certain physical improvements for their common benefit, to borrow funds therefor, to levy an assessment upon themselves in sufficient amount to retire the debt and interest; and to construct facilities, own, and maintain them. (*See generally*, A.C.A. §§ 14-88-201 – 212). The law is lengthy and allows other actions, but this is a generally adequate description for the clerk or recorder's perception of the activities associated with improvement districts.

The formation of an improvement district requires a petition prepared by the property owners bearing a majority of signatures presented to the clerk (A.C.A. § 14-88-203). When this event occurs, the clerk must verify the signatures purported to be a majority of owners of real property in the designated district for which a legal description is included in the petition. In making this certification, the clerk or recorder is expected to work with the proper county officials, including those in the circuit or county clerk's office, the assessor's office, and possibly the voter registration office to match signatures with property descriptions.

When the clerk or recorder has certified the correctness of a majority of signatures of property owners in the proposed district, the improvement district may be placed on the agenda of the next regular or special meeting of the council. The governing body conducts a public hearing, and the clerk or recorder will assist in publishing notice of the public hearing and obtain the editor's affidavit of proof of publication. (A.C.A. § 14-88-203). The governing body's ordinance establishing the district is read three (3) times on three (3) separate days unless the rules are suspended as described in Chapter III of this *Handbook*. (A.C.A. § 14-55-202). Generally, the ordinance establishes the district, confirms its purpose and names the trustees of the district. If the council adopts the ordinance, the clerk or recorder is responsible for publishing it in the newspaper of local general circulation, obtaining the editor's affidavit of proof of publication; and for filing the ordinance in the permanent records of the city. (A.C.A. §14-55-206).

After the improvement district is formed and begins to function, the clerk or recorder has no further responsibilities or required actions. The bonds and other

debts of the district are administered by the district's trustees, not by the municipality. The annual assessments that are used to retire the debt are placed on the real estate tax records of the county collector and remitted to the district's trustees. None of these funds are placed under the authority of the clerk, recorder's office or the city treasurer at any time.

Essentially, the role of the clerk or recorder is during the establishment phase of a private improvement district, i.e. receiving the petition, certifying that signatures of a majority of the property owners are on the petition, and in serving as secretary to the governing body at the public hearing and adoption of the ordinance establishing the district.

There may be other activities of a clerk or recorder of a community development nature, but those described above are the principal activities in which the majority of clerks and recorders will regularly participate.

APPENDIX

OF

FORMS

SAMPLE ORDINANCE

ORDINANCE NO.

[Title]

AN ORDINANCE LIMITING THE TIME OF PARKING ON MAIN STREET;
DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES

[Enacting Clause]

BE IT ORDAINED BY THE TOWN COUNCIL OF THE
INCORPORATED TOWN OF _____

[Command Clause]

Section 1

It shall be unlawful for any person to park a motor vehicle on Main Street between Third and Fourth Streets for the duration of more than one hour.

[Penalty Clause]

Section 2

Any person violating the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than \$1.00 but not more than \$25.00.

[Repealing Clause]

Section 3

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

[Emergency Clause]

Section 4

The congested condition of the parking area and the consequent practice of double-parking on Main Street between Third and Fourth Streets due to unlimited parking has resulted in a serious

traffic hazard which is dangerous to motor vehicle operators and pedestrians. An emergency is therefore declared and this ordinance being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage.

[Attestation]

DATED: _____

APPROVED: _____

Mayor

ATTEST: _____

Recorder

Ordinance No. _____

AN ORDINANCE ESTABLISHING A POLICY DEFINING FIXED ASSETS FOR THE CITY OF _____

WHEREAS, the Arkansas Municipal Accounting Law in Ark. Code Ann. section 14-59-107 requires all municipalities to adopt a policy defining fixed assets, including the dollar amount and useful life necessary to qualify as a fixed asset.

THEREFORE, BE IT ORDAINED:

SECTION 1. The term “fixed assets” as used in Ark. Code Ann. 14-59-107 shall be deemed to include such items of real and personal property belonging to the City with a cost or value of \$_____ or more and an expected useful life of at least _____year(s).

(Note: typically amounts might be \$500-1000 with a useful life of 1-2 years, however the council may establish other figures).

SECTION 2. The City shall maintain a Fixed Asset List as required by Ark. Code Ann. 14-59-107. The _(City Treasurer/Clerk-Treasurer/Recorder-Treasurer)____, shall be responsible for maintaining the list and keeping it updated. The list shall comply with the requirements of Ark. Code Ann. 14-59-107(b).

SECTION 3. Each fixed asset as defined in Section 1 of this ordinance shall be assigned a property item number by the _____, for use in listing the item on the City’s Fixed Asset Listing.

(Note: section 3 is optional. The city does not have to assign property numbers, but if it does, they must be included on the fixed asset record required by Ark. Code Ann. 14-59-107).

For a sample Fixed Asset Listing, see Appendix C to the *Municipal Accounting Handbook* published by the Arkansas Municipal League.

Petition for Initiative

INITIATIVE PETITION

To the Honorable _____

Secretary of State of the State of Arkansas, or County Clerk, or City Clerk

We, the undersigned registered voters of the State of Arkansas, or _____
County, Arkansas, or City of _____, or Incorporated Town of _____, Arkansas (as
the case may be), respectfully propose the following amendment to the Constitution of the State
or act or ordinance (as the case may be), and by this, our petition, order that the same be
submitted to the people of said state, or county, or municipality (as the case may be), to the end
that the same may be adopted, enacted, or rejected by the vote of the registered voters of said
(state, county, or municipality) at the regular general election to be held on the ___ day of _____,
20___, and each of us for himself or herself says:

I have personally signed this petition; I am a registered voter of the State of Arkansas, or
_____ County, Arkansas, or City of _____, or Incorporated Town of
_____, Arkansas (as the case may be), and my printed name, date of birth, residence, city
or town of residence, and date of signing this petition are correctly written after my signature.

(Here insert popular name and ballot title of initiated measure.)

(In the case of a proposed initiated act or ordinance, insert the following:

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS, OR _____
COUNTY, ARKANSAS, OR CITY OF _____ OR INCORPORATED TOWN OF
_____, ARKANSAS (as the case may be));

(Here insert full text of initiated measure.)”

[NOTE: A.C.A. § 7-9-104 states that all initiative petitions must be in a form substantially the same as the one listed above. Therefore, there is no need, for example, to include language relating to Acts of the General Assembly where the petitioners wish to challenge a municipal ordinance.]

Petition for Referendum

To the Honorable _____

Secretary of State of the State of Arkansas, or County Clerk, or City Clerk

We, the undersigned registered voters of the State of Arkansas, or _____ County, Arkansas, or City or Incorporated Town of _____, Arkansas, (as the case may be) respectfully order by this, our petition, that Act No. ____ of the General Assembly of the State of Arkansas, approved on the ____ day of ____, 20____, entitled ‘An Act ____’ or Ordinance No. ____, passed by the county quorum court, the city (or town) council of the City (or Incorporated Town), or County of _____, Arkansas, on the ____ day of ____, 20____, entitled, ‘An Ordinance ____,’ be referred to the people of said state, county, or municipality (as the case may be), to the end that the same may be approved or rejected by the vote of the registered voters of the state, or of said county or municipality (as the case may be) at the biennial (or annual, as the case may be, if a city ordinance) regular general election (or at a special election, as the case may be) to be held on the ____ day of ____, 20____; and each of us for himself or herself says:

I have personally signed this petition; I am a registered voter of the State of Arkansas, or _____ County, Arkansas, or City of _____, or Incorporated Town of _____, Arkansas (as the case may be), and my printed name, date of birth, residence, city or town of residence, and date of signing this petition are correctly written after my signature.

(Here insert popular name and ballot title of referred measure.)

REFERRED TO THE PEOPLE OF THE STATE OF ARKANSAS, OR _____
COUNTY, ARKANSAS, OR CITY OF _____ OR INCORPORATED TOWN OF
_____, ARKANSAS (as the case may be): (Here insert full text of referred measure.)”

[NOTE: A.C.A. § 7-9-105 states that all referendum petitions must be in a form substantially the same as the one listed above. Therefore, there is no need, for example, to include language relating to Acts of the General Assembly where the petitioners wish to challenge a municipal ordinance.]

PETITION VERIFICATION FORM

“State of Arkansas County of _____

I, (print name of canvasser), being duly sworn, state that each of the foregoing persons signed his or her own name to this sheet of the petition in my presence. To the best of my knowledge and belief, each signature is genuine and each signer is a registered voter of the State of Arkansas, _____ County, or City or Incorporated Town of

_____. At all times during the circulation of this signature sheet, an exact copy of the popular name, ballot title, and text was attached to the signature sheet. My current residence address is correctly stated below.

Signature _____

Residence _____

Indicate one: ___ Paid Canvasser ___ Volunteer/Unpaid Canvasser Subscribed and sworn to before me this ___ day of _____, 20___

Signature _____

Clerk, Notary, Judge, or J.P.

Seal _____”

[Source: Ark. Code Ann. § 7-9-109.] Note: this form is for use with both initiative and referendum petitions.

REFERENDUM ORDINANCE

ORDINANCE NO

AN ORDINANCE FIXING THE TIME FOR THE FILING OF REFERENDUM PETITIONS PROVIDED FOR BY AMENDMENT NO. 7 TO THE CONSTITUTION OF THE STATE OF ARKANSAS, AND FOR REGULATING THE PROCEDURE THEREON.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____

Section 1. All referendum petitions under Article 5 § 1 (formerly known as Amendment 7) to the Constitution of the State of Arkansas must be filed with the city clerk within thirty days after the passage and publication of such ordinance.

Section 2. Whenever any referendum petition is filed the city [clerk or recorder, as the case may be] will initially determine the sufficiency of the petition as provided in Arkansas Code Annotated 7-9-126 and Article 5 section 1 of the Arkansas Constitution.

Section 3. If the city council finds that such petition is signed by the requisite number of petitioners, it may order a special election or place the question on the ballot at the next municipal general election to determine by vote of the qualified electors whether the ordinance shall stand or be revoked.

Section 4. If any ordinance referred to the people is defeated at the polls, the city council shall make a note of such fact and shall expunge such ordinance from its files.

Section 5. If any provision of this ordinance is held to be void, that the same shall not affect the validity of the remainder, but the remainder shall stand.

PASSED: _____, 20__

APPROVED: _____

Mayor

ATTEST: _____

City Clerk or Recorder

(Note: A.C.A. § 14-55-304 gives a sponsor 60 days to circulate a municipal referendum petition, unless it concerns a municipal bond. The constitutionality of this statute is on appeal to the Arkansas Supreme Court as of this writing)