

# Project Manual

## Urban Planning for Arkansas Municipal Officials



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## Introduction

Municipal officials in Arkansas must be familiar with all aspects of running a modern city. This includes urban planning and the regulation of land use. While some officials may deal with these concepts only indirectly, others must deal with them on a daily basis. In either case, officials should understand the basics. Doing so may not only help the city avoid costly litigation, it will also build trust and confidence in the relationship between the general public and its municipal government.

This document sets out a basic description of the origins of planning and its place in municipal government. Once familiar with its contents, municipal officials will have an understanding of how planning will interact with their departments. They will also be able to understand the implications of decisions made by the planning commission and, ultimately, the governing body.

For staff members who work directly with some aspect of planning, zoning, subdivision regulation, or building code compliance, this document will only provide an introduction to your job. Additional experience and education will provide a more solid foundation with which to perform your designated tasks.

For other municipal officials, this guide will provide a sufficient background to permit coordination with aspects of urban planning that may affect their operations.

This document does not serve as a legal guide to planning. It refers to accepted legal practices and applicable state statutes as they are commonly interpreted by attorneys, but nothing herein should be construed as offering legal advice. If there should be any difference between procedural recommendations offered in this manual and those stated by your city attorney, the advice of your city attorney will apply.



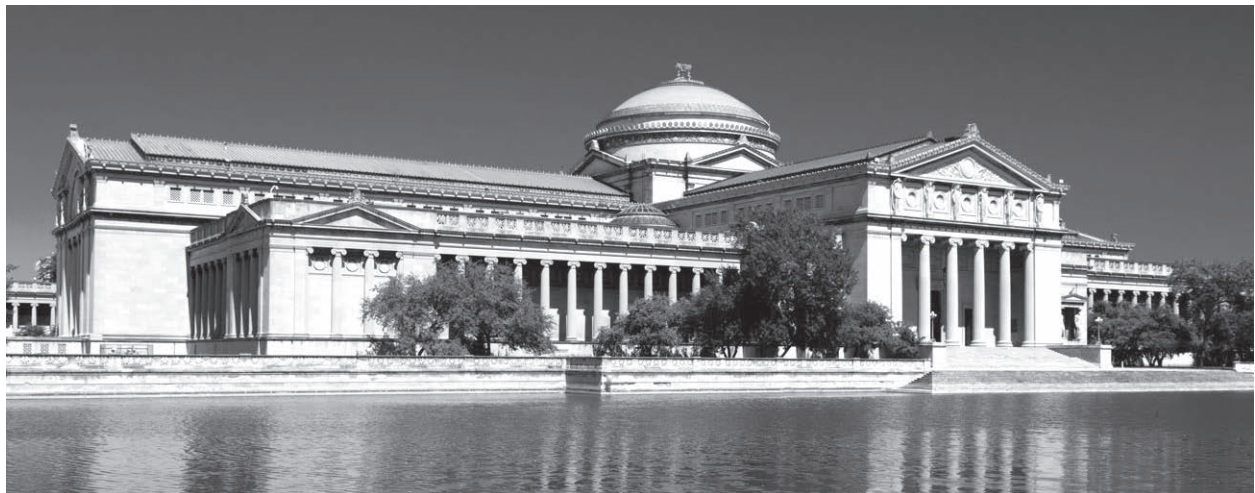
# I. Background

Humans have been preparing and implementing urban plans since earliest recorded history. The reasons for this vary. Sometimes people gathered in and planned cities for mutual defense. At other times, the objectives centered on trade and commerce. For whatever reason, the layout of cities often responded to some conscious need that people recognized as important.

In the United States, much of what we have come to define as urban planning grew from the reaction that people had to the Chicago World's Fair of 1893. Called "The Columbian Exposition," this fair celebrated the landing of Columbus in the new world. It featured, among many other attractions, the "Great White Way," a collection of classically inspired architectural wonders.

The sight of the impressive buildings within the fair stood in stark contrast to the image many Americans held of cities as dirty, noisy, diseased places covered in soot and coal dust and afflicted with all sorts of social ills. For the first time, many saw that American cities could be places of order and beauty. When visitors returned home, they began efforts to make their cities look more like the example set by the Chicago fair. This began the so-called "City Beautiful Movement," which still characterizes much of modern city planning efforts.

Planning efforts in modern Arkansas cities include more than simple beautification. They deal with a variety of subjects, including transportation, housing, the environment, public safety, economic development, and the provision of community facilities such as parks, libraries, fire stations, and schools. In fact, urban planning eventually touches almost every aspect of our lives.



The Palace of Fine Arts Building at the World's Columbian Exposition of 1893 is the only building remaining. It now houses Chicago's Museum of Science and Industry in Jackson Park.

## II. Authority

### General

The authority for cities to plan and to regulate land use derives from an old legal concept known as “The Common Law,” defined by *Black’s Law Dictionary* as “the body of law derived from judicial decisions, rather than from statutes or constitutions.”

So the common law has no statutory basis. It is, instead, based on tradition and precedent. Its usage is much more complicated and your city attorney can explain it in more detail. The important aspect of it for municipal officials is that common law establishes the right for cities to take actions that protect the health, safety, welfare, and morals of the community. This includes the activities associated with urban planning.

This should be the first thought in mind when considering plans or regulations that affect property rights. Does a proposal meet the test of protecting the health, safety, welfare, and morals of the community? Failure to meet this test may indicate a flaw in the planning process.

### In Arkansas

In Arkansas, cities of the first and second class and incorporated towns have the power to adopt and enforce plans for the coordinated, adjusted, and harmonious development of the municipality and its environs (Arkansas Code Annotated § 14-56-402).

### What It Means

In simple terms, this means your city or town may choose whether or not it wants to engage in planning and land use regulation. The State of Arkansas does not require it. However, if a community decides to engage in planning, it must do it in the same way as all other communities. Unfortunately, there are no simplified processes in the statutes for smaller cities. A city with a population of 2,000 must follow the same process as the largest city in the state. The following section addresses the steps a city in Arkansas must take in order to plan and administer land-use regulations.



**To Plan  
or Not to Plan.  
Your Choice!**

### **III. Planning in General**

Once a municipality in Arkansas has made a decision to engage in planning, there are a number of steps that must be taken in order to begin the process. There are also a number of concepts that elected officials must understand. This section outlines those as a general introduction to planning in our state.

#### **The Planning Commission**

The first step in this process is to establish, by ordinance, a planning commission. The planning commission has the broad authority to prepare plans for the city and its planning area. The legislative body of the municipality may create a planning commission of not less than five members, of whom at least two-thirds shall not hold any other municipal office or appointment except membership in the board of adjustment or a joint planning agency.

A city of the second class or an incorporated town may elect by ordinance to allow the city council to serve as the planning commission and board of adjustment (ACA § 14-56-404(a)(2)).

#### **The Planning Area**

One of the first things a planning commission must do is to establish a planning area map.

The planning area is the region for which the city will prepare plans, ordinances, and regulations. It may consist of the entire city's territorial jurisdiction or a portion of it. A city's territorial jurisdiction extends one to three miles, depending on population, beyond the city limits or half-way to any other city exercising its planning authority. When the jurisdiction of two cities overlap, they may, by mutual agreement, decide upon a planning area boundary between the two cities (ACA § 14-56-413).

It is important to remember that the authority to plan and enforce development regulations within the planning area applies to cities of the first and second class as well as incorporated towns that choose to engage in planning. Cities with populations above 8,000 and situated on navigable streams also have the authority to administer and enforce planning and zoning ordinances outside the city. So if your city does not fall within both these categories, it will not have any authority for zoning beyond the corporate limits.

## **The Planning Map**

After it is established, the planning commission will need to prepare a map showing the general location of streets, public ways, and public property. The map should also show the planning area boundaries. This map is called the planning area map. The planning commission will be in charge of maintaining and updating the planning area map. Once it has prepared a planning area map, the city must file it with the county recorder and keep a copy available in the city clerk's office.

The planning area map provides a number of benefits. Among those are:

1. It can designate the long-range master street plan for the area.
2. It can indicate the future location of needed community facilities such as parks and fire stations.
3. It can graphically display the city's long-range land-use intentions, i.e. policies.
4. It can provide a general idea of suburban areas that will become part of the city in the future.

Following preparation and filing of the planning area, the planning commission may proceed to prepare plans for that area.

## **The Plan**

The plans of the municipality should address the present and future needs of the community, promoting the safety, morals, order, convenience, prosperity, and general welfare of the citizens (ACA § 14-56-403) and should be reviewed on a regular basis.

Among other things, the plans may provide:

1. Efficiency and economy in the process of development;
2. The appropriate and best use of land;
3. Convenience of traffic and circulation of people and goods;
4. Safety from fire and other dangers;
5. Adequate light and air in the use and occupancy of buildings;
6. Healthful and convenient distribution of population;
7. Good civic design and arrangement;
8. Adequate public utilities and facilities; and
9. Wise and efficient expenditure of funds (ACA § 14-56-403(b)).

Cities are not limited to the nine areas above. The list is, however, an excellent place to start. It also provides an excellent checklist for making development decisions.



## **Form of the Plan**

The statutes do not specify the form in which a plan should be prepared. They simply specify certain steps that must be taken in order to prepare and adopt the plan. Since there is no prescribed form, plans have taken many forms over the years, from multivolume sets to simple brochures. The appropriate form is that which serves your city best. Over the last decade or so, plans have tended to be more compact and more visual than in the past. Also, most plan documents are now created for web access.

## **The Planning Period**

As with the form of the plan, there is no statutory requirement for the period to be covered by the plan. For years, a 20-year planning period was considered appropriate and is still used in many cases. Some cities, particularly those in high-growth areas or those in areas of the state being impacted by unique forces, find long planning periods impractical.

In reality, different elements of the plan may require different time periods. For example, the land-use element of a plan may require updating as frequently as every five years for some municipalities. Transportation facilities, on the other hand, take years to complete from the time they are first planned, so that element of the plan may project more than 20 years. The planning and construction of new community facilities may fall somewhere in between.

## **What Does the Plan Do?**

First, the comprehensive plan provides a “blueprint” for city growth. It outlines the manner in which the city will accommodate development or redevelopment. It should establish a vision for the ultimate form and purpose of the city. A well-done plan will regulate growth in a manner that is in the best interest of all its citizens. Further, the plan will provide valuable information to prospective residents and investors as they seek a stable environment in which to settle or do business.

Second, the plan identifies and analyzes the various growth issues facing the city. Ultimately, the plan will develop ways in which those issues can be resolved.

Third, the plan explains in greater detail how growth will be controlled and managed in a way that fits the economic resources of the city.

Fourth, the plan provides the foundation for regulations, including the zoning code and subdivision code. This is the most critical function of the plan since its adoption provides a basis upon which a municipality may exercise zoning and subdivision regulations. In other words, we plan first, and then we regulate.

Finally, the plan provides a rational basis for making land-use decisions. This is extremely important in an age of almost constant litigation. Your city attorney will be extremely pleased when the planning commission and city council make decisions based on the plan.

## What Does The Plan Not Do?

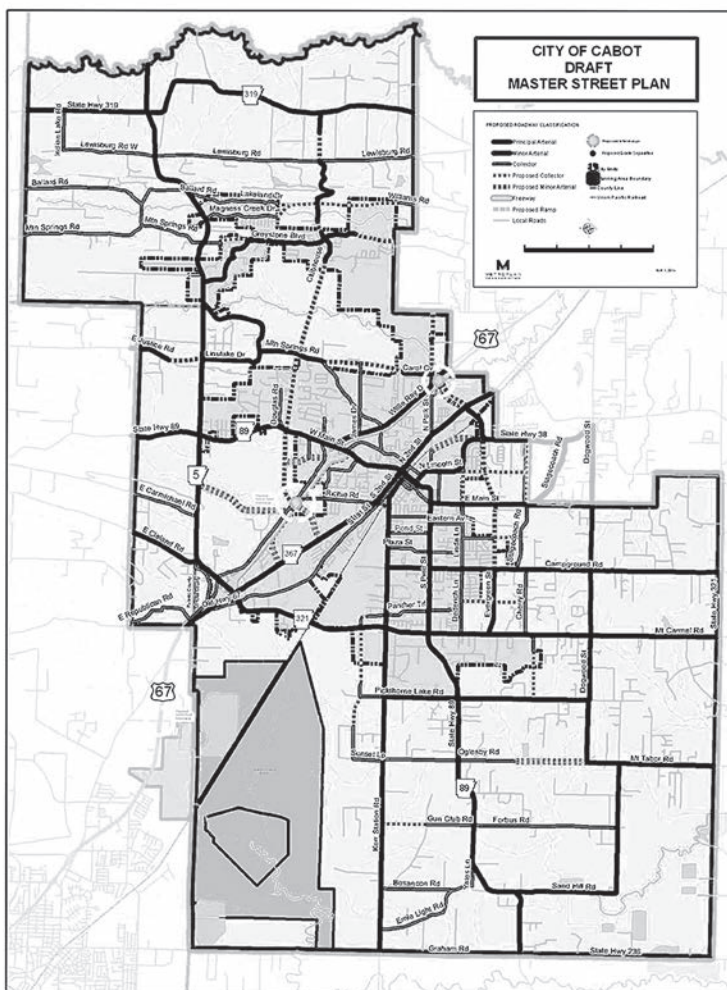
**The plan is not a legal document.** It is a policy document that sets forth the intention of the planning commission and city council regarding growth and development decisions.

**The plan is not a zoning code.** Its provisions are general and do not refer to specific properties. Following adoption and filing of the land use plan, the commission may prepare a recommended zoning code or ordinance for the entire area of the municipality to submit to the legislative body (ACA § 14-56-416(a)(1)). The zoning code does exercise legal authority over each individual property in the city.

**The plan does not cover all elements of government.** In most cases, the comprehensive plan adopted by the planning commission is not a “strategic” plan. Rather, it is an element of strategic planning for the city.

**The plan is not a magic cure-all.** It cannot solve all the problems of a community. In fact, it can solve very few problems unless it enjoys the full support of the planning commission, governing body, and residents.

**An important point:**  
We plan first, and then we regulate. Regulations such as the zoning and subdivision code should act to carry out or protect provisions of the plan. In this way, they meet the test of protecting the health, safety, and welfare of the residents.



Plans can take the form best suited for your city. The important thing is that you have one and follow it.

## **IV. The Planning Process**

Some steps in planning may be undertaken at the same time, such as setting goals and collecting data. It is important to reassess the goals frequently in light of new information. Public participation is appropriate in many, but not necessarily all, of the planning process steps. Public input will be beneficial in many phases of the planning process and will help make the plan unique to your city.

### **Identify Issues**

Consider issues facing residents, workers, property owners, and business people. Issues that may occur in the future and issues that may have regional, statewide and global impact are also important. Communication with people who will be affected by the plan is vital. Identify major development options open to the municipality.

### **Set Goals and Policies**

It is important to involve the public in this step since goals, objectives, and priorities will vary across the city. Each municipality will have its own set of priorities and values that need to be incorporated into the plan. A clearly stated policy document will provide a solid basis for preparing the plan.

### **Collect Data**

Data collection depends on which issues are important, what data is readily available, and the resources available for collecting data. Information about economic, social, and political structure is important to set goals. Information about the man-made and natural environment is also important. In this age of technology, much of the data necessary for good planning is available online. Nothing, however, can replace the simple act of talking to residents, business owners, and potential investors face-to-face.

Many sources of data exist with which a municipality can develop its plan. The following list includes a sample of these.

- The American Planning Association, Arkansas Chapter
- Google Maps
- Public and private utilities
- State agencies
- Census Bureau: [www.census.gov](http://www.census.gov)
- Planning and Development Districts and Metropolitan Transportation Offices
- Arkansas GIS Office: [www.gis.state.ar](http://www.gis.state.ar)
- Colleges and Universities

## **Prepare Plans**

Prepare plans that will achieve the goals the city has chosen. The comprehensive plan should address all of the planning area, plus adjacent lands that impact it. The subject matter of the plan should address all of the top priorities. The core of plan should address the history, population, economic activity, land use, and circulation patterns of the city. Specific elements of the plan may include topics such as land use, recreation, transit, fire protection, etc. Elements to consider include:

- Community services and facilities
- Parks and recreation
- Utilities
- Housing
- The natural environment
- Urban design
- Economic development
- Growth management
- Historic preservation
- Transportation

## **Draft Programs to Implement Plan**

When forming new programs, the city should consider costs to personal freedoms, monetary costs, and whether the programs achieve the city's goals.

Plan implementation programs can fall into the following categories:

10. Enactment and administration  
(zoning codes, subdivision codes, building codes, housing codes, etc.)
11. Project review  
(i.e., review of impact statements)
12. Programs undertaken by local government to provide public services  
(e.g., recreation programs)
13. Construction programs undertaken by local government  
(e.g., sewage treatment or land fill)
14. Construction programs undertaken by private individuals or firms  
(e.g., subdivisions or industrial development)

## **Evaluate Potential Impacts**

Analysis should include environmental impacts, the impact on the local economy, government finance, and the social consequences that would result from the plan and its implementation.

## **Review and Adopt Plan**

The intent of the plan is to be adopted by the local governing body as a commitment to a future course of action. Public education and public hearings are important at this step. The legislative body should understand the plan and its policies and must support it.

## **Review and Adopt Programs to Implement Plan**

This includes additional public education and hearings so that the public is fully notified before programs are officially adopted.

## **Administer Programs**

The regulatory documents need to be put into the administrative structure of the city in order to be used on a daily basis.

## **Review and Revise**

This is a continuous process of reviewing plans and programs and adjusting them to fit the changing needs of community.

# **V. Regulations To Implement The Community Plan**

Municipalities generally implement plans in a number of ways. Included in these are zoning codes or ordinances, subdivision regulations, and capital improvement programs. The first two are the major regulatory means of implementing plans. The third applies to programs and projects that will carry out the plan.

There are other codes and programs at the local, state, and federal level that aid in the achievement of plan goals.

## **Zoning Code**

Following adoption and filing of the land use plan, the commission may prepare for submission to the legislative body a recommended zoning code for the entire area of the municipality.

Note: Some cities adopt regulations through a zoning ordinance and some through a zoning code. Either is acceptable, and the choice may be left to the preference of your city attorney. In this document we use the word “code” to refer to the zoning document.

## **Rules for the Zoning Code**

- The zoning code shall consist of both a map and text.
- The zoning code may regulate: (1) the location, height, bulk, number of stories, and size of buildings; (2) density and distribution of population; (3) open space; (4) lot coverage; and (5) the uses of land, buildings, and structures.
- The zoning code may require off-street parking and loading.
- The zoning code may outline districts for large scale unified development with compatible uses. It may also allow the elimination of uses not in conformance with provisions of the zoning code and address other matters concerning the health, safety, and general welfare of the municipality, as is necessary.
- The zoning code shall include provisions for administration and enforcement.



- The zoning code shall designate districts or zones of such shape, size, or characteristics as deemed advisable.
- The regulations imposed within each district or zone shall be uniform throughout the district or zone.

### **The Board of Zoning Adjustment**

The zoning code shall provide for a board of zoning adjustment, which may either be composed of at least three (3) members, or the commission as a whole may sit as the board of zoning adjustment. The board shall have the following functions:

- Hear appeals from the decisions of the administrative officers in respect to the enforcement and application of the zoning code. The board of adjustment may affirm or reverse, in whole or in part, the decisions of the administrative officers.
- Hear requests for variances from the literal provisions of the zoning code in instances where strict enforcement of the code would cause undue hardship due to circumstances unique to the individual property under consideration. The board of adjustments may grant such variances only when it is demonstrated that the variance would be in keeping with the spirit and intent of the provisions of the zoning code.

The board shall not permit, as a variance, any use in a zone that is not permitted under the zoning code.

The board may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

Decisions of the board in respect to the above shall be subject to appeal only to a court of record having jurisdiction.

The board shall establish regular meeting dates, adopt rules for the conduct of its business, establish a quorum and procedure, and keep a public record of all findings and decisions.

Each session of the board shall be a public meeting. Public notice of the meeting and business to be carried on should be published in a newspaper of general circulation in the city at least one (1) time seven (7) days prior to the meeting.

The zoning code shall be observed through denial of the issuance of building permits and use permits (ACA § 14-56-416).

### **Zoning Code Pitfalls**

Pitfalls that can cause problems with the zoning code include:

- Strict separation of land uses without considering the context of a proposed development
- Using the same “default zoning” for all recently annexed land
- Developing an unmanageable number of zoning districts with little flexibility
- Reliance on the proposed use of the land during a re-zoning hearing
- Emphasis on exact land uses instead of suitability factors
- Failing to analyze regulations to make sure they promote the health, safety, welfare and morals of the community. Regulations that lower property values without clearly meeting this standard may invite legal challenge

## **Subdivision Regulations**

Following adoption and filing of a master street plan, the commission may prepare and administer, after approval of the legislative body, regulations controlling the development of land.

## **Development of Land**

The development of land includes, but is not limited to:

- The provision of access to lots and parcels;
- The extension or provision of utilities;
- The subdividing of land into lots and blocks; and
- The parceling of land resulting in the need for access and utilities.

## **Regulations**

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

- Information to be included on the plat filed for record
- Design and layout of the subdivision, including:
  - » Standards for lots and blocks
  - » Street rights-of-way
  - » Street and utility grades
  - » Other similar items
- Standards for improvements to be installed by the developer at his own expense such as:
  - » Street grading and paving
  - » Curbs, gutters, and sidewalks
  - » Water, storm, and sewer mains
  - » Street lighting
  - » Other amenities

The subdivision regulations may also do the following:

- The regulations may permit the developer to post a performance bond or other surety in lieu of actual installation of required improvements before plat approval.
- They may provide for the dedication of all rights-of-way to the public.
- The regulations may govern lot or parcel splits, which is the dividing of an existing lot or parcel into two (2) or more lots or parcels.
- No deed or other instrument of transfer shall be accepted by the county recorder for record unless it is to a lot or parcel platted and on file or accompanied with a plat approved by the commission.
- The regulations will establish the procedure to be followed to secure plat approval by the commission.
- The regulations will require the developer to conform to the plan currently in effect.
- The regulations may require the reservation of land for future public acquisition to use for community or public facilities indicated in the plan. This reservation may extend no more

than one (1) year from the time the public body responsible for the acquisition of reserved land is notified of the developer's intent.

- When a proposed subdivision does not provide areas for a community or public facility based on the plans in effect, the regulations may provide for reasonable dedication of land for such public or community facilities or for a reasonable equivalent contribution in lieu of dedication of land.

### **Other Issues**

In the area where the municipality intends to exercise its territorial jurisdiction as indicated on the planning area map, the county recorder shall not accept any plat for record without the approval of the planning commission (ACA § 14-56-417(c)).

Remember that the role of the Planning Commission in the review of subdivisions is an administrative one only. The sole function of planning commission review of subdivision plats is to ensure that the plat meets the minimum standards of the city's subdivision code. If it does, the Planning Commission has no authority to deny the plat. See *Richardson v. City of Little Rock Plan. Commn.*, 295 Ark. 189, 191-92, 747 S.W.2d 116, 117 (1988).

## Code Enforcement

Code enforcement provides another effective method of carrying out or protecting the provisions of a plan. Moreover, enforcing some codes is not an option for municipalities. For example, the Arkansas State Fire Code is adopted by state law and governs every property in the state. The name is somewhat misleading as the code is actually a state building code. It has replaced some of the traditional building codes such as the Southern Standard Building Code. Certain officials in the city, including the mayor and fire chief, are ex-officio deputies of the state fire marshal.

It is extremely important, therefore, that elected officials remain aware of implications of these codes and other state and federal mandates. Some of the critical codes, plans, and laws include the following:

- The Arkansas State Fire Code
- The Electrical Code
- The Plumbing Code
- Flood management programs
- Environmental laws
- Laws affecting the practice of religion
- Laws protecting persons with disabilities
- Laws affecting affordable housing
- Court decisions affecting regulatory takings

In addition to the above, new laws, standards, regulations, and so-called “unfunded mandates” periodically emerge from state and federal government. The conscientious elected official will remain aware of these. The Arkansas Municipal League will provide help and guidance along the way.

## New Challenges

With each session of either the state and national legislature, or each opinion of the federal or state supreme courts, rules may change for Arkansas cities in exercising the planning function of government. The Arkansas Municipal League strives to keep our cities and their city attorneys abreast of these through workshops and publications. Some important changes since the last publication of this publication bear special mention.

- **Annexation:** Although Arkansas municipalities still retain the power to annex new territory by election, petition, or (by ordinance) the annexation of enclaves, the legislature has added some new provisions to those processes. These appear in the League's handbook on annexation. Elected officials should remain aware of the provisions regarding annexation in any form.
- **Taking of Value:** A regulatory taking is one that removes all value from a person's property through the regulatory process. Courts have ruled against this and a city should seek legal advice if there are any questions as to it in its plans and subsequent ordinances.

Municipalities should also exercise caution in the partial reduction of the use of a person's property although it is generally allowed under controlled conditions. In some cases, a regulation creating a reduction in value of ten percent or more may result in legal problems. A major exemption for the city exists in regulations that are enacted under the so-called "Police Power" of the city. Merriam-Webster describes the police power generally as "The inherent power of a government to exercise reasonable control over persons and property within its jurisdiction in the interest of the general security, health, safety, morals, and welfare except where legally prohibited."

This should be a test for the city in adopting any zoning or development regulation. A careful legal review before adoption may eliminate potential problems in the future.

- **Signs:** A United States Supreme Court ruling, *Reed v. Town Of Gilbert*, 135 S. Ct. 2218 (2015) resulted in a major impact on the manner in which municipalities may enforce sign regulations. The impact involves the content and the description of signs as regulated by the city. The implications are far too complicated to discuss in this publication. Cities should be aware, however, that terms like "political signs," or "real estate signs" in a zoning code may pose legal problems. Planners and elected officials should seek legal advice on any aspect of sign regulations.
- **Residential Building Design:** Cities may not exercise many types of controls over the design of individual residential structures as per Act 446 of the 92nd General Assembly of the Arkansas legislature. This law prohibits cities from regulating many design elements, including, among others, minimum size, exterior color, type of siding, and architectural styling. Residences in historic districts and some others are exempted. This law does not apply to those regulations or ordinances affecting residential building design elements that were adopted by cities before February 2019. Municipal officials should seek detailed legal assistance in complying with this statute. Details may be found in the Arkansas Code Title 14, Chapter 56, Subchapter 2.







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