

Overview of the Process to Change the City Administrator Form of Government

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General Comments

- The comments set forth in this presentation are based on our interpretation of the governing provisions of law – primarily Article 5, § 1 of the Arkansas Constitution and the statutory provisions of Ark. Code Ann. § 14-48-105.
- Our comments are also based on a proposed petition to change the City’s form of government to the mayor-council form of government pursuant to Ark. Code Ann. § 14-43-201 et seq.



Governing Law

- Ark. Code Ann. § 14-48-105 addresses the procedure to change the city administrator form of government to another form of local government.
- Article 5, § 1 of the Arkansas Constitution addresses “Initiative and Referendum.”
 - It provides that “municipalities may provide for the exercise of the initiative and referendum as to their local legislation.”
 - Defines “measure” as “any bill, law, resolution, ordinance, charter, constitutional amendment or legislative proposal or enactment of any character.”
- Ark. Code Ann. § 7-9-101 et seq. addresses the petition and election procedures for initiatives, referenda, and constitutional amendments.
 - Applies to petitions on “measures,” which are either an: (1) amendment to the Arkansas Constitution; (2) act having state-wide implication; or (3) ordinance of a municipality, whether originating in the municipal legislative body or proposed by the electorate.
 - Because of the narrow definition of “measure,” Ark. Code Ann. § 7-9-101 et seq. is not applicable to a petition to change the form of government.

Petition to Change the Form of Government

To change form of government, there must be a petition:



signed by electors equal in number to 15% of the aggregate number of ballots cast for all mayoral candidates in the preceding general election; or,



Authorized by ordinance enacted by the Board of Directors.

Petition to Change the Form of Government

Substance and form of petition:

- It must identify a form of municipal government to which the City will change.
- The exact title to be used on the ballot must be submitted with the petition.
- Verification of person circulating petition.

Petition is submitted to the mayor.

When must a petition be submitted?

- Initiative petitions must be filed at least 90 days before the next regular election. Fort Smith Municipal Code, sec. 2-67.
- Referendum petitions must be filed by the close of business on the 31st day after the date of passage of the measure sought to be referred. Fort Smith Municipal Code, sec. 2-68.
- A petition to change the form of government can be presented at any time; however, date of presentment will affect the date of any special election on the petition.

After Petition submitted, what happens next?

- The city clerk's duties:
 - The sufficiency of all local petitions shall be decided by the city clerk. Ark. Const., Art. 5, § 1.
- Fort Smith Municipal Code, sec. 2-71:
 - The city clerk has 30 days to determine the sufficiency of the petition.
 - If the city clerk determines the petition is sufficient, the city clerk shall certify that determination to the petition sponsors and the board of directors.
 - If the city clerk determines the petition is insufficient, notice is given to the petition sponsors and the board of directors and the petition sponsors have ten days to correct or amend the petition. After the expiration of the ten-day period or resubmission (whichever occurs first), the city clerk must issue a final certification of sufficiency or insufficiency and provide notice to the petition sponsors and the board of directors.
 - The City Clerk's decision is final unless suit is filed within 30 days of the certification date.

After Petition certified, proclamation issued by the Mayor

- The mayor's duties:
 - The mayor, by proclamation, "shall submit the question of organization of the city under the form of government stated in the petition at a special election to be held at a time specified therein." Ark. Code Ann. § 14-48-105(b)(2).
- The proclamation must be published one (1) time.
- Notice of the election must be published one (1) time for two (2) weeks.
 - The first publication cannot be less than fifteen (15) days before the date of the election.

Proclamation

- The proclamation must be filed with the county clerk. Ark. Code Ann. § 7-11-203
- Contents of proclamation (Ark. Code Ann. § 7-11-204):
 - Date of the special election;
 - The full text of the measure or question for which the election is called;
 - The ballot title;
 - Any other information required by law.



Date of Special Election on a Petition

- The mayor's proclamation must be in accordance with Ark. Code Ann. § 7-11-201 et seq.
- Under Ark. Code Ann. § 7-11-205, all special elections are held on:
 - the first Tuesday after the first Monday in March (if that day is a legal holiday, then on the second Tuesday);
 - the second Tuesday of November (if that day is a legal holiday, then on the third Tuesday); or,
 - The second Tuesday of any other month, if necessary to comply with the requirements of Art. 5, § 1 of Arkansas Constitution.
- A special election cannot occur within seventy (70) days of the date the proclamation is filed with the county clerk.

Election on Petition

- Election conducted and results declared in the same manner as provided by law in respect to other city elections.
- The county board of election commissioners shall certify the results of the election to the mayor.
- The results of the election are conclusive unless suit is brought to contest the certification within thirty (30) days after results certified.
- If no suit filed, the mayor shall file certificates stating the proposition was adopted with the secretary of state and the county clerk.
- If the proposal to change the form of government is defeated, the question of adopting that same form of government cannot be resubmitted to the voters within four (4) years thereafter.
- See Ark. Code Ann. § 14-48-105(d), (e) & (g).

After Election on a Petition

- If a majority of the votes cast on the question are in favor of adoption of the proposed form of government, the city must proceed to the election of all of the city officials required by the laws governing the form of government adopted. Ark. Code Ann. § 14-48-105(f)(1)(A).
- The election of the city officials under the new form of government adopted shall be held at the next time provided for the election of city officials under the form of government adopted. Ark. Code Ann. § 14-48-105(f)(1)(B).

Required elections under mayor-council form of government

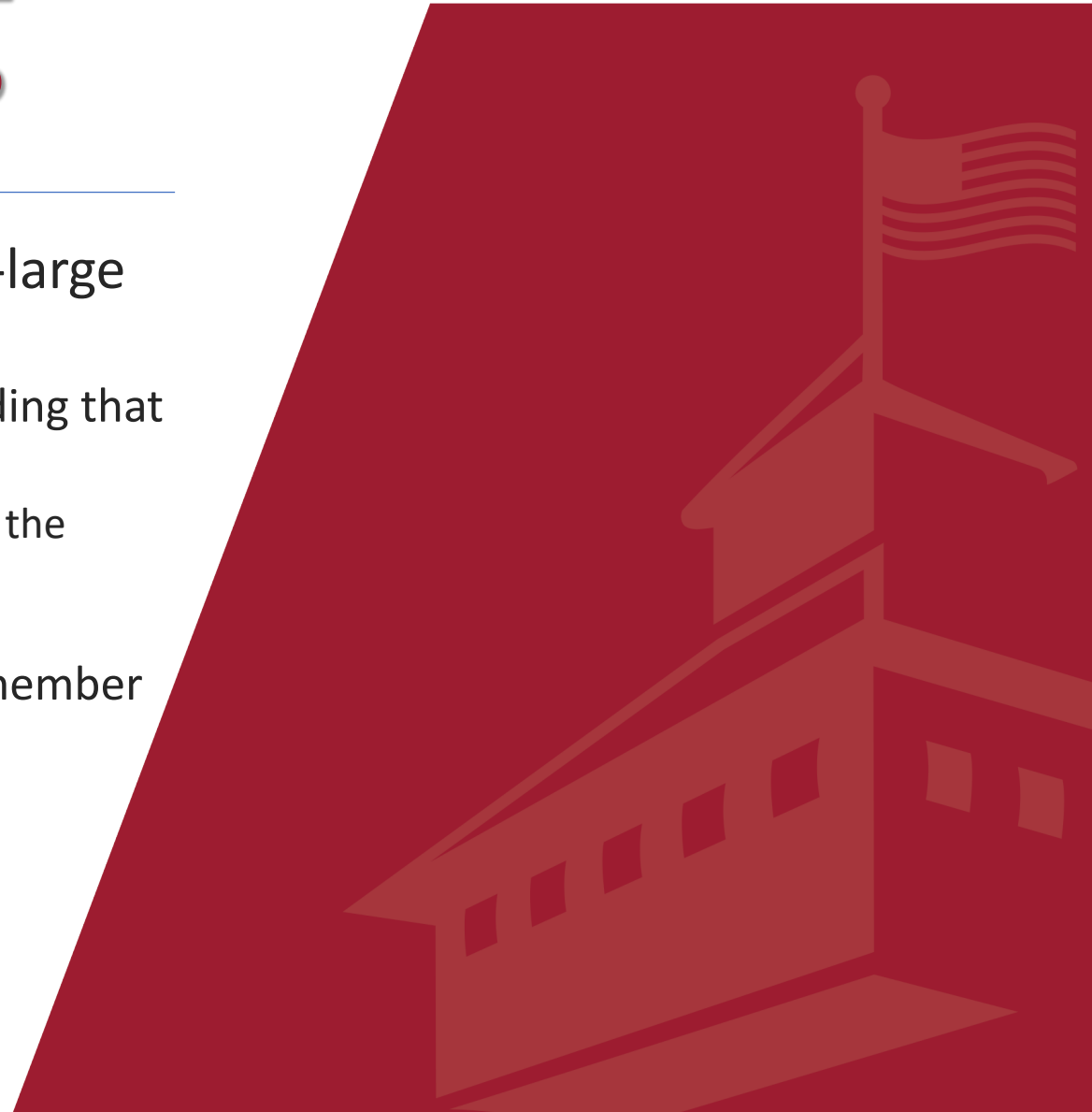
- Required elected officials in mayor-council city with population in excess of 50,000:
 - 1 mayor;
 - 1 city clerk;
 - 2 council members from each ward of the city;
 - 1 city attorney; and,
 - 1 city treasurer.
- All of the above officials hold office for a term of four (4) years.
- See Ark. Code Ann. § 14-43-303

Required elections under mayor-council form of government

- The election for the officials required under the mayor-council form of government would occur in the general election in November 2028. Ark. Code Ann. § 14-42-201(a). (Assuming voters approved change in form of government in November 2026.)
- Because council members must be elected every two years for staggered four year terms in each ward, one council member from each ward would serve an initial two year term.
 - That determination is “made by lot.” Ark. Code Ann. § 14-48-105(f)(1)(C)(ii).
- The initial term of the city attorney and city treasurer would be two years, unless the Board adopts an ordinance providing that the mayor, city clerk, city attorney and city treasurer shall be elected at the same election. See Ark. Code Ann. § 14-43-303(a)(2) & (3).

Council member positions – elected at large or by ward?

- All council member positions are elected on an at-large basis, unless:
 - the governing body of a city adopts an ordinance providing that council members shall be elected by wards; and,
 - Board of directors could adopt such an ordinance during the transition period or the city council could adopt such an ordinance after the transition is complete.
 - the governing body may provide for one ward council member to be elected at large and the other by ward.
- See Ark. Code Ann. § 14-43-307(a)(1) & (b)(1).



After the election of officials required in the mayor-council form of government.

- All officials under the city administrator form of government continue to serve until January 1, 2029.
 - No elections for board of directors at large positions in 2028.
- The officials elected to serve in the mayor-council form of government would take office January 1, 2029. Ark. Code Ann. § 14-42-201(b)
- On January 1, 2029, the term of office of all members of the board of directors and the mayor shall terminate and the transition to the mayor-council form of government is complete. Ark. Code Ann. § 14-48-105(f)(1)(C)(i).

Duties of Mayor in Mayor-Council Form of Government

- The mayor is the ex officio president of the city council and presides over council meetings.
- The mayor is entitled to vote to establish a quorum of the city council and is entitled to vote “when his or her vote is needed to pass any ordinance, bylaw, resolution, order, or motion.” Ark. Code Ann. § 14-43-501.
- The mayor is the city’s chief executive officer.
- The mayor shall: supervise the conduct of all the officers of the city; have and exercise the power conferred on sheriffs to suppress disorder and keep the peace; perform such duties compatible with the office as the city council may require.
- The mayor has the power of veto, that can be overridden by a vote of two-thirds (2/3) of all council members.
 - No veto power over appointment to fill vacancy of council-member position. Ark. Cod Ann. § 14-42-103(b)

Powers of City Council Generally

- The city council:
 - Possesses all legislative powers granted to it;
 - Manages and controls finances of the city; and,
 - Provides the times and places of holding its meetings, which are open to the public.
 - The mayor or any three (3) council members may call special meetings in the manner provided by ordinance.
- See Ark. Code Ann. § 14-43-502.

