

**Iowa Handbook for**  
**City Clerks &**  
**Finance Officers**

2024

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[1099s & W-9s](#)

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Amendment Public Hearing Notice - See [Budget Amendment Forms](#)

[Annual Exam](#)

[Annual Financial Report](#)

[Audit and Examination Preparation](#)

[Authorizing Payments in Advance of Council Approval – Sample Resolution](#)

[Background Check Authorization](#)

[Bidding Procedure Flow Chart](#)

[Budget Amendment Forms](#)

[Budget Forms](#)

[Budget Reports for Council](#)

Chart of Accounts - See [Uniform Chart of Accounts](#)

[Cigarette/Tobacco Permit Form](#)

City Clerk Calendar - [2024](#), [2025](#)

[City Finance Committee - Administrative Code \[545\]](#)

[City TIF Indebtedness Certification Form](#)

[Council Rules of Procedure - Sample](#)

[Depository Resolution - Sample](#)

[Election Manual](#)

[Group Health - IA Individual Health Benefit Reinsurance Forms \(Required by Code 513C.10\)](#)

[Group Health Insurance 509A Compliance Certificate \(fillable\)](#)

[Investment Policy Model](#)



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[Iowa Workforce Development Handbook for Employers](#)

Monthly Budgetary Report Sample - See [Budget Report for Council](#)

[Ordinances Required](#)

[Periodic Exam](#)

[Public Hearing Requirements](#)

[Reconciliation](#)

[Record Retention Manual](#)

[Red Flag Model Policy](#)

[Redbook - Iowa Alcoholic Beverages Laws & You](#)

[Resolutions Required](#)

[Resources: Agencies and Organizations Contact Information](#)

[RFP - Audit](#)

[RFP - Examination](#)

[Salary Publication of Gross Wages](#)

[Salary Resolution - Sample](#)

[Transfer Resolution - Sample](#)

[Treasurer's Report - Sample 1](#)

[Treasurer's Report - Sample 2](#)

Unemployment & Insurance Handbook for Employers - See [IWD Handbook for Employers](#)

[Uniform Chart of Accounts](#)

[Utility - Disconnection Handbook - IAMU](#)

[Utility - Disconnection of Service Handbook Forms - IAMU](#)

[Utility - Electric Utility Calendar of Annual Filings - IAMU](#)

[Utility - Gas Calendar of Annual Filings - IAMU](#)

[Zoning Responsibilities Table](#)

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# Forward

This is our regular update of the City Clerk/Finance Officers Handbook, which has been produced over many years with several editions released. In some ways, municipal governments do not change much as the core services they provide to citizens are in constant demand. In other ways, cities are continually evolving due to the changing nature of a community along with different regulations at the state and federal levels.

In recent years, the Iowa Legislature has adopted a host of significant changes to the property tax system that continue to have a direct impact on city governments. Other pieces of legislation have also altered how cities provide services to the public. This manual is up-to-date at the time of publishing, but readers should keep in mind that federal and state laws can be adopted at any time that may impact the way cities do business.

As a clerk or finance officer, there are responsibilities to providing effective and efficient services to those who govern and to those who are governed. It is the goal of this handbook to provide a unique resource, especially for those unfamiliar with governmental accounting and record retention requirements. It takes a great commitment by those willing to serve. To be complete, that commitment must include continuous learning and the fullest use of resources. This manual points out resources and trainings available to assist.

The Iowa Municipal Finance Officers Association (IMFOA) wishes to thank the many individuals who assisted with this handbook since it was first created as well as the many updates and editions. First and foremost to the Iowa League of Cities, whose staff is committed to providing professional up-to-date materials for this and many other valuable trainings and publications. In addition, we acknowledge the state agencies and other experts who have reviewed and made contributions to this revision. We appreciate their continued assistance and service to our cities.

This handbook is intended to provide assistance and guidance, but can never substitute for appropriate legal advice from an attorney. While the content will prove invaluable in providing an overall perspective and background on various tasks and issues involved in running a city government, nothing provided herein should be relied upon or used in substitution for the advice of competent legal counsel. It is with great respect for the profession and those who serve that we publish this handbook as a valuable resource to Iowa's city clerks and finance officers.

Tricia Meiers  
President, Iowa Municipal Finance Officers Association

Alan Kemp  
Executive Director, Iowa League of Cities

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## ***Disclaimer***

The *Iowa Handbook for City Clerk/Finance Officers* released in 2024 is designed as a guide for city clerks, finance officers and other personnel in their municipal duties. Every effort has been made to insure this publication is accurate and up-to-date at time of printing. However, the Iowa League of Cities cannot assume any liability for errors or omissions.

This Handbook is presented as informational and a guideline for operations based on federal, state and local laws. The information is not intended to be, nor should it be construed as legal advice or opinion. The reader should consult with a city attorney for any legal advice or opinion on the subject matter.

# Chapter 1

## Municipal Government in Iowa

Municipal government in Iowa was formed by events of the past and continues to evolve. In 1968, the voters of Iowa approved passage of the Home Rule Amendment to the Iowa Constitution. Then in 1972 additional legislation authorized municipal actions and the following guidelines:

1. “A city may exercise its general powers subject only to limitations expressly imposed by a state or city law.”
2. “An exercise of a city power is not inconsistent with a state law unless it is irreconcilable with state law.”
3. “A city may not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.” *Code of Iowa Sections 364.2 and 364.3.*

### Home Rule

Home Rule allows a city to exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort and convenience of its residents, unless it can be shown that a law of the Iowa General Assembly clearly prohibits it from acting.

In its basic form, home rule authority means that a city can pass any law that is not contradictory to state and federal law or the Constitution, but there are additional limitations. A city in Iowa has little control over how it taxes its citizens and must follow specific laws that govern who is taxed, how much and how often. Additionally, a city must limit its actions to local affairs. It cannot pass a law that is not within its scope of authority. For example, it cannot pass a law that limits the speed limit on the Interstate, as that is regulated by the state government. Lastly, the ability of cities to regulate within their boundaries is also impacted and limited by court decisions and legislation passed at the state and federal level. For a more detailed explanation of Home

Rule refer to the Iowa League of Cities “*City Home Rule Special Report*” at [www.iowaleague.org](http://www.iowaleague.org).

### Forms of Government

Cities in Iowa have different forms of government. Most are outlined in *Code of Iowa* Chapter 372. The form of government sets the structure of the city government and may define specific roles and responsibilities for different officials, the number of council seats, terms of office and other factors.

The Mayor-Council form of government is by far the most common form in Iowa with more than 900 cities having this structure. The Mayor-Council form typically has five council members with those elected at-large or by ward, as defined by city ordinance. The number of council members can be increased by following a specific process, or in the case of very small cities, decreased to three (*Code* Section 372.4). The councils under this form of government can create the position of city administrator or manager by ordinance.

Some cities in Iowa have the Home Rule Charter or Special Charter form of government (see *Code* Chapter 420 and Section 372.9). In these forms the city defines the organization and structure of their city in a charter document that must be approved by the voters. A number of cities in Iowa have the Council-Manager-At-Large or the Council-Manager-Ward forms of government (see *Code* Section 372.6). Both forms set specific requirements for the creation of the position of city manager and description of duties and authorities of the city manager position. Differences in the two forms are based on the number of council members and whether they are elected at-large (meaning from the entire city) or by ward (meaning from different geographic segments of the city as determined by city ordinance).

The Commission form of government is also an option in Iowa (see *Code* Section 372.5). This form creates departments of the city, such as the Department of Public

Safety and the Department of Parks and Recreation, and sets that the mayor and council are elected to administer the different departments. Currently no cities in Iowa have this form.

The last two forms of government to discuss are the consolidated forms. *Code* Sections 331.247-331.252 set forth two types of consolidated government, the City Council Consolidated form and the Community Commonwealth form. These are forms that involve merging county and city services or city and city services together in one metropolitan area. Iowa currently does not have any consolidated governments of this type.

The process to change from one form of government to another is described in Iowa law. If the city receives a petition from citizens to change the form of government, they hold an election on the matter. A city can only change their form of government once every six years; in reality, it happens much less frequently.

## City Regulation

Cities have the authority to regulate much of what occurs within their boundaries, particularly in light of the Home Rule Amendment as discussed previously. There are certain powers granted to cities through state and federal law. There are certain issues where state and federal law are silent, and localities have stepped forward to regulate due to the need within their community. *Code*

Chapter 364 describes some of the powers conferred to cities by state government. Examples of this include allowing cities to require citizens to connect to sewer systems and require the abatement of nuisances. Additionally, cities can regulate land use by adopting zoning ordinances as described in *Code* Chapter 414. They can regulate businesses in different ways, such as restricting where businesses can locate and requiring licenses of certain businesses. Furthermore, cities can take measures to regulate circumstances they deem as unsafe to the citizens, such as animal control.

### Procedure for Regulation

As mentioned, city regulation must be determined in the context of existing federal and state law. Occasionally, existing law preempts or prohibits cities from taking certain actions. For example, although a city may want to clean up a feedlot located inside its borders, state law preempts cities from defining a feedlot as a nuisance. The Iowa Constitution may also play a role as well as the *Iowa Administrative*

*Code* (IAC). The IAC, which are rules set forth by a state government agency to carry out a law passed by the state legislature, may stipulate a specific process the city must follow in certain circumstances.

### Legislative Action: Motions, Resolutions and Ordinances

To enact a regulation the city must take certain official action at a public meeting. There are three basic types of action a city takes: motions, resolutions and ordinances as described in *Code* Chapter 380. The process to undertake these actions is described in Chapter Three of this manual.

Motions are the most administrative type of legislative action a city can take. Motions are used for routine business of the city such as approving meeting minutes and directing city staff to take action.

Resolutions are statements of policy. A resolution is also sometimes required by state law to take certain actions. Examples of resolutions might include a resolution setting wages and benefits for city employees or a resolution adopting an investment policy for city funds. (For a complete listing of required resolutions, [see Resolutions Required.](#))

Ordinances are a law of general and permanent nature in the city. Examples of ordinances might be a zoning ordinance or defining a property nuisance in the city.

### Enforcement of Regulations

Cities can take different actions to enforce their ordinances. One type of enforcement method is a municipal infraction. The process to establish and enforce a municipal infraction is defined in *Code* Section 364.22. Municipal infractions are civil, monetary penalties and must be established by ordinance. State law sets the maximum amount of the penalty as \$750 for first offense and \$1000 for each subsequent offense. Cities can set their penalties lower but not higher.

### Municipal Infractions

Municipal infractions are written as a ticket and often require a court appearance to resolve the issue. Such infractions are often used for nuisance violations. Cities can use them for other municipal code violations as well. Cities can also establish fines for other municipal code violations by ordinance. An example of this would be parking fines. State law does restrict what cities can charge for parking fines in *Code* Section 321.358.

### **Abatement**

Cities can also enforce their regulations by establishing abatement ordinances. This would require the abatement, or ending, of a particular situation that violates the city code. Abatement procedures are enforced by giving proper notice to the violator and providing for due process where they can be heard on their objections to the action.

The most common example of abatement is nuisance abatement. Cities may define certain conditions to be nuisances, based on the state definition found in *Code* Chapter 657. To proceed with the abatement process, a city would give proper notice to the violator and request that they clean up their property or take action that would eliminate the nuisance situation or that they request a hearing on the matter. After a certain time, if no action is taken, the city may take action to abate the nuisance and bill the property owner or assess it to their property in the same manner as a tax.

### **Boards and Commissions**

Cities have a variety of boards and commissions. These governmental bodies are created to carry out specific tasks, study a topic and make a report or recommendation to the council or oversee specific operations of the city. Boards and commissions are sometimes created by state law, while others are put in place by city ordinance or are created for a short task by the council. If created by city ordinance it should set forth: the duties of the members, their powers, funding source (if applicable), the frequency of reports to the council and term of office. Additionally, it should state how appointments or renewals are made, such as whether the mayor or council has such authority.

#### **Specific Boards and Commissions**

There are several boards and commissions that are common to city government. Listed here are a few common boards and commissions that are created by state law and subject to the open meetings law, *Code* Chapter 21.

#### **Library Boards**

Many cities have municipal libraries, a vital part of their service to the community. A city may establish a library board as designated in *Code* Section 392.5, and the board has some authority that is autonomous from that of the city council. Although the council still determines how much money from the city budget will be allocated to the library, the library board controls the expenditures. Additionally, the board controls the expenditure of all gifts, devises and bequests to the library. By virtue of this unique

relationship (the city council determines the total amount of funding the library will get from the city, the board of trustees controls how it is expended) the board, city council, library and city administrative staffs must work closely and cooperatively to ensure all budget and legal compliances are met.

After the board approves library bills in the general operation of the library, the library director should coordinate information with the city finance officer to ensure the bills are added to the list of claims provided to the city council and published. This ensures the expenditures are published in accordance with state code requirements (see *Code* Section 372.13(6) on publication of all claims and definition for each fund) and the general ledger and budget ledger are kept current. While this is not mandated, both the Auditor of the State and the State Library of Iowa encourage this method. As with any other department, the library cannot spend more than has been allocated unless the budget is formally amended. Accordingly, the library and the city must work together to determine whether a formal budget amendment is required to account for possible expenditure overages or unanticipated revenues. It is often beneficial for the city council to receive a monthly or quarterly financial report from the library board to help ensure the library's budget is fiscally sound.

Regarding the appointment of the library board, the city should have an ordinance on file that describes the appointment and terms of the library board. Any attempt to change the structure, powers, duties or terms of the library board must be submitted to the voters of the community.

#### **Planning and Zoning Commission**

If a city has adopted a zoning ordinance it must also appoint a planning commission (commonly called the planning and zoning commission) and a zoning board of adjustment, as specified in *Code* Chapter 414.

“Planning and Zoning and the Board of Adjustment” presents a more detailed discussion of the zoning process in Chapter 8 of this manual.

The planning and zoning commission is an odd-numbered body appointed by the city council. The *Code* spells out two specific responsibilities for the commission related to the development and maintenance of the zoning ordinance. First, it has the responsibility for overseeing the preparation of the zoning ordinance and making recommendations to the city council regarding its adoption. Usually the planning

and zoning commission works in the preparation of the ordinance with a consultant, council of governments or the city's own staff, who handles the technical details of ordinance drafting. Second, the *Code* provides that after the initial adoption of the zoning ordinance the commission must provide review and make recommendations to the city council regarding any proposed change to the map (a rezoning) or the text of the ordinance.

The city's zoning ordinance also spells out specific responsibilities for the commission. These generally involve reviewing and providing recommendations to the city council on a variety of development processes, including planned unit developments and major site development plans. Some zoning ordinances give the planning and zoning commission responsibility for providing recommendations to the board of adjustment on special exceptions, and occasionally variances. The city's subdivision ordinance also often gives the commission the responsibility for reviewing and providing recommendations to the city council on preliminary subdivision plats.

The planning and zoning commission also plays an important role in developing land use policy that goes well beyond the duties outlined in the *Code* and the zoning ordinance. Some of the most common tasks include assisting in the preparation of the comprehensive plan and other functional plans, and reviewing and making recommendations on Tax Increment Financing districts, Urban Renewal districts, and Self-Supported Municipal Improvement districts.

### **Board of Adjustment**

*Code* Section 414.8 requires that the zoning board of adjustment be a five-, seven- or nine-member board appointed by the city council to serve staggered terms. A majority of the membership must be "persons representing the public at large and shall not be involved in the business of purchasing or selling real estate."

The duties of the board of adjustment are limited to the three spelled out in *Code* Section 414.12 (and explained in greater detail in Chapter 8): (1) Appeals of decisions of the zoning administrator, (2) decisions on applications for special exceptions – also known as conditional uses or special uses – and (3) decisions on applications for variances.

Administratively, the board of adjustment is a forum of last resort. The only appeal from the decision of the board of adjustment is to the court system. In too many cities, however, this has led to the mistaken assumption that the

board of adjustment is the final authority on almost all zoning matters. Individuals will go to the board any time they feel the ordinance is "too strict." In reality, the board's duties are limited, and it is bound by strict criteria found in the zoning ordinance that define the limits of its authority to grant special exceptions and variances.

### **Utility Boards**

Many cities have municipally owned and operated utilities, such as water, sewer, stormwater, electric, natural gas, internet or cable television. Those that have utilities have the council make decisions regarding the administration of that utility or the city may establish a utility board. This board would be appointed in a manner determined by the city's ordinance. According to *Code* Section 388.4, "A utility board may exercise all powers of a city in relation to the city utility, city utilities, or combined utility system it administers, with exceptions." They may not certify taxes to be levied, pass ordinances or amendments or issue general obligation or special assessment bonds. The title to all property of a city utility or combined utility system must be held in the name of the city, but the utility board has all the powers and authorities of the city with respect to the acquisition by purchase, condemnation, or otherwise, lease, sale, or other disposition of such property, and the management, control, and operation of the same, subject to the requirements, terms, covenants, conditions, and provisions of any resolutions authorizing the issuance of revenue bonds, pledge orders, or other obligations which are payable from the revenues of the city utility or combined utility system, and which are then outstanding. Each year the board must make a detailed annual report with a complete financial statement to the council.

Although there are no legal requirements for the clerk to serve as secretary of the various boards and commissions, in many communities the clerk by ordinance is designated as the secretary. These meetings are also subject to *Code* Chapter 21 as it relates to requiring public access, agendas and minutes. In a city of less than 75,000 population which also has a civil service commission, the city clerk or designee of the city clerk is required by law to serve as clerk for the civil service commission. In cities over 75,000 population, the commission shall appoint a clerk of the commission (*Code* Section 400.4).

The clerk can serve as a coordinator among the boards and commissions and act as a "go-between" for the council and the boards and commissions. Through attending the meetings of the various boards and commissions, the clerk can be a valuable source of information and assistance.

### **Administrative Agencies**

If the council wishes to establish an administrative agency, it shall do so by an ordinance which indicates the title, powers and duties of the agency, the method of appointment or election, qualifications, compensation and term of members, and other appropriate matters relating to the agency. There are restrictions on the types of authority that the council can delegate to an administrative agency. In certain cases, the council may not delegate to an administrative agency any of the powers, authorities and duties related to financial and property transactions. Airport and hospital commissions, for example, have special authority and must be reviewed for their unique circumstances. Again, these agencies are subject to the open meetings laws, but are not required to publish the minutes like the council.

### **Intergovernmental Relationships**

City government does not operate in a vacuum. It is impacted and limited by federal and state laws. These regulations place limits on a city's ability to exercise home rule. Intergovernmental relations are important, not only relationships between different levels of government, but also relationships between local government entities. For decades, in order to accomplish many tasks and maximize services while achieving savings, local governments have worked together. Cities have joined forces with nearby cities, townships, county governments, schools and others to accomplish a variety of tasks.

To formalize agreements, cities and other local governments utilize *Code* Chapter 28E. This section allows jurisdictions to join together to perform functions that they can perform as individual entities. The three most commonly used forms are: 1) contractual to form a relationship between one government and another; 2) a mutual relationship to share resources to achieve a benefit for both agencies; and 3) to establish an entirely new organization such as a landfill commission. Some situations that use agreements, commonly referred to as "28E's" include fire or police protection, parks and recreation provisions and many others. It is beneficial for a city to review their existing agreements periodically. Some may have expiration dates or may need to be reviewed for their continuing applicability. *Code* Section 28E.8 requires, within 30 days of the effective date of an agreement and any amendment, modification or termination of an agreement, it shall be filed, in an electronic format, with the Secretary of State. Each entity creating an agreement under Section 28E.5 is also required to submit a biennial electronically-submitted report to the Secretary of State by April 1 of every odd-numbered year.

### **Restrictions on City Officials**

#### **Conflict of Interest**

Conflicts of interest issues are covered in *Code* Chapter 68B and Sections 362.5-362.6. Conflicts of interest may take different forms, but typically they emerge in situations where the city official has some outside interest that would potentially influence their decisions as a city official.

There are specific restrictions in state law placed on a city official's interest in a contract with the city. Generally, a city official cannot do business with their city unless covered by a specific exception in the law. Additionally, there are specific voting guidelines when a conflict of interest exists. If a city official has a conflict of interest, they should declare that conflict and refrain from discussion and voting on that item. If a city official votes on an item and it was later found that they had a conflict of interest that does not automatically make that vote invalid. A vote in this case is only invalid if the vote found to be in violation was decisive to passage. There are specific exceptions provided in law. For example, *Code* Section 362.5 provides that a city official can enter into a contract with their city for an amount less than \$6,000 in a year. This recognizes that in a small city there may be few people with which a city can do business. Additionally, if a contract is competitively bid these limits do not apply and city officials are eligible to submit a competitive bid

#### **Incompatible Offices**

In addition to conflicts of interest, there is also the potential for incompatible offices. This occurs when a city official holds another office that, by its nature, is incompatible or inherently incongruous with their role as a city official. Incompatible offices are often determined by a legal opinion. Over the years, the Iowa Office of the Attorney General has issued formal opinions on which offices they feel are incompatible. This is a good place to begin research when a city has a city official considering holding multiple offices. An example of this would be Section 388.3 of the *Code*, which provides that "(A) public officer or a salaried employee of the city may not serve on a utility board."

*Code* Chapter 403 prohibits an employee of an urban renewal agency (city, county or community college) from purchasing urban renewal property. This becomes particularly difficult if the entire city is within the urban renewal district.



**Gift Law**

Another restriction on a city official is their ability to accept gifts from others. State law seeks to prevent situations where an official could be influenced by receipt of gifts. To avoid this situation, *Code* Chapter 68B, Div. III states that a city official cannot receive a gift from a restricted donor. A restricted donor is defined generally as someone seeking to do business, is currently doing business, or has recently done business with the city.

There are numerous exceptions to the gift law. For example, there is a provision that allows for an elected official to receive information while attending an event; additionally, someone can receive gifts of \$3 or less in value in one day. Many local jurisdictions have their own ordinance that addresses this. Care should be given that the local ordinance does not conflict with the state code.

Exceptions for campaign contributions, conference materials and speaking engagements exist, but check *Code* Section 68B.22 and consult with the city attorney.

**Nepotism**

Nepotism is when someone receives employment because of their family relationship with a policy maker. *Code* Chapter 71 places restrictions within three degrees of consanguinity, or three degrees of family relationship (see table of consanguinity). It states that someone cannot be appointed to such a position without approval of a general body. Although this is the legal restriction, occasionally cities might choose to adopt their own nepotism policy that is stricter than what state law requires.

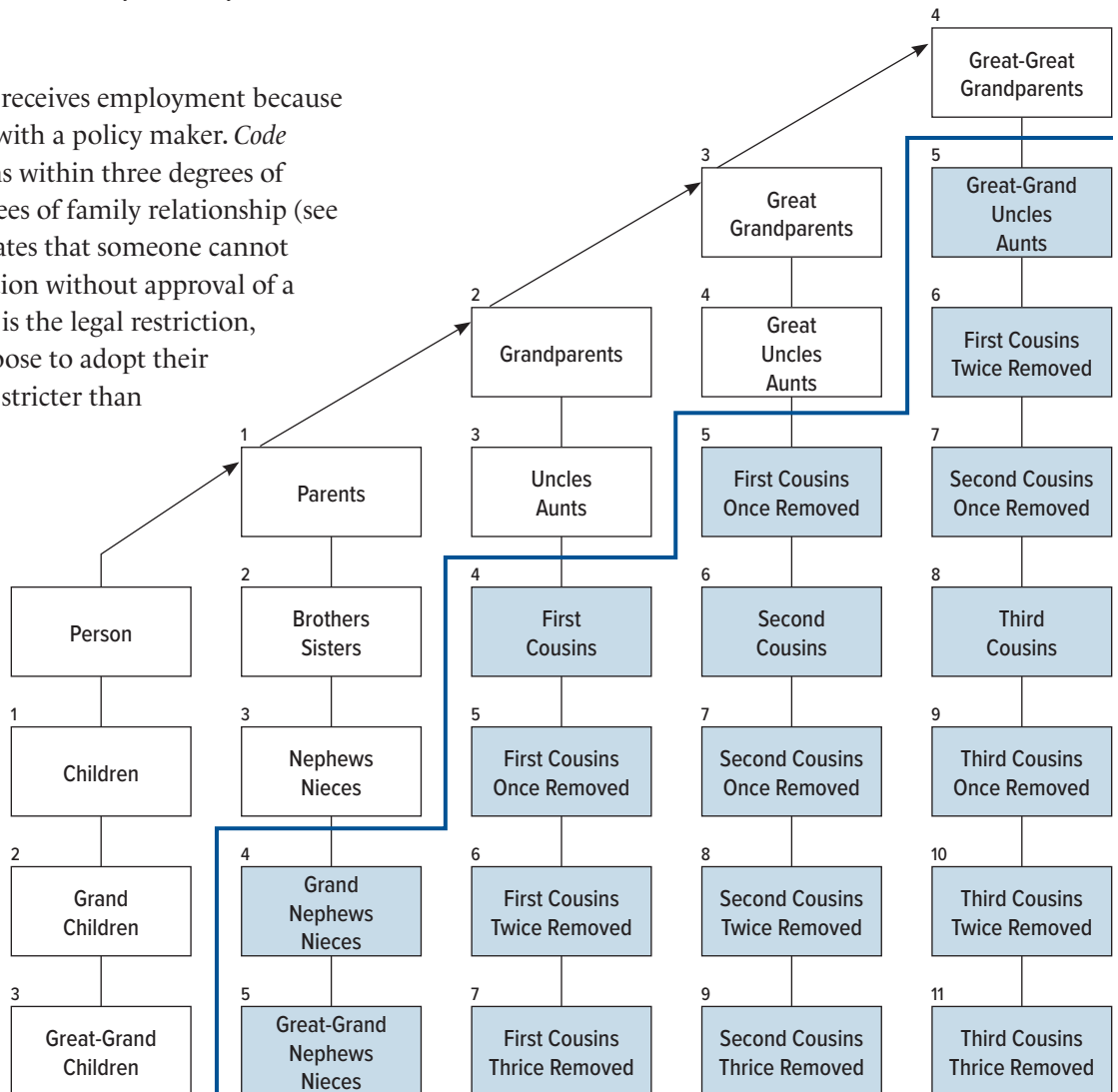
**Other Ethical Issues or Concerns**

If you believe you, an employee or council person have a situation that may be or “appear to be” a conflict of interest or other ethical related issue, check with the city attorney prior to taking any action. The Iowa Ethics & Campaign Disclosure Board also has a website that can help you work through a gift or conflict of interest question under Iowa law, at [ethics.iowa.gov](http://ethics.iowa.gov).

**Consult Your City Attorney**

To protect you and your city from legal claims brought against individual elected officials or your city, consult your city attorney whenever you are unsure about possible liability resulting from an action or non-action that you are considering.

**Table of Consanguinity**



# Chapter 2

## Role of Clerk

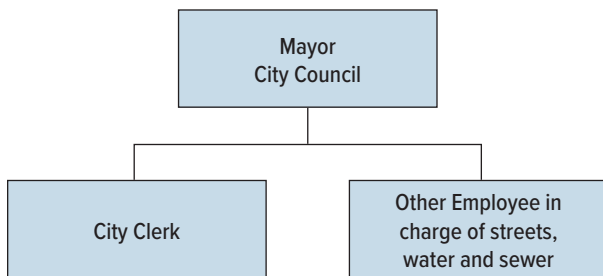
The position of city clerk is one of the most important jobs in Iowa municipal government. City clerks must handle a wide range of city business, particularly in smaller communities, often working long hours to ensure their local government runs smoothly. It is crucial for mayors and council members to recruit, identify, train and keep a well-qualified and able person for this position. Doing so can be a long-term investment in the organization.

This chapter discusses the various duties and roles of the city clerk in Iowa. Included is information on some basics of being a city clerk, required duties such as publishing notices, and guidance on handling public interaction and citizen requests.

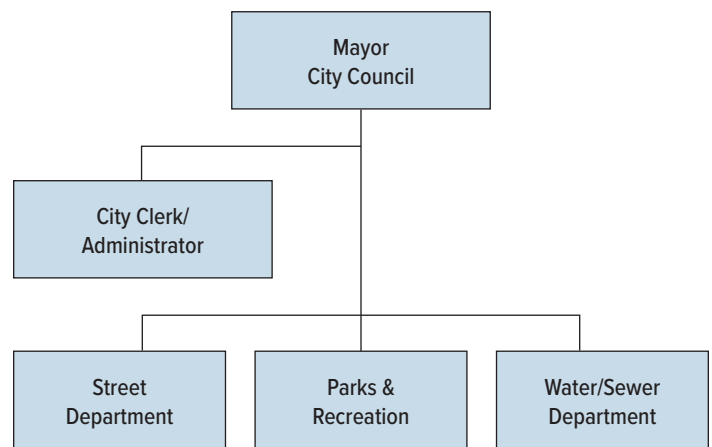
### Internal City Structure

The following are examples of organizational charts from a small, medium and large community:

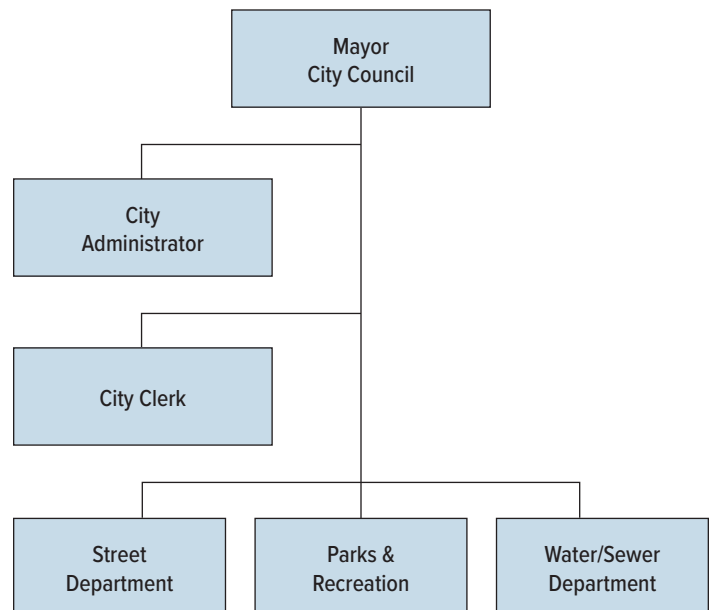
#### *small community:*



#### *medium community:*



#### *large community:*



## Variations of City Clerk Title

There is not a uniform job description for city clerks. In fact, many cities have their own set of unique requirements and duties for their city clerk. Some ask that their clerk to also handle the role of finance officer, while others include city administrator duties. Below you will find examples of the various city clerk job titles:

- Clerk/Treasurer
- Clerk/Finance Officer
- Clerk/Administrative Director
- Any combination above with a City Administrator or Manager

Regardless of the official title, it is obvious that city clerks are asked to perform many tasks with integrity, impartiality and professionalism. They need to prepare council meeting agendas and minutes as well as publish all of the associated public notices (Chapter 3 discusses council meeting duties in more detail). They need to manage and maintain the official records of the city, including the city code, and be ready to share them with the public when requested (Chapter 4 discusses public records and their availability in more detail). They will need to work with the public and handle citizen complaints. They distribute the various permits and licenses a city may require. Finally, in certain cities, a clerk might be asked to oversee a board or commission, handle the city's insurance, represent the city on regional groups, or they could oversee other city employees.

## Statutory Duties

The *Code of Iowa* in Section 372.13(3) requires that a city council appoint a city clerk with the following duties (from Section 380.7):

1. Promptly record each measure.
2. Where applicable, indicate whether the mayor signed, vetoed or took no action on the measure and whether the measure was passed after the mayor's veto.
3. Publish a summary of all ordinances or the complete text of ordinances and amendments in a manner provided in *Code* Sections 362.3, 380.6 and 380.7. "Summary" means a narrative description of the terms and conditions of an ordinance setting forth the main points of the ordinance in a manner that informs the public in a clear and understandable way, the meaning of the ordinance and providing sufficient notice to conform to the desired conduct required

by the ordinance. The description must include the title of the ordinance, an accurate and intelligible abstract or synopsis of the essential elements of the ordinance, a statement that the description is a summary, the location and normal business hours of the office where the ordinance may be inspected, when the ordinance becomes effective, and the full text of any provision imposing fines, penalties, forfeitures, fees or taxes. Legal descriptions of property must be described in full, provided that maps or charts may be substituted for legal descriptions when they contain sufficient detail to clearly define the area with which the ordinance is concerned. If it is necessary to use technical or legal terms not generally familiar to the public, the narrative description should include definitions.

4. Authenticate all measures, except motions, with his or her signature and certify the time and manner of publication if any. The clerk's certification is presumptive evidence of the facts stated therein.
5. Maintain for public use copies of all effective ordinances and codes.

One of the largest duties of the clerk is to record and publish the minutes of each city council meeting (*Code* Section 372.13(6)). The council minutes should include:

- Signatures of the mayor and city clerk in accordance with *Code* Section 380.7.
- Proper notice preceding the meeting required by *Code* Section 21.4 (tentative agenda).
- Information sufficient to indicate the vote of each member present as required by *Code* Section 21.3.
- Documentation of the passage of ordinances, amendments or resolutions by a majority vote of all the members of the council in accordance with *Code* Section 380.4 (not just those in attendance).
- Documentation that the council followed proper proceedings for closed sessions (*Code* Section 21.5).
  - 1) The session was closed by affirmative roll call vote of at least two-thirds of the members.
  - 2) The specific exemption under *Code* Section 21.5 was identified and documented.
  - 3) Final action was taken in open session.

- Delivered for publication (or posted depending on population size) within 15 days of the meeting in accordance with *Code* Section 372.13(6) and includes:
  - 1) Total disbursements from each fund.
  - 2) A list of all claims allowed (including the reason for the claim).
  - 3) A summary of all receipts.
  - 4) A summary of ordinances or amendments adopted.

### Other Publication Notice Requirements

- If notice of an election, hearing or other official action is required by the city code, the notice must be published (or posted) at least once, not less than four nor more than twenty days before the date of the election, hearing or other action.
- A publication required by the city code must be in a newspaper published at least once weekly and having general circulation in the city. Cities with a population of two hundred or less, or in the case of ordinances and amendments to be published in a city in which no newspaper is published, a publication may be posted in three public places in the city which have been permanently designated by ordinance.
- Legislation adopted in 2024 altered some of the public notice procedures by directing qualified newspapers that have a website to place such notices online and to make that section of the website free to access. It also mandates daily newspapers to publish notices within 72 hours of receipt and weekly newspapers to publish within 48 hours of the next scheduled publication. Additionally, if a newspaper refuses to publish a notice, the legislation allows cities to alternatively post the notice to its website, the county government website, and the state government website that hosts such notices.

### Records and Providing Information

City clerks are also required to maintain the official records of the city (*Code* Section 380.7). This includes updating the city code and maintaining the various records of the city. It's important to note that the records of the city have different requirements in terms of how long they must be kept. We recommend keeping the League's Record Retention Manual on hand to view the requirements for the different types of records. See Chapter 4 for more information on Public Records.

### Codification

A city's laws are created through the passage of ordinances. The clerk is responsible for the safe keeping of these documents. Additionally, *Code* Section 380.8 requires the city ordinances be compiled or codified. See Chapter 4 for more details on how this process must be done.

### City Elections

A city shall hold a regular city election on the first Tuesday after the first Monday in November of each odd-numbered year. A city shall hold regular, special, primary or runoff city elections as provided by state law and city ordinance.

The mayor or council shall give notice of any special election to the county commissioner of elections. The county commissioner of elections shall publish notice of any city election and conduct the election pursuant to the provisions of *Code* Chapters 39-53, except as otherwise specifically provided in *Code* Chapters 362-392. The results of any election shall be canvassed by the county board of supervisors and certified by the county commissioner of elections to the mayor and the council of the city for which the election is held.

There are five possible election/nomination method combinations. A city will have ONE of the following:

1. A city primary election (if necessary), followed by a regular city election.
2. A regular city election with the candidate nomination method being nomination by petition or nomination by convention (cities that follow *Code* Chapters 44 and 45).
3. A regular city election with the only candidate nomination method being nomination by petition (*Code* Chapter 45 cities).
4. A regular city election with the only candidate nomination method being nomination by convention (*Code* Chapter 44 cities).
5. A regular city election, followed by a city runoff election (if necessary).

**Important Note:** By default, all cities operate under the first option listed above (a primary election, if necessary, followed by a regular city election). City councils must adopt ordinances to change the method of nomination to one of the other options or change it back to the first option. All cities have a primary provision unless the council has passed an ordinance specifying another type of nomination.

**When Held**

A city primary election must be held when the number of candidates who file nomination papers is more than twice the number of seats to be filled for a particular office. The candidates who receive the most votes, up to twice the number of seats to be filled for an office, are declared nominated and will have their names automatically placed on the ballot at the regular city election.

**Cities with Primary Elections**

Nominated by petition – The number of signatures must be at least equal to two percent of the number of votes to fill the same office at the last election, but not less than 10 signatures. (Contact the county auditor to see how many voted in the last election).

The city primary election, if necessary, is held on a Tuesday four weeks before the date of the regular city election. (*Code* Section 376.7)

**Cities with Primary Election Provisions**

The filing period begins 85 days before the regular city election and ends at 5 p.m. on the 68th day before the regular city election.

**Signatures Needed***Primary or Runoff Provision Cities:*

- At least 10 or 2% of number of people who voted for the office at last regular city election (*Code* Section 376.4)

*Chapter 45 Cities:*

- For cities with a population of 3,500 or greater, at least 25 eligible electors of city or ward
- For cities with a population between 100 and 3,500, at least 10 eligible electors of city or ward
- For cities with a population less than 100, at least 5 eligible electors of city or ward

**All Other Cities**

(including cities with runoff provisions)

The filing period begins 71 days before the regular city election and ends at 5 p.m. on the 47th day before the regular city election. The County Election Commissioner's office must be open until 5 p.m. on the final day for filing in all cases. (*Code* Section 376.4(5))

**Withdrawals and Objections**

The withdrawal and objection deadline varies by the type of election a city has authorized. In cities with primary elections it is 63 days before the regular city election (*Code* Sections 376.4(6), 44.9(6)).

In all other cities, including cities with runoff provisions, it is 42 days before the regular city election (*Code* Sections 376.4(6), 44.9(6)). Withdrawals and objections must be submitted in writing to the County Commissioner of Elections.

**Nomination Papers**

The County Commissioner of Elections is allowed to designate city clerks to receive nomination papers for city elections. With this designation comes all the duties, to include:

- The city clerk's office shall remain open until 5:00 p.m. on the final date to file nomination papers.
- Review each petition and affidavit of candidacy for completeness following the standards in Section 45.5 and accept the petition for filing if on its face it appears to have the requisite number of signatures and was timely filed.
- Note on each petition and affidavit accepted for filing the date and time they were filed.
- Return any rejected nomination papers to the person on whose behalf the nomination papers were filed.
- Deliver the text of any public measure being submitted by the city council to the County Commissioner of Elections AND nomination papers no later than noon on the day after the last day on which nomination petitions can be filed.

**Oath of Office**

The Oath of Office for newly elected and appointed officers may be administered at any time after the election results are certified, but must be taken by noon the first business day of the new year. This includes those who are reelected. The oath is not required to be at a council meeting. The

actual wording of the oath should substantially be: “I, (name of officer), do solemnly swear that I will support the Constitution of the United States and the Constitution of the state of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of (name of office) in (name of city), as now or hereafter required by law.” See *Code* Section 63.10.

The mayor and clerk are authorized to administer oaths. State law also empowers a number of others to administer oaths and take affirmations, such as a justice of the United States Supreme Court, a judge of the court of appeals and district courts, a clerk of the supreme or district court and a notary public. For a complete list of authorized individuals, please refer to *Code* Chapter 63A.

### Bonding Requirements

*Code* Chapter 64 requires that some city officials post bonds prior to taking office. This is done to protect the city from liability and to safeguard the integrity of public funds. Posting bonds is an insurance measure that involves taking a pledge to reimburse the municipality against costs or losses incurred by wrongful or negligent actions. Typically, this is done by purchasing surety bond insurance, of which the city pays the premiums for its officials.

An advisable method for meeting bond requirements is the “blanket bond” which covers several or all officials and employees. Some bonds are set at specific amounts by law while others are determined by designated city officials who are given discretionary power to set the amount of the required bonds.

### Personnel

The clerk/finance officer may be the position responsible for the processing and reporting for payroll, or perhaps there is a separate human resource position. The payroll process generates records which must be maintained with differing levels of security and on various retention schedules. The League’s Record Retention Manual should be used as a guide. *Code* Chapter 91B allows public employees to have access to and obtain a copy of their own personnel files subject to the following:

- Agreement on the time for review. A representative of the city must be present during the viewing to ensure safe keeping of the documents.
- References collected on behalf of the employee by the employer should not be included in the personnel file.

- All medical documents concerning the employee should not be included in the personnel file.
- Other sensitive documents such as I-9s should not be included in the personnel file.

Like any other public record, the city may charge a reasonable fee for copies requested by the employee.

Public access to personnel files is much more restricted. *Code* Chapter 22 and federal regulations under HIPAA should be considered for guidelines. Consultation with the city attorney is always advisable when a request for personnel documents is requested by anyone other than the employee. More information on personnel management is available in Chapter 5 of this manual.

### Public Service/Citizen Interaction

The clerk is a central resource for citizens, elected and appointed officials, other governmental agencies and the media. The clerk is looked to for providing new officials with information about the job of being a mayor or council member and instruction on meeting rules of procedure for the city council. Educating elected officials does not stop there either as the clerk can be asked to do a range of things from explaining detailed finance and budgeting processes to researching historical documents in the city’s archives. The clerk should provide calendars and other administrative documents for orderly and timely scheduling of agenda preparations and detailed processes such as budgeting and other actions requiring lead time for council discussions or public hearing deadlines.

The clerk is also a key position for the city’s public image. Requests to furnish information to members of the press and providing courteous and prompt replies to inquiries from the public reflect directly on the city. City hall may be the first place that newcomers go to get information or apply for utility services. Very often, the clerk is also asked to speak about city operations to civic groups or at the local school.

A typical day in the life of a city clerk can be dealing with the citizens, either handling complaints or taking payment for various city services. It is not uncommon for a citizen to show up at a council meeting to repeat a complaint made earlier to a city employee. It is a good business practice for the city to establish a complaint or service request system. At a minimum, the system should address the following:

1. Receipt of complaint/service request. This can be done by phone, letter, email, online form or in person.

2. Recording the complaint/service request. This should be done in writing or entered into a computerized system. Information should include date of incident or request, person making the complaint/request and nature of complaint/request.
3. Referral to the proper department or council agenda.
4. Follow up or completion of task documented.
5. Resident notification.

### **Alternative Communications**

With the changes in the way people communicate, the city clerk will also be asked to participate in websites, emails and social media. It is important for the clerk to remember that all forms of communication should be done in a prompt, professional manner. Documents in the clerk's possession, regardless of the medium, are also subject to the open records laws discussed more fully in Chapter 4 of this manual.

# Chapter 3

## Public Meetings

Meetings of a city government are crucial. The business of the public must be conducted in open meetings, making them a necessary function of city government. The city clerk is often responsible for many of the steps that take place before, during, and after the meeting. *Code* Chapter 21 discusses the requirements for open meetings, and Chapter 380 addresses some of the legislative actions of the council during those meetings.

Common questions arise regarding what types of gatherings are subject to the open meeting requirements. Any gathering of a majority (or quorum) of city council members could be considered a meeting if they are discussing or deliberating city business. It is not required that they take action; merely discussing an issue within their decision-making authority can qualify as a meeting. A majority of council members gathering in the same place for ministerial or social purposes would not be a meeting as long as they do not discuss city business.

The Iowa Public Information Board (IPIB) was created in 2012 to provide an alternative means to ensure compliance with the open meetings and open records laws and to offer a cost-effective process for resolving disputes. This nine-member board is appointed by the Governor, subject to confirmation by the Senate, with one full-time director who is an attorney. The board has broad authority for rule-making and investigations, including gathering information pertinent to a complaint or allegation that would otherwise be classified as confidential. Another important power of the board is the ability to provide training opportunities and the authority to require individuals with responsibilities related to Chapters 21 and 22 to receive periodic board-approved training. The board does not have jurisdiction over the judicial or legislative branches of state government or the Governor's office, but it can make recommendations for proposing legislation related to public access to government information.

Questions also arise regarding who is covered under the open meetings law, as the law specifies that “governing bodies” as well as “an advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues” are subject to the law. For cities, this law applies to the city council as well as entities such as the Planning and Zoning Commission, the Board of Adjustment, the Library Board, and the Park and Recreation Commission. It may also apply to other committees or advisory boards if they were created formally by the city. The city should seek guidance from its attorney if unsure whether a particular body would be subject to the open meeting requirements.

### Before the Meeting

Prior to any meeting of the city council, the city must give notice of that meeting. The requirements for giving notice include posting the time, date, and place of the meeting as well as the tentative agenda. This notice must be posted at least 24 hours prior to the meeting in a publicly accessible location and must be provided to the media that have requested to receive it.

Notice is also required for a reconvened city council meeting unless the meeting is reconvened within four hours of recess, and the time and place of the reconvened meeting are announced in open session at the commencement of the original meeting, which is recessed and recorded in the minutes of the meeting, with no changes to the agenda.

There is an exception to the 24-hour notice in the event of an emergency. Although the law does not define an emergency, it recognizes that there may be situations where it is impossible or impracticable to give a 24-hour notice. If 24-hour notice is not given, as much notice as possible must be provided, and the meeting minutes must state why proper notice was not given.



When the law states a “tentative agenda” must be posted, cities often wonder what level of detail is required. The level of detail is not defined in *Code* Section 21.4(1), which requires the agenda to be presented “in a manner reasonably calculated to apprise the public.” The agenda must provide enough information for citizens to understand the nature of the discussion item. For example, an agenda item titled “water” might not provide enough information for the public to understand that the council will consider a water rate ordinance at that meeting. It is recommended to provide detailed headings for each agenda item to help ensure the public is properly informed.

### **Agenda Development**

The process of developing an agenda can vary from city to city. Procedures such as who can add items to the agenda and the timing of the information can be determined by the city itself. Many cities have adopted procedural rules that establish how an agenda is developed. For instance, some cities allow anyone to propose items for the agenda,

while others require those who wish to add an item to submit a request form. Additionally, some cities only allow items to be placed on the agenda if they are proposed by the mayor or a council member. While there is no definitive right or wrong way to develop an agenda, it is important that everyone in the community, including city officials and staff, understands how items are added to the agenda in their community.

Many cities prepare a detailed council packet. While the agenda outlines the overall items for discussion and action by the council, the council packet is prepared for the council and includes important information for their review. This packet might contain the full text of all resolutions and ordinances to be discussed by the council, as well as background information on bills for payment, contracts, and other items. Some cities mail the packet to the mayor and council a certain number of days prior to the meeting; others hand-deliver the packet, email this information, or post it on the city’s website.

### **Sample Agenda**

THE CITY OF SAMPLE COUNCIL AGENDA  
SAMPLE CITY HALL COUNCIL CHAMBERS, STREET ADDRESS  
February XX, 20XX at 5:30 PM

#### NOTICE TO PUBLIC:

CALL TO ORDER: Mayor XXXXX

ROLL CALL: Council Person 1, Council Person 2, Council Person 3, Council Person 4, and Council Person 5

#### APPROVAL OF AGENDA:

APPROVAL OF THE CONSENT AGENDA: All items listed under the consent agenda will be enacted by one motion. There will be no separate discussion of these items unless a request is made prior to the time Council votes on the motion.

1. Approve Council Minutes of January XX, 20XX.
2. Approve Bill List in the amount of \$XX, XXX.XX
3. Resolution 20XX-XX Approving Contract and Bond for Construction of the Park restroom for \$7,969.00.
4. Resolution 20XX-XX Approving Change Orders totaling \$5,326.00 for 20XX Street repairs to XYZ Construction Company
5. Resolution 20XX-XX Accepting Quit Claim Deed Regarding South Street Subdivision
6. Liquor Licenses: New: Motorway Sports, Renewals: Fareway Food Store (end of consent agenda items)

#### REPORT:

7. City Cleanup Project – date to be determined

#### RESOLUTIONS:

#### PUBLIC HEARING

8. Resolution 20XX-XX adopting FY 20XX-20XX Budget Amendment.

#### ORDINANCES:

9. Ordinance 171 Creating the Zoning Ordinance of 20XX and Repealing the Zoning Ordinance of 1898, second reading.
10. Ordinance 172 Relating to Dogs in City Park, first reading.

#### PUBLIC COMMENTS:

#### ADJOURNMENT:

One item you may see on council agendas is a consent agenda. The consent agenda is a tool used to expedite council meetings by allowing several non-controversial items to be voted on simultaneously. Items on the consent agenda often include the approval of previous meeting minutes, bills, and other simple actions. Cities that use a consent agenda should provide an opportunity for a council member to remove an item from the consent agenda for separate discussion and approval if they choose.

### During the Meeting

During the meeting, the city council and the mayor work together to conduct the business of the city. The city clerk, mayor, and council all have distinct roles during the meeting.

The mayor serves as the presiding officer, as outlined in *Code* Section 372.14, and oversees the meeting. The mayor is responsible for maintaining order and decorum during the meeting. Over 90 percent of cities in Iowa have a mayor-council form of government with a five-member council, although this varies somewhat with chartered cities. In most cities in Iowa, the mayor cannot vote, not even to break a tie. Cities with a different form of government should consult their city code regarding the mayor's authority during a meeting. In the absence of the mayor, the mayor pro-tem conducts the meeting but retains the ability to vote on measures before the council.

The council meeting is a gathering of the council members, who are the voting body that makes policy decisions for the city. The city council controls the city's finances, approving the budget and expenditures for the community.

The city clerk has specific duties during the meeting. The clerk prepares the minutes and the list of bills (or claims) for the council to approve. They often draft language for resolutions or ordinances in consultation with the city attorney. At the meeting, the clerk takes minutes and records the votes of each council member on each item. The city clerk also submits a monthly budget report and a treasurer's report if the city clerk and treasurer positions are combined. A more detailed report should be provided for department managers. Additionally, the city clerk may be called upon to answer questions or provide expertise on various matters before the council.

There are three types of actions that councils take: **motions**, **resolutions**, and **ordinances**. Often, the mayor and council may turn to the city clerk for suggestions on the correct approach in any situation.

**Motions** are the most typical action of the council. They are used for routine actions, such as the approval of minutes, and take effect immediately upon a council vote. A simple majority of the council members present must vote affirmatively to pass a motion. The mayor cannot veto a simple motion.

**Resolutions** are statements of policy that have a lasting impact as defined in *Code* Section 362.2(21). Examples include wage resolutions and approvals of personnel policies, contracts, or the annual budget. Resolutions are considered in one meeting. A majority of all council members, not just those present at the meeting, must vote affirmatively to pass a resolution.

Under certain circumstances, a "super-majority" may be needed for passage, such as in the case of a special assessment resolution. Typically, a resolution takes effect immediately upon the mayor's signature. If the mayor vetoes a resolution, state law requires the mayor to provide a written explanation to the council within 14 days of passage. The council can override the veto within 30 days by a two-thirds vote of all council members, not just those present at the meeting (see *Code* Section 380.6(2)). However, the mayor may choose not to act on a resolution. If the mayor takes no action within 14 days of passage, the resolution becomes effective at that time.

Resolutions required by statute include:

- Approval of subdivision plats
- Approval of the sale of city property
- Approval of contracts to construct public improvements
- Expenditures exceeding \$100,000 on a public improvement project
- Acceptance of a public improvement or facility upon completion
- Adoption or amendment of the annual budget
- Approval of the Street Finance Report
- Approval of Bank Depositories

**An ordinance** is a city law of a general or permanent nature. Cities pass various ordinances to establish the duties of city officers; to regulate animals, businesses, and property; land use; to adopt traffic control regulations and more. A majority of all council members must vote affirmatively in three separate meetings to pass an ordinance. This majority is based on the total number of council members

under your form of government, not the number present at a meeting. In effect, vacancies count as a “no” vote on an ordinance. *Code* Section 380.3 allows the requirement to consider an ordinance three times to be waived, or ‘suspended,’ by a three-fourths vote of the council members when necessary to expedite passage. Some ordinances may require a “super-majority,” such as *Code* Section 414.5, which requires a three-fourths favorable vote of all council members. Consult your city attorney when such situations arise.

If the mayor vetoes an ordinance, state law requires the mayor to provide a written explanation to the council within 14 days of passage. The council can override the veto within 30 days by a two-thirds vote of all council members, not just those present at the meeting (see *Code* Section 380.6(2)). However, the mayor may choose not to act on an ordinance. If the mayor takes no action within 14 days of passage, the clerk must record that. An ordinance is effective upon publication or posting, which will be discussed shortly unless a later effective date is specified in the ordinance.

[Click here for a list of required ordinances.](#)

### Public Hearing

Certain actions of the city require a public hearing to be held before the council can make a final decision. In some cases, these requirements are set by state law, while in others, the city code itself may require a public hearing to take a specific action. Additionally, the city may choose to hold a public hearing even when it is not required, to obtain more citizen or public feedback on a particular issue.

Examples of when a public hearing is required include prior to the adoption of the city budget or a budget amendment, prior to the disposal of real city property, and prior to adopting or amending a zoning ordinance. There are also other various instances when a public hearing may be required. In most circumstances, the most common notification provision is found in Section 362.3, which mandates that notice of the time, date, and place of the public hearing must be given not less than four and not more than 20 days before the date of the hearing. Public hearings for budget approval or budget amendments require a notice to be published not less than 10 and not more than 20 days before the hearing.

Notice of a hearing on proposed zoning changes must be published no less than seven days prior to the hearing. The notice must be published in a newspaper of general circulation in cities with a population over 200. Legislation

adopted in 2024 requires newspapers that have a website to also post such notices to their site free of charge. Also, if a newspaper refuses to publish a notice, cities can now post the notice to their city website, the county government website and a statewide public hearing notice website.

Cities with a population under 200 may provide notice by posting in three locations designated by local ordinance, typically the library, mayor’s office, and city hall.

For more information regarding public hearings, please visit the League’s resource page [here](#).

### Closed Session

Although openness is required of council meetings, in certain special circumstances, cities may want to close public access to a part of the meeting. *Code* Section 21.5 provides specific reasons and procedures for closing public access to a meeting. Broad examples of circumstances where public access may be denied include discussion of hiring, firing, or performance of an employee when necessary to protect their reputation and they request the meeting be closed; discussion with the city attorney on litigation; and discussion of real estate transactions until the point that the transaction is finalized.

The meeting must begin in open session with a call to order and a roll call. To go into closed session, there must be a motion to hold a closed session approved by at least two-thirds of the members or all those present. The minutes must record the votes of individual council members on the question of holding a closed session. Additionally, the motion and minutes must state the exemption under Section 21.5 that permits a closed session.

No business can be discussed during the closed session that does not directly relate to the specific reason for the closed session. Upon completion of the closed session, a motion and vote can be taken to end the closed session and return to open session. Final action must be taken in open session.

When holding a closed session, the governmental body must keep the following:

- Detailed, written minutes of:
  - All discussion
  - Persons present
  - Discussion occurring during the closed session
- An audio recording of the entire closed session.

The minutes and audio recordings are sealed and must be kept by the governmental body for at least one year from the date of the meeting at which the closed session was held.

If a lawsuit is brought to enforce the provisions of the open meetings law, then upon court order, they must be unsealed and examined by the court. The court must balance the potential adverse consequences of public disclosure against the value of the information contained in the minutes or on the recording to determine whether to disclose any portion of the closed session.

In accordance with Section 21.5b(2), however, the office of State Ombudsman does not need a court order to examine the detailed minutes and audio recording of a closed session if there is an investigation under *Code* Chapter 2C and the information is unavailable through other reasonable means. The release of the minutes and recording by the city in compliance with this section does not change the confidential nature of the closed session under Section 2C.9.

Iowa courts have the power to enforce the open meetings law. Any aggrieved person, the attorney general, or the county attorney can bring a lawsuit to enforce this law. It is up to the city to prove they complied with the law. The following judgments may be entered when the court has found a violation of the open meetings law:

- The court must assess each member of the governing body who participated in the violation an amount not less than \$100 and not more than \$500. For knowingly participating in the violation, members must be assessed not less than \$1,000 and not more than \$2,500
- A member of a governmental body who violates open meeting laws has a defense to the assessment of damages if the member: a. Voted against the closed session. b. Believed with good cause that the facts indicated compliance with the open meetings law. c. Reasonably relied on a court decision, a formal attorney general's opinion, a formal opinion of the Iowa Public Information Board, an opinion of the attorney for the governmental body given in writing or memorialized in the meeting minutes, or a written advisory opinion by the attorney general, attorney for the governmental body, or the Iowa Public Information Board.
- All costs and reasonable attorney fees will be awarded by the court to the party who successfully established a violation of the law in court and will be assessed against the members found to have participated in the violation.
- The court must void any action taken in violation of the law if the lawsuit for enforcement is brought within six months of the violation and if the court finds that the public interest in enforcing the open meetings law outweighs the public interest in sustaining the validity of the action taken in the closed session. However, the court cannot void the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election, or public sale has been held regarding the bonds or evidence of indebtedness.
- If a member of the governing body has engaged in one prior violation of the open meetings requirements for which damages were assessed against the member during their term, the court must issue an order removing the member from office.
- The court may also issue a mandatory injunction punishable by civil contempt ordering the member of the governing body to refrain for one year from any future violations of the open meetings law.

The Iowa Public Information Board also has the power to enforce the open meetings law and the authority to impose similar sanctions against persons and entities found to have violated open meetings laws.

### ***Meetings of Other Boards or Commissions***

As mentioned earlier, other boards and commissions must adhere to open meeting laws, which require preparing an agenda and minutes. However, only the minutes of city council meetings need to be published.

### **After the Meeting**

#### ***Preparation of Minutes***

(*Code* Sections 372.13(6), 21.3, 21.5)

City clerks are typically responsible for taking council meeting minutes, as mentioned earlier. After the council meeting, clerks are required by law to publish or post the meeting minutes within 15 days. The publication requirement for minutes is the same as the requirement for notices discussed previously in this chapter. Cities with populations under 200 can post minutes in three designated places as specified by ordinance. Cities with populations over 200 must publish minutes in a newspaper of general circulation. Meeting minutes must include the actions of the council and the votes of each council member. Some cities include more information than the minimum

required by law, and the amount of information to include is typically determined by city practice.

The following list is required:

1. Type of meeting: regular or special.
2. Time, date, and location of the meeting.
3. Members present.
4. Who presided over the meeting (mayor or mayor pro-tem).
5. All actions taken. Only the titles of resolutions and ordinances need to be in the minutes if the full text is filed separately.
6. Results of each vote taken, detailed enough to indicate the vote of each council member present.
7. List of claims. The list of claims needs to include the vendor's name, a description of the service or purchase, and the total amount paid. Additionally, a summary of total expenditures from each city fund and a summary of all receipts must be published.

The minutes may also include:

- Approval of prior minutes
- Filing of reports
- Record of all committee appointments
- Names of citizens appearing before the council and the nature of their comments

When an ordinance is passed by the council, it becomes effective upon publication unless the ordinance itself specifies a later effective date. If no newspaper is published in the city (as opposed to circulated), no matter the size, the city may also post ordinances and amendments at three public places designated by ordinance instead of publishing them. Some ordinances are quite lengthy. To save on publication costs, cities can summarize ordinances. The summary must include certain items such as the title of the ordinance, a synopsis, a statement that the description is a summary, the location and normal business hours of the office where the ordinance may be inspected, the effective date of the ordinance, and the full text of any fines, penalties, forfeitures, fees, or taxes. Legal descriptions of property must be fully listed.

Audio recording of a council meeting is only required for a closed session. There are no rules on the retention or handling of audio recordings used as a convenience during open sessions. However, if the meetings are recorded, as long as the audio recordings exist, they are considered public records and are available to the public pursuant to *Code* Chapter 22.

### ***Pay the Bills***

In cities where the clerk is also the city treasurer, all claims approved by the council need to be paid as soon as possible. See Chapter 11 of this manual for more details.

### ***Preparation for the Next Meeting***

During the preparation of the minutes following the council meeting, it is the best time to note each item that may require follow-up or placement on the next meeting's agenda. In many communities, the clerk is asked to relay messages or work orders to other staff. Items on the council's agenda may also require communication with other citizens, engineering firms, the city attorney, or other governments, which may fall on the clerk to complete before the next meeting.

# Chapter 4

## Public Records

The majority of the documents created and held by city governments fall into the realm of public records. Public records must be available to citizens upon request. City clerks have significant responsibilities regarding public records, including creating, maintaining, retaining, and providing these records upon request.

### Publication Requirements

City clerks often create many of the documents held by city governments or are designated as the central depository of records for the city. These documents often become official upon publication in a newspaper that meets specific requirements. City clerks are typically responsible for taking the minutes at city council and other meetings. According to *Code* Section 372.13(6), city clerks must send the minutes of each council meeting to a newspaper within 15 days of the meeting. The minutes must include the vote of each council member and the action taken, as well as the expenditures of each fund, a summary of all receipts, and a list of claims. Failure by the clerk to make this publication may result in a simple misdemeanor, so city clerks must fulfill this duty.

Many city councils meet only once a month; however, the requirement to send the minutes within 15 days remains. This often results in clerks needing to publish the minutes before council approval at a meeting. In such cases, cities usually publish the minutes prior to approval and then reflect any amendments made to the minutes at the next meeting. Depending on the size of the city, the clerk may need to publish in a newspaper or may be able to publish minutes by posting them in three places as designated by ordinance. Cities with a population under 200 can meet the publication requirement in this manner.

There are different requirements for the publication of ordinances, which are not based on population. Upon passage, ordinances must be published to become effective. Ordinances are published in a newspaper if the city has one published within its limits. A city without a local

newspaper can meet the requirement by posting in three places designated by ordinance. Cities may also summarize ordinances when they publish them. *Code* Section 380.7(3) requires certain information to be included in a summary, such as the title of the ordinance, a synopsis of its essential elements, a statement that the description is a summary, the location and normal business hours of the office where the full ordinance may be inspected, the effective date of the ordinance, and the full text of any provisions imposing fines, penalties, forfeitures, fees, or taxes, as well as legal descriptions of property.

### Other Publication Requirements

The budget and budget amendments require a public hearing notice to be published (or posted) no more than 20 days but no fewer than 10 days before the hearing. The same time requirements apply for cities that only need to post their hearings.

For other items, *Code* Section 362.3 stipulates that “if notice of an election, hearing, or other official action is required by the city code, the notice must be published at least once, no less than 4 days, and no more than 20 days before the date of the election, hearing, or other action.” *Code* Section 414.4 requires zoning public hearing notices to be published at least 7-20 days prior to the hearing.

The city must publish the gross salary of each employee at least annually. This list should also include the mayor, council members, library staff, and volunteers who receive any compensation.

A news release about the city’s audit or examination must be published before the report can be filed with the State Auditor’s office. No public hearing is necessary; only the news release, which is prepared by the auditor.

Cities have other publication requirements related to specific actions of the council for the issuance of public bonds. These notices must be published once, no fewer than 4 days, and no more than 20 days before the sale.

There are numerous notices of public hearings and other prescribed actions for capital projects and public improvement projects.

If a publication is not completed within the required time, the public hearing or other council actions cannot proceed. Even if the publication delay is not the fault of the city, it must still comply with the time requirements. Legislation adopted in 2024 requires newspapers that have a website to also post such notices to their site free of charge. Also, if a newspaper refuses to publish a notice, cities can now post the notice to their city website, the county government website and a statewide public hearing notice website.

Notices of elections are managed by the county auditor's office. However, it is the city's responsibility to notify the county auditor's office promptly to get the ballot prepared and publication done in accordance with *Code* Section 49.53. (See Chapter 2 for more details).

## Codification

Cities are required by *Code* Section 380.8 to compile a city code of ordinances containing all city ordinances in effect, referred to as 'the city code.' Exceptions include grade ordinances, bond ordinances, zoning map ordinances, ordinances vacating streets and alleys, and ordinances containing legal descriptions of urban revitalization areas and urban renewal areas. The city clerk must maintain a copy of the city code at city hall. Additional copies are frequently placed at the public library and the county law library. Many cities provide a copy of the city code to their elected officials or post it on their websites for public access.

The city is required to maintain its city code in one of three ways:

1. **Annual Supplement:** The city may compile an annual supplement to the city code of ordinances. This supplement consists of all new ordinances and amendments to ordinances that became effective during the previous year. The supplement must be adopted by a resolution of the council and placed in the code of ordinances.
2. **Insertion of New Ordinances:** The city may insert new ordinances or amendments to ordinances directly into the code itself. This must be done at least annually. This works especially well for cities that maintain a copy of their city code as a word-processing document, allowing for quick and convenient updating. This service may also be available to cities that use a private codification company.

3. **Compilation Every Five Years:** If the city does not compile an annual supplement, annually insert changes into its code directly, or has not made any additions or amendments to the city code, it must compile or "codify" the code of ordinances at least once every five years. If there have been no substantive changes to the code, the city may simply adopt the code by ordinance. However, if the city has made additions, amendments, or intends to change any code provision, it must hold a public hearing on the proposed code prior to its adoption. *Code* Section 362.3 requires that a notice of the public hearing be issued at least four but not more than 20 days prior to the hearing date. The notice must state that a copy of the proposed code of ordinances is available for inspection at the city clerk's office. If the council substantially amends the proposed code of ordinances after the hearing, the notice and hearing process must be repeated. Within 30 days after the hearing, the city may adopt the code of ordinances. Any new ordinances added during codification become effective upon publication of the ordinance approving the code of ordinances unless a subsequent effective date is provided within an ordinance.

Besides being a violation of state law, failure to follow the state requirement for maintaining your code can result in the city being unable to enforce its laws. Additionally, the city should never undertake any changes or amendments to its code of ordinances without consulting its city attorney.

Private codification companies are available to provide cities that use their services with sample ordinances. City attorneys may have access to sample ordinances in addition to insight into enforcement issues. Many area councils of government offer a codification service and have model ordinances available. It is the city's responsibility to be familiar with the provisions of all ordinances before adoption.

## Providing Public Records

The *Code of Iowa* Chapter 22, commonly known as the open records law, defines public records as "all records, documents, audio recordings, or other information stored or preserved in any medium, belonging to this state or any county, city, township, school corporation, political subdivision, nonprofit corporation, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing." The law also includes records related to the investment of public funds, even if they are in the custody of a private third party.

Given this broad definition, city officials must remember that public records include email, text messages, or other communications to the official, whether received at the city office or on the official's personal computer or electronic device outside of city hall if the communication is a record of or belonging to the city.

Public records may also include a list of the city's utility customers and other utility records, provided these are not specifically made confidential under Iowa law. However, *Code* Section 388.9A explicitly states that public records of a city utility, including "private customer information," are not subject to examination or copying under Section 22.2(1). Therefore, such records are considered confidential under Iowa law, meaning cities and utilities are not required to release those utility records. Nevertheless, utility records containing private customer information can be released at the utility's discretion if the city develops a policy to determine when releasing such records is appropriate. Under the new law, "private customer information" includes data identifying a specific customer and any record of a customer account, including internet-based customer account information.

According to the open records law, every person has the right to examine and copy records. Individuals may also publish or otherwise disseminate the records or the information contained in them. The records custodian should never relinquish possession of public records and is responsible for supervising the examination to protect the records from being damaged, disorganized, or removed. Typically, the city is under no obligation to "create" a record; it is only required to make existing records available.

The city may not charge for the right to examine a public record, but it may charge the actual costs of reproduction if requested. The city may also charge a fee for copying services that do not exceed the cost of providing the service. Additionally, the city may charge a reasonable fee for supervising the records examination. If there is no suitable space to examine the records where they are stored, the city may require the examiner to pay any necessary expenses for providing a place for the examination. Best practices suggest establishing a policy to ensure consistent access to public documents and uniformly agreed-upon fees.

The city may also wish to adopt a policy governing which public documents should be posted on websites and other web-hosted databases, as well as how public access is granted to these media.

### **Confidential Records**

The open records law specifically identifies certain records that must be kept confidential by the custodian of the records. However, a court order can require the release of these records. More than 70 types of records are confidential under the open records law, including most personal information contained in personnel records, appraisals, or appraisal information until a contract for sale is signed or the appraisal is provided to the property owner of the property the government is seeking to buy, and records that represent and constitute the work product of an attorney related to litigation or claims made by or against a public body.

If the city is unsure whether to allow the examination of a record, the first step is to contact the city attorney for advice. If the attorney is not immediately available, the custodian of records has the right to refuse examination. The law specifically states that a good-faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record is not a violation if the purpose of the delay is to determine the status of the record. *Code* Section 22.8(d) defines a reasonable delay to be less than 20 days, with the ordinary expectation being not more than 10 business days.

If the city attorney determines the records are specifically identified as confidential, their examination would clearly not be in the public interest, or the examination would substantially and irreparably injure persons, the attorney may seek a court order restraining the examination.

On the other hand, failure to comply with the open records law can result in a lawsuit against the city and against persons who participate in the violation of the law. Mandatory assessments for violations include damages up to \$2,500 against persons violating the law or up to \$12,500 if the violation is committed knowingly. Additionally, the court is required to order those violating the law to pay costs and attorney fees to the party who establishes the open records law violation. The law specifically states that "Ignorance of the legal requirements of this chapter is not a defense to an enforcement proceeding."

### **Managing Public Records**

Public records are the property of the citizens and must generally be available for public inspection. A good organizational plan for records management can make retrieving requested records easier and quicker for city staff. Since the city holds records that are not maintained



by anyone else and affect many people's lives, they require special care and consideration. Additionally, as most Iowa cities are over 100 years old, the records kept in city hall provide a very important history of the community.

The open records law establishes the city as the lawful custodian of the records. It requires the city to delegate the responsibility of implementing its public records policy to specific officials or employees. The city must publicly identify these individuals. In some cases, the city clerk is assigned this function. In larger cities, the responsibility may be divided among several individuals, such as department heads. The easiest way to comply with the requirements is for the city to adopt a Records Management Policy that identifies who is assigned responsibility for maintaining the records.

### ***Permanent Records***

Many of the records held by cities have their basis in law. These documents create a valuable trail of evidence and a history of actions taken by the city. Certain city records are outlined in the *Code of Iowa* or the *Iowa Administrative Code* and are required to be maintained for a specific period. Other documents retained by cities may be addressed in state or federal law, and some may have recommended retention based on the practical application of the information they contain.

Certain documents are created as city governments conduct their business, such as city council meeting minutes and city ordinances and resolutions. These documents are required by the *Code* to be kept permanently. Other examples of permanent records include real property transactions, condemnation, easement, and annexation documents, as well as certain financial records such as budgets and amendments.

Many city records must meet the *Code* Section 372.13(5) requirement to be kept for at least five years. For example, many day-to-day financial records of the city have retention schedules of five years. These might include purchase orders, invoices, canceled checks or warrants, and receipt books. These are just a few examples of retention periods; the actual length of retention varies greatly depending on the records.

### ***Records Retention Manual***

The Iowa Municipal Finance Officers Association and the Iowa League of Cities collaborated with the State Archivist from the State Historical Society to develop the Records Retention Manual. This manual is available on the League's website at the following [link](#).

### ***Electronic Records***

Due to space limitations and the ease of retrieval, electronic records are becoming an increasingly popular way for clerks and other city staff to store city documents. The same rules of access, openness, and retention apply to electronic records as they do to paper documents. Cities are encouraged to adopt policies on the use and disposal of electronic documents. Items such as emails, texts, recorded messages, and website content should be included in such a policy.

# Chapter 5

## Human Resources

In order to provide services to its citizens, the city must have employees or contracted personnel to deliver those services. The number of employees and some of the benefits provided to those employees is a local decision. For certain positions, specialty licensing or mandatory training is dictated through federal and state laws. Most of these regulations apply to all employees. It is noted when the regulations only pertain to a certain classification of employees.

### Interviewing

Interviewing is an important part of the hiring process. It allows the employer to get to know the applicant to see if their qualifications meet the requirements of the job. It also allows the applicant to understand the job and its requirements so they can decide if it's a job they want.

For an interview to be fair and legal, certain standards are a must. It is important to ask the same general questions of all interview candidates. This ensures equality and a consistent foundation to evaluate the candidates. Avoid discriminatory topics in both interview questions and casual conversation. Discriminatory topics include questions about country of origin, race, ethnicity, age, gender identity, sex, sexual orientation, marital status, children, veteran status, or disability.

Oftentimes, applicants will provide this information in an interview. If this occurs, acknowledge the information without further discussion and redirect the interview to acceptable topics specific to the job.

Additional interviewing resources are available at: [workforce.iowa.gov/jobs/skills/workshops](http://workforce.iowa.gov/jobs/skills/workshops).

### Fair Credit Reporting Act (FCRA)

The FCRA regulates the information that an employer can receive from a background check.

- The employer must notify the applicant in writing and obtain written consent from the applicant prior to requesting a background check.
- If the information in the background check is the reason an applicant is not hired, the employer must provide a pre-adverse action notice disclosure, a copy of the report, and a copy of the applicant's rights.
- Credit-related information can only be requested from the previous seven years.

If an employer requests an employment credit report as part of the background check, it should only be used in the selection of financially sensitive positions. Using an employment credit report can be very controversial; it is important to be consistent in how they are used and in actions taken in response to the information on the report. The Equal Employment Opportunity Commission (EEOC) has determined that rejecting an applicant solely based on an employment credit report could be viewed as discrimination due to disparate impact on minorities. For more information, see: [Fair Credit Reporting Act](#).

### New Hire Orientation and Onboarding

When bringing on a new employee, it is important to understand that orientation and onboarding are not the same but are both very important.

Orientation is a short-term event. Its purpose is to provide new employees with the immediate tools and information they need to begin their role.

Onboarding is a long-term process. This process should be tailored to the person/position, rather than a one-size-fits-all approach. It should provide ongoing alignment of the new hire's role to the culture and philosophy of the city.

Both orientation and onboarding are equally important and should complement each other. A good orientation should provide each new employee with the knowledge and tools to become successful as they start their role with the city.

For more information, visit:

[iowaleague.org/resource/employee-orientation-and-onboarding](http://iowaleague.org/resource/employee-orientation-and-onboarding)

### **Job Descriptions**

While there are no employment laws mandating a city to have a job description, a well-written one can offer numerous benefits. It serves as the foundation in the hiring process and aids in creating interview questions tailored to the specific open position. Job descriptions also establish expectations and responsibilities. A quality job description should clearly define the essential functions of the position and provide guidance on compliance with the Americans with Disabilities Act (ADA) and its Amendments Act (ADAAA).

Key sections to include in job descriptions:

- **Heading:** This section may comprise the position title, department, Fair Labor Standards Act (FLSA) status (exempt or non-exempt), reporting relationship, and days/hours of work.
- **Summary:** A brief overview that outlines the position's objectives and its significance within the city.
- **Duties/Responsibilities:** This is the core section where detailed descriptions of the position's tasks are provided. It's crucial to be descriptive, as this section delineates the specifics of the role. Duties should be listed, and time allocation for each can aid in determining whether they are essential or marginal.
- **Qualifications:** Minimum skills and knowledge required for the position should be outlined here, encompassing education, experience, technical skills, training, or any other necessary qualifications.
- **Physical Demands/Working Conditions:** This section specifies whether the position involves outdoor or indoor work, exposure to weather conditions or hazardous materials, travel expectations, and physical requirements such as sitting, bending, kneeling, lifting, etc.

### **Affirmative Action**

Affirmative Action plans are required as a condition of doing business with the federal government. Federal contractors and subcontractors are the entities required to take Affirmative Action to ensure fair and equal treatment.

The Department of Labor is the authority on affirmative action. Their direct contact information can be found at: [www.dol.gov/general/topic/hiring/affirmativeact](http://www.dol.gov/general/topic/hiring/affirmativeact)

### **Civil Service Commissions**

Civil Service Commissions supervise various aspects of employment to uphold fairness regarding hiring, promotion, demotion, suspension, and termination. The commission is tasked with creating rules and regulations, including written exams, physical exams, and interviews for covered positions. *Code* Section 400.6 covers permanent full-time police officers and firefighters in cities having a population of more than 8,000, and all appointive permanent full-time employees in cities having a population of more than 15,000 EXCEPT:

1. Appointees to fill vacancies in elective offices and members of boards and commissions and the clerk to the civil service commission.
2. The city clerk, chief deputy city clerk, city attorneys, city treasurer, city assessor, city auditor, professional city engineers licensed in this state, and city health officer.
3. The city manager or city administrator and assistant city managers or assistant city administrators.
4. The head and principal assistant of each department and the head of each division. This exclusion does not apply to assistant fire chiefs and assistant police chiefs in cities with police departments of 250 or fewer members. However, Sections 400.13 and 400.14 apply to police and fire chiefs.
5. The principal secretary to the city manager or city administrator, the principal secretary to the mayor, and the principal secretary to each of the department heads.
6. Employees of boards of trustees or commissions established pursuant to state law or city ordinances.
7. Employees whose positions are funded by state or federal grants or other temporary revenues. However, a city may use state or federal grants or other temporary revenue to fund a position under civil service if the position is a permanent position that will be maintained for at least one year after the expiration of the grants or temporary revenues.

### **Veterans Preference**

The Veterans Preference Act provides a preference system for qualified veterans during the hiring and termination

processes. Qualified veterans are defined in *Code* Section 35.1 as military veterans of qualified wars and service. These qualified veterans will receive a preference “in the appointment and employment over other applicants of no greater qualification.” Section 35.1 lists the activities that resulted in veteran status for these purposes, and it includes all who served in any active federal service, other than training, in the U.S. Armed Forces and who were discharged under honorable conditions. This is in addition to the previous definition, which listed numerous armed conflicts in which veterans might have served. Previously, the law only applied to Iowa veterans, but the law now includes any veteran who is a resident of the U.S.

Cities are required to create and use applications that include an inquiry into the applicant’s military service. For all jobs filled by competitive examination or appointment, the law requires cities to post a public notice of the application deadline to fill a job 10 days prior to the deadline. The posting requirement is the same as for posting agendas in that the notice is to be posted in a prominent place that is easily accessible to the public and clearly designated for that purpose. The fact that a city has advertised for the position in a newspaper or other publication does not fulfill the posting obligation of the statute.

The veteran hiring preference includes cities in the civil service system and cities that use point-rated qualifying exams. Section 400.10 describes how a veteran shall receive additional points to their grade or score. The point system adds an additional 5 percentage points for veterans. Also, another 5 percentage points must be added if the veteran has a service-connected disability, is receiving compensation disability benefits, or was awarded the Purple Heart.

Cities that fail to comply with the veterans’ preference laws may be taken to court by the veteran. The hiring process can be stopped by court action, and the veteran may also appeal the hiring decision to the district court in the county in which the action occurred. After considering the evidence, the court may determine if the applicant is qualified and, if so, shall specifically direct further action by the city. Under both provisions, the parties may, as an alternative, seek judicial review in accordance with the terms of the Iowa Administrative Procedure Act. In addition, the law contains a provision that allows the preferred veteran to seek final and binding arbitration.

Another provision in Chapter 35C allows a preferred veteran to request notification of a refusal to hire and the

specific grounds for refusal. The veteran may make this request at the time of application or during an interview for the position. If such a request is made, cities are required to send the notification of refusal and the specific grounds (if also requested) to the veteran within 10 days after the successful applicant is selected.

When the recruitment process results in no applications from qualified veterans, the city is not required to use the training and experience rating to evaluate application materials.

Veterans’ preference also provides termination protection to qualified veterans. Section 35C.6 states that a veteran shall not be removed from a position, “except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of such employee or appointee to a review by a writ of certiorari or at such person’s election, to judicial review in accordance with the terms of the Iowa Administrative Procedure Act, Chapter 17A, if that is otherwise applicable to their case.” The burden of proving incompetence or misconduct lies with the city. This is true even if your city considers itself to be an at-will employer.

### ***Employment-at-will***

“Employment-at-will” means an employer can terminate an employee at any time, without notice or reason, except for an illegal reason. Employees are also free to leave employment at any time without notice or reason. Employment-at-will can be negated by a contractual agreement, both intentional and unintentional (such as a promise of employment made in a handbook or by a supervisor).

### ***Equal Employment Opportunity Commission (EEOC)***

The EEOC is an independent governmental agency that advocates for equal opportunity in employment. The EEOC enforces many federal laws that affect employment and investigates claims of discrimination. It also has the authority to settle charges of discrimination; if a settlement is not reached, the EEOC has the authority to file a lawsuit if warranted.

### **Federal**

#### ***Title VII of the Civil Rights Act of 1964***

Title VII of the Civil Rights Act of 1964 governs employers who have 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year.

Title VII makes it illegal for employers to discriminate against employees based on the following protected classes: sex, race, color, national origin, and religion. The Iowa Civil Rights Law includes additional protected classes, and the more stringent of the two laws must be followed. See the Iowa Civil Rights Act below.

### ***The Pregnancy Discrimination Act***

This Act amended Title VII of the Civil Rights Act to include the prohibition of “sex discrimination based on pregnancy, childbirth, or related medical conditions.”

### ***Pregnant Workers Fairness Act (PWFA) Regulations***

The PWFA requires public and private sector employers with 15 or more employees to provide “reasonable accommodations” to pregnant employees related to their pregnancy, childbirth, or related medical conditions. The final regulations go into effect on June 18, 2024.

Under the rules, an employer must provide reasonable accommodations for an employee’s “known limitations” and cannot require an employee to accept an accommodation other than what is determined through the interactive process.

### ***The Age Discrimination in Employment Act of 1967 (ADEA)***

ADEA was created to prohibit discrimination against individuals over the age of 40 in all aspects of employment.

### ***The Equal Pay Act of 1963 (EPA)***

The EPA was created to prohibit discrimination in pay between men and women and to prevent retaliation if a person files a discrimination claim.

### ***The Genetic Information Nondiscrimination Act of 2008 (GINA)***

GINA was created to prohibit discrimination against applicants or employees based on genetic information and to prevent retaliation if a person files a discrimination claim.

### ***Americans with Disabilities Act of 1990 (ADA) and ADA Amendments Act of 2008 (ADAAA)***

The ADA/ADAAA prohibits discrimination in employment (including application, hiring, advancement, discharge, compensation, or any other aspect of employment) against a qualified individual with a disability or perceived disability. The ADA/ADAAA also prohibits discrimination in state and local programs and activities by all local

governments, regardless of the number of employees. The ADA/ADAAA also makes it illegal for the employer to retaliate against an employee or applicant for asserting his/her rights under ADA/ADAAA.

Employers are required to make reasonable accommodations for qualified employees with disabilities unless it would cause an “undue hardship” for the employer. For an accommodation to be considered an “undue hardship,” it must be significantly difficult or expensive to implement. A useful fact sheet can be found at:

[www.eeoc.gov/laws/regulations/adaaa\\_fact\\_sheet.cfm](http://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm)

## **State of Iowa**

### ***Iowa Civil Rights Act***

The Iowa Civil Rights Act governs cities that have four or more employees. It protects the rights of all people regarding hiring and employment. It guarantees fair and equal treatment for all employees regardless of race, retaliation, color, creed, age, religion, sex, sexual orientation, gender identity, national origin, mental disability, or physical disability (including pregnancy) that does not interfere with job performance, with reasonable accommodation. Individuals have the right to an employment experience free from discrimination and harassment. The Iowa Civil Rights Act also covers pregnancy and maternity leave, stating that pregnant employees must be treated the same as any other temporarily disabled employee. If other temporarily disabled employees are allowed to work in an alternative assignment or provided with temporary modified duties, the same must be provided for employees with pregnancy-related conditions. The law also mandates that employers must allow pregnancy-related employees eight weeks of unpaid leave.

### ***Iowa Age Discrimination - Chapter 216 Civil Rights Commission***

The state law prohibits discrimination against individuals over the age of 18.

### ***Peace Officers Bill of Rights***

Iowa Code Chapter 80F protects police, fire, EMT, jailers, probation/parole officer, communication officer or anyone else certified by the Iowa Law Enforcement Academy (ILEA). The purpose of the Peace Officer’s Bill of Rights is to ensure the fair handling and investigation of complaints against peace officers. It is triggered when a complaint is received by a municipality regarding an officer. The definitions of “complaint” and “officer” are defined by the statute.

## The Department of Labor (DOL)

The DOL, headed by the U.S. Secretary of Labor, is responsible for many occupational regulations, including safety, wage and hour, and unemployment insurance.

### The Fair Labor Standards Act (FLSA)

The FLSA establishes minimum wage, overtime pay, child labor laws, hours worked, and recordkeeping.

#### FLSA Minimum Wage

As of July 24, 2009, the federal minimum wage is \$7.25 per hour. Iowa’s minimum wage is the same. In cases where one minimum wage is higher than the other, the higher wage prevails. The Iowa Legislature adopted a law in 2017 preempting counties or cities from establishing their own minimum wage.

#### Department of Labor Overtime

Employees eligible for overtime are classified as nonexempt employees. This classification requires them to be paid overtime pay at no less than one and one-half times their regular rate of pay for hours worked over 40 hours in a workweek. Employees over the age of 16 years are not limited as to how many hours they can work in a workweek. Exempt employees are not entitled to overtime pay. To be considered exempt, an employee must be paid at or above a minimum weekly salary level and meet all the tests within a certain exemption category, including executive, administrative, professional, computer, and outside sales. For additional information, a fact sheet has been provided at: [www.dol.gov/agencies/whd/fact-sheets/23-flsa-overtime-pay](http://www.dol.gov/agencies/whd/fact-sheets/23-flsa-overtime-pay)

#### Child Labor

For teens younger than 18 years, the FLSA restricts the hours of work and the nature of occupations. Federal child labor laws prohibit employment by minors in jobs and conditions detrimental to their health or well-being.

Iowa child labor law largely mirrors federal law. However, recent state legislation has made certain aspects less stringent. The permissible jobs and hours of work, by age, in non-farm tasks are as follows:

- Youth aged 18 and older are unrestricted in the types of jobs they can perform and the hours they can work.
- Youth aged 16 and 17 are allowed to work unlimited hours in non-hazardous jobs.
- Youth aged 14 and 15 may work outside of school hours in various non-manufacturing, non-mining, and

non-hazardous jobs under the following conditions: per state, no more than six hours on a school day, per federal, no more than three hours on a school day; per state, 28 hours in a school week, per federal 18 hours a school week; eight hours on a non-school day, or 40 hours in a non-school week, per state and federal. Additionally, they may not begin work before 7 a.m. nor end after 7 p.m. per state, 9 p.m. per federal, except when school is not in session, when evening hours are extended until 9 p.m. per state, 11 p.m. per federal. When state and federal laws conflict, employers are required to follow the more stringent of the two. They may not work during school hours, except as provided in Work Experience and Career Exploration Programs (WECEP). Under these special provisions, youth aged 14 and 15 enrolled in an approved WECEP may be employed for up to 23 hours in school weeks and three hours on school days (including school hours).

*Youth aged 14 and 15 may work outside of school hours under the following conditions:*

STATE	FEDERAL
<b>No More Than:</b>	
6 hours on a school day, 28 hours in a school week	3 hours on a school day, 18 hours in a school week
8 hours on a non-school day, 40 hours in a non-school week	8 hours on a non-school day, 40 hours in a non-school week
<b>Working Hours:</b>	
School in Session: 7 a.m. - 7 p.m.	School in Session: 7 a.m. - 9 p.m.
School Not in Session: 7 a.m. - 9 p.m.	School Not in Session: 7 a.m. - 11 p.m.

#### Recordkeeping

Employers are required to display an official poster outlining the provisions of the Fair Labor Standards Act. These posters can be picked up at no cost from local offices of the Wage and Hour Division and toll-free by calling 1-866-4USWage (1-866-487-9243). They are also available electronically for downloading and printing at: [www.dol.gov/general/topics/posters#workplace-posters](http://www.dol.gov/general/topics/posters#workplace-posters)

Records that are required for non-exempt employees:

- Employee’s full name and social security number.
- Address, including zip code.
- Birth date, if younger than 19.
- Sex and occupation.
- Time and day of the week when the employee’s workweek begins.

- Hours worked each day.
- Total hours worked each workweek.
- Basis on which the employee's wages are paid (e.g., "\$9 per hour", "\$440 a week", "piecework").
- Regular hourly pay rate.
- Total daily or weekly straight-time earnings.
- Total overtime earnings for the workweek.
- All additions to or deductions from the employee's wages.
- Total wages paid each pay period.
- Date of payment and the pay period covered by the payment.

### **Independent Contractor**

An independent contractor is a person, business, or corporation that provides goods or services to other businesses. A contract dictates the goods or services to be provided and the fee agreed upon. The activities of the independent contractor must be spelled out in the scope of work and acknowledged by both parties. The government organization utilizing the independent contractor does not provide direction and oversight to the contractor or its employees, nor does it provide any benefits, equipment, or supplies. It is the responsibility of the independent contractor to provide proof of workers' compensation and liability insurance. A common document to provide this proof is a Certificate of Insurance (COI) that comes from the contractor's insurance provider(s).

The COI should include the contractor's insurance provider, policy types, policy period, and coverage amounts, and list your organization as an Additional Named Insured.

Each contractor should file a W-9 with the city to document their Employer Identification Number and corporate status. Each contractor must also be registered with the state of Iowa at: [secureapp.dhs.state.ia.us/epay](https://secureapp.dhs.state.ia.us/epay).

### **Meal Breaks and Rest Periods**

Neither Iowa nor federal law requires lunch or coffee breaks for most employees. Iowa does require that employees under the age of 16 years be given a 30-minute meal break if scheduled to work five or more consecutive hours. If a break taken is not a bona fide meal period (typically lasting at least 30 minutes), it should be a compensated break and counted towards overtime if applicable. If a bona fide meal break is taken, it is not considered work time and is not compensable time.

### **Family and Medical Leave Act**

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

#### **Coverage**

One area of the FMLA that has been somewhat confusing for city officials is which employers and employees are covered under the law. While all cities are considered to be covered employers by FMLA, many do not have a sufficient number of employees to be required to comply with FMLA leave requirements. To be eligible to take leave under the FMLA, an employee must:

- Work at a location where the employer has 50 or more employees within 75 miles (make sure to look at seasonal employees and on-call firefighters).
- Work for a covered employer.
- Have worked 1,250 hours during the 12 months prior to the start of leave.

If a city has eligible employees, information concerning FMLA entitlements and employee obligations under the FMLA must also be included in the city's employee handbook or personnel policies.

#### **FMLA Requirements Applicable to All Cities**

All cities are considered covered employers and are required to post a notice explaining the provisions of the FMLA. This posting must occur regardless of whether the city has any eligible employees. The notice must be posted in a conspicuous place where it can be readily seen by employees and applicants. A copy of the required posting can be found on the U.S. Department of Labor website.

#### **Benefits**

The FMLA provides eligible employees with up to 12 work weeks of unpaid leave a year for certain qualifying events. Generally, leave under the FMLA is unpaid. However, a city may require an employee to substitute accrued paid leave (vacation or sick leave) for FMLA leave. A city should have a written policy regarding how such leave and the use of compensatory time off will be treated. The law also requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. Employees are also entitled to return to their same or an equivalent job at the end of their FMLA leave.

### **Qualifying Events**

It is important to be aware that not all medical and family situations qualify for FMLA leave, so check with your city attorney, an employment attorney, and/or the U.S. Department of Labor if any questions arise. A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid, job-protected leave in a 12-month period for one or more of the following reasons:

- For the birth of a son or daughter, and to bond with the newborn child.
- For the placement with the employee of a child for adoption or foster care, and to bond with that child.
- To care for an immediate family member (spouse, child, or parent – but not a parent “in-law”) with a serious health condition.
- To take medical leave when the employee is unable to work because of a serious health condition.
- For qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, Reserves, or Regular Armed Forces.

### **Intermittent Leave**

An employee may take leave under the FMLA intermittently. Intermittent leave is only required to be given by an employer if: (1) medically necessary due to the serious health condition of a covered family member or the employee; (2) medically necessary due to the serious injury or illness of a covered service member; or (3) necessary because of a qualifying exigency. While an employee generally must receive permission from the employer to take intermittent leave for the birth of a child, an employee with a pregnancy-related illness may take leave intermittently for a serious health condition.

### **Military Service**

The military leave rules grant an employee who is eligible for leave under the FMLA up to 26 weeks of unpaid leave to care for a family member (spouse, child, parent, or next-of-kin) who is a covered service member and undergoing medical treatment, recuperation, or therapy for a serious illness or injury and up to 12 weeks of unpaid leave for a qualifying exigency arising from a family member’s active duty or impending call to active duty in support of a contingency operation.

### **Volunteer**

A volunteer is a person who performs services for a nonprofit organization or government entity without monetary compensation, other than reimbursement of expenses or a nominal stipend. Volunteers usually dedicate less time than employees or contractors. It’s important to note that employees cannot volunteer in the same capacity as they are employed; for example, a full-time firefighter cannot volunteer for the same employer where he/she is employed. Volunteers who receive a stipend greater than \$500 lose protection under the Volunteer Protection Act. According to the Department of Labor (DOL), volunteer pay cannot exceed 20 percent of what a permanent employee would be paid for the same services.

### **Safety**

It is the responsibility of every city to provide a safe work environment for their employees. Employees are responsible for following all safety and health regulations as required by federal, state, local, or company policy.

### **Retirement**

#### ***Iowa Public Employee Retirement System (IPERS)***

The Iowa Legislature created IPERS in 1953 to provide a dependable and economical retirement plan for Iowa’s public employees. IPERS retirement benefits help attract and retain qualified personnel in public service.

- **Coverage:** Most city employees are covered under IPERS, with some exceptions. Part-time elected officials and those paid on a fee basis are covered unless they request not to be. Temporary employees working less than six months or on an irregular, seasonal, or on-call basis are excluded from coverage. However, temporary employees may become eligible if they establish an “ongoing relationship” with an IPERS employer, either by earning \$1,000 or more for two consecutive quarters or by working 1,040 hours or more in a calendar year. Employees eligible for another retirement system, such as MFPRSI, are also exempt.
- **Membership Classes:** Most city employees and elected officials are part of the Regular Membership Class of IPERS. Many public safety positions, such as firefighters, police officers (including part-time), and emergency medical service providers, fall under the Protection Occupation Membership Class.
- **Contribution Rates:** IPERS operates as a partnership between employees and employers who share contribution costs. Using an actuarial valuation,



IPERS sets annual rates. In both classes, employees pay around 40% of the total contribution, while employers pay about 60%. Protection Occupations have higher rates since they often work fewer years and retire sooner than Regular Members.

- **Benefits:** IPERS is a defined benefit plan providing a lifetime benefit calculated using a formula based on years of service and salary increases. IPERS offers retirement calculators to help project future benefits.

### ***Municipal Fire and Police Retirement System of Iowa (MFPRSI)***

The Iowa Legislature established the MFPRSI in 1990 to provide a retirement plan for certain police officers and firefighters under *Code* Chapter 411. Cities required to participate in the program include those with public safety departments subject to the state’s civil service law in 1990 and cities with a population exceeding 8,000 in that same year. The plan also covers cities that choose to voluntarily participate in the retirement program. In total, the plan covers employees from 49 cities. Since the guidelines for the program are included in *Code* Chapter 411, the system is often referred to as the 411 System.

- **Contribution Rates:** The contribution rate structure is established by the *Code of Iowa*. The rate for covered employees is set at 9.40 percent of earnable compensation and remains constant. The employer contribution rate is determined each year by the MFPRSI Board of Trustees following an actuarial valuation of the system. Employers must pay a minimum contribution rate of at least 17 percent.
- **Benefits:** MFPRSI is a defined benefit plan that provides a lifetime benefit calculated using a formula. Benefits increase based on years of service and salary growth over a working career. MFPRSI offers retirement calculators to help project retirement benefits.

### ***Early Retirement Incentives***

Public sector employers sometimes offer incentives to employees to retire early. These programs are typically designed for higher-paid employees with relatively long tenures who voluntarily choose to retire. Incentives may include cash payments and continued employer contributions to health insurance and other benefits. The goal of such programs is often to transition higher-paid employees out of the workforce in favor of more cost-effective wage earners.

To confirm the potential savings from such plans, cities should seek the assistance of a human resources consultant. Additionally, the city attorney should review the plan to ensure it complies with various personnel laws, including the Age Discrimination in Employment Act.

## **Drug and Alcohol**

### ***Commercial Driver’s License (CDL)***

Employers that require CDL drivers must drug test the CDL drivers in accordance with the Department of Transportation (DOT) and Federal Motor Carrier Safety Administration (FMCSA).

The DOT states that if an employer has one or more employees operating vehicles with CDLs on a public road, DOT Supervisor Training is required. This training is necessary for the supervisors of the CDL drivers. It includes 60 minutes of training on the symptoms of alcohol abuse and 60 minutes on the symptoms of controlled substance use.

Under these regulations, CDL drivers are subject to the following drug testing scenarios:

- Pre-employment
- Reasonable suspicion/cause
- Random testing
- Return-to-duty
- Follow-up testing
- Post-accident testing

An employer needs to understand and follow these regulations.

### ***Non-Commercial Driver’s License***

Iowa has a drug testing law, *Code* Section 730.5, Private Sector Drug-Free Workplaces. In the definition section of the code under “Employer,” it specifically states that “Employer” does not include the state, or a political subdivision of the state, including a city, county, or school district.

Since the code specifically excludes political subdivisions and there are no other specific drug testing laws or codes that cover these entities, the default law that would govern is the U.S. Constitution, specifically the Fourth Amendment and “the right of people to be secure against unreasonable searches and seizures.”

If the city is currently drug testing non-CDL employees, ensure you are aware of the risks and are working with an employment attorney. The attorney can help draft a drug testing policy (if not already done) and provide legal support as needed.

### Public Employment Relations (Collective Bargaining)

Iowa *Code* Chapter 20 was created to establish the rules for collective bargaining contracts and outline what can and cannot be negotiated. The code also provides guidelines for neutral arbitration when the city and employees cannot reach an agreement. When Chapter 20 was established in 1974, it prohibited public employees from striking.

Chapter 20 was significantly amended in 2017, specifically regarding the subjects of bargaining. For bargaining units excluding public safety bargaining groups, certain subjects that were previously mandatory to bargain are now prohibited, including retirement systems, health insurance, evaluation procedures, dues checkoffs, and other payroll deductions for political contributions and activities, as well as staff reduction. For non-public safety bargaining units, the only mandatory subject to bargain is base wages.

Public employers are now required to hold a recertification vote for each union before each new contract negotiation. A majority of workers in a bargaining unit must now vote in favor of the union, as opposed to the previous law, which only required a majority of the employees who participated in the vote.

### Performance Appraisals/Evaluations

Performance appraisals and evaluations are not mandatory for employers; however, they are essential tools for documentation and communication. When done correctly, an evaluation should cover a specific time period (e.g., the first 90 days, six months, or the past year) and should not contain any new information that the employee hasn't been previously aware of prior to the review. Nothing in the evaluation should come as a surprise to the employee.

Supervisors should provide ongoing communication to employees about their performance, both positive and negative. Assessing a job description while evaluating performance can help determine how well the employee is fulfilling their role. Evaluations should review past goals and determine whether they were achieved, as well as set new goals for the future.

There is no one-size-fits-all evaluation form that is superior to others. It is important to find one that works best for your managers and your organization.

### Property Interests and Due Process

Traditionally, employees who are employed at will do not have a right to due process. However, if a public employee has a “property right” or “property interest” in their employment, they may not be deprived of their employment (terminated) without due process protections as stated in the U.S. Constitution’s 14th Amendment. Public employees with a “property interest” or “property right” are those who, under policy or statutory language, expect continued employment. These employees have a right to due process before termination. While due process does not necessarily require a formal hearing, the city is obligated to give the employee notice of the reason for termination and the opportunity to respond to charges before a final termination decision is made.

### Just Cause

Some cities utilize the “just cause” standard during the termination process. Especially employees covered by a collective bargaining agreement are normally subject to providing “just cause” in termination. Seven factors are used when determining “just cause”:

1. The employee knew the company policy.
2. The company policy was reasonable.
3. The company investigated to determine that the employee violated the policy.
4. The investigation was fair and objective.
5. Substantial evidence existed of the employee’s violation of policy.
6. The company’s policy was consistently applied.
7. The discipline was reasonable and proportional.

These factors are useful to consider in any discipline situation, not just in situations that require just cause.

### Discipline

There are two main types of discipline: progressive discipline and immediate discipline. It’s essential to use an approach that aligns with your city and your culture. Additionally, it’s important to ensure that the chosen type of discipline is applied consistently and does not violate any union contracts.

### Immediate Discipline

This discipline process is immediate and focuses on cause and effect. A poor decision is made, and there is an immediate consequence. There are four components of the immediate discipline:

- **Immediate consequence/discipline:** Prompt discipline regardless of whether it was the first instance or not.
- **Prior warning:** Clear understanding of employer rules and regulations and awareness of potential discipline in the event of a violation.
- **Consistency:** The same discipline is applied each time a violation occurs.
- **Impersonal:** Discipline is applied uniformly to every employee, based on the violation of policy rather than the employee's identity.

Termination traditionally occurs after a certain number of violations or disciplinary actions. If a number is set, it is important to be consistent in terminating every employee who meets the set criteria. Deviating from the established policy could lead to a wrongful termination and/or a discrimination claim.

### Progressive Discipline

Progressive discipline is a process where the consequences become more serious as an employee repeats a violation. Traditionally, progressive discipline follows some or all of the steps outlined below.

To deviate from the progressive disciplinary process, a disclaimer should be included in the policy. The disclaimer should state that the city will strive to follow the progressive approach but reserves the right to combine and/or omit steps and terminate employees without prior notice or disciplinary action, depending on the seriousness and circumstances of each situation.

1. **Counseling/Verbal Warning:** Although this is a verbal warning, it should still be documented, with the employee signing off or having witnessed if the employee refuses to sign. This documentation provides written proof of the first step.
2. **Written Reprimand:** This step is more serious than the first step. It should include a formal plan of action, detailing the issue and why it is a problem, providing details of the incident, and specifying clear expectations and consequences if it occurs again.

3. **Performance Improvement Plan (PIP):** This can be used in the discipline process as well as a non-disciplinary goal-setting and career development tool. A PIP should include expected performance, current performance, a plan of action to achieve expected performance, a timeline to achieve the expected performance, and consequences if not achieved. The PIP should be reviewed with the employee by the supervisor periodically throughout the duration of the plan.
4. **Paid Suspension:** This step may not always be disciplinary in nature. It can be used to investigate a possible violation of policy.
5. **Unpaid Suspension:** This step is used for very serious rule violations or as the last step before termination. If an exempt employee is placed on an unpaid suspension leave, be sure to review the FLSA regulations on docking pay from an exempt employee.
6. **Termination:** The last and most serious step in the process. Upon reaching this step, thorough documentation should accompany the termination paperwork.

Before terminating an employee through any disciplinary process, it is important to evaluate all information regarding the violation. This evaluation should include a review of applicable policies violated, prior infractions by the employee, and a consultation of the employee handbook, applicable union contract, and any additional discipline policies. Comparing other employees disciplined for similar reasons ensures consistent treatment. Consult with an employment attorney if needed.

### Exit Interviews

Exit interviews are a valuable tool for gathering information about the city's performance as an employer and identifying areas for improvement. These interviews should be conducted with the employee by an impartial person who is not their direct supervisor. A well-executed exit interview should yield actionable insights for the city. It is essential to reassure the employee that their honest feedback will not result in any negative consequences.

### Final Check

According to *Code* Section 91A.4, "an employer must pay all wages earned by an employee, minus any lawful deductions specified in Section 91A.5, up to the time of suspension or termination. These wages must be paid no later than the next regular payday for the pay period in which they were earned, as outlined in Section 91A.3."

***Consolidated Omnibus Budget  
Reconciliation Act (COBRA)***

COBRA generally requires group health plans sponsored by employers with 20 or more employees in the previous year to offer employees and their families a temporary extension of health coverage (known as continuation coverage) in certain instances where coverage under the plan would otherwise end.

COBRA allows workers and their families who lose health benefits to continue group health coverage for a limited time under specific circumstances, such as voluntary or involuntary job loss, reduced working hours, job transitions, death, divorce, and other life events. Qualified individuals may be required to pay the entire premium for coverage, which can be up to 102% of the plan's cost.

COBRA outlines the process for employees and family members to elect continuation coverage and mandates that employers and plans provide notice.

# Chapter 6

## Licenses and Permits

Cities issue many licenses and the administration of these licenses often becomes the responsibility of the city clerk. State government requires city involvement for certain licenses, such as liquor, beer, wine, and cigarettes. Cities may choose to issue other licenses because they would like to have more control over the type of work or activity within the city.

### Alcohol (Liquor, Wine, and Beer)

Cities are required to be involved in the issuance of alcohol or beverage permits because of the process mandated by Iowa law. The Iowa Alcoholic Beverages Divisions (ABD) provides oversight at the state level and full guidance related to licensing can be found on their website, [abd.iowa.gov](http://abd.iowa.gov).

Depending on the size of your community and your ordinance requirements, a number of city inspections may be required to determine the eligibility of an individual or business to hold or to renew a liquor license. These would be above and beyond the state-required application requirements. Once the applicant has all the applicable forms completed on the ABD website (this is an online process), a criminal and financial background investigation will take place. When this has been completed and the premises have been inspected and approved, then the application must go before the city council for consideration.

### Additional License Privileges

In addition, there are certain add-on permits and privileges for specific types of alcoholic beverage sale, including retail, off-site, special events and manufacturing. The ABD website has details on each type.

### Application Process/Background Investigations

Cities and the ABD conduct background investigations to determine if applicants and their proposed premises meet licensing requirements. Although time-consuming, these

background investigations play an important role in the issuance of licenses.

### Applicant Requirements

To be eligible to hold a liquor license, or wine or beer license, the applicant is required to file the application online at [abd.iowa.gov/licensing/elaps](http://abd.iowa.gov/licensing/elaps) and meet the standards of 'good moral character.' Under Iowa law, applicants are considered to be of 'good moral character' if the licensee fulfills the following criteria:

- Is a U.S. citizen and an Iowa resident, or incorporated to do business in the state. The corporation must be registered and in good standing with the Iowa Secretary of State's office. In the case of a partnership, only one general partner needs to be a resident of this state.
- Has not been convicted of a felony during the past five years. If an applicant has a felony conviction, the applicant is not eligible to hold an Iowa alcoholic beverages license unless the felony conviction is more than five years old and the applicant's rights of citizenship have been restored.
- Has not had any financial interest in an Iowa liquor license, wine or beer permit that was revoked during the past two years.
- Has 'financial standing' and 'good reputation' to indicate that the applicant will comply with all laws and rules governing the license.

### Premises Requirements

To meet licensing requirements, the proposed licensed premises must conform to all applicable state laws, local ordinances and health and fire regulations. Licensed premises must meet the following criteria:

- Premises must be owned or under the control of the applicant.

- Within the jurisdiction of an approving local authority.
- Kept clean, free of litter, and in good repair.
- Have at least one restroom (if selling for on-premises consumption).
- Equipped with running water from a source approved by the local health department.
- Have tables and chairs sufficient to seat a minimum of 25 people at one time (if selling for on-premises consumption).

### **Local Authority Actions**

The local authority shall either approve or disapprove the issuance of a liquor control license, a retail wine permit, or a retail beer permit, and shall endorse its approval or disapproval on the application (Iowa Code 123.32(2)). The local authority may suspend a class “A”, class “B”, class “C”, special class “C”, class “C” native distilled spirits, or class “E” liquor control license or retail wine or beer permit for a period not to exceed one year, revoke the license or permit, or impose a civil penalty not to exceed one thousand dollars per violation. A local authority which acts pursuant to Section 123.32 or Section 123.50 shall notify the ABD in writing of the action taken, and shall notify the license or permit holder of the right to appeal a suspension, revocation, or imposition of a civil penalty to the division. (Iowa Code 123.39). Pursuant to Code Section 17A.18 and 185 Iowa Administrative Code Section 10.27, the licensee may file a written Notice of Appeal with the ABD within 30 days after issuance of an order. Unless otherwise provided by statute, a person’s request or demand for a contested case proceeding shall be in writing, delivered to the agency by United States Postal Service or personal service and shall be considered as filed with the agency on the date of the United States postal service postmark or the date personal service is made. (Iowa Admin. Procedures Act 17A.12(9)).

### **Evidentiary Appeal Hearing**

If a licensee files an appeal of a local authority action, an appeal hearing is held. An administrative law judge from the Iowa Department of Inspections, Appeals & Licensing holds appeal hearings. The appeal hearing provides licensees with an opportunity to demonstrate that they comply with all the lawful requirements for holding an alcoholic beverages license. The parties may call witnesses, make arguments and introduce evidence. Hearings are open to the public and are recorded.

### **Proposed Decision**

Following the appeal hearing, the administrative law judge will issue a proposed decision. The proposed decision will be in writing and forwarded to all interested parties by mail. The proposed decision may apply to the following:

### **Administrative Sanctions**

The proposed decision may affirm, reverse or dismiss the civil penalty or suspension or revocation imposed by the local authority.

### **Denied License Applications**

The proposed decision may affirm or reverse the local authority’s denial of the alcoholic beverages license application. The proposed decision becomes a final decision unless a request for review is filed with the ABD administrator.

### **Request for Review**

A licensee who objects to the proposed decision may request the ABD administrator to review the decision. The local authority may also request review of the proposed decision. The request for review must be in writing and filed with the ABD.

If a request for review is filed, the ABD administrator may ask the licensee and the local authority to file briefs and exceptions on issues raised in the appeal hearing.

### **Final Decision**

The ABD administrator reviews the proposed decision on the record made at the appeal hearing and on the briefs and exceptions filed by the licensee and the local authority. When review of the record is complete, the ABD administrator issues a final decision. The final decision will be in writing and will be forwarded to the licensee and all interested parties by mail. The final decision may include the following:

- **Administrative Sanctions**

The final decision may affirm, reverse or modify the proposed decision. The Division administrator may also dismiss the matter. If the appeal hearing concerns an administrative sanction, the civil penalty, license suspension or revocation will be stayed pending a final decision.

- **Denied License Applications**

The final decision may affirm or reverse the local authority’s denial of the license application. If the appeal hearing concerns a denied renewal

application, the licensee will be allowed to remain open for alcoholic beverages business pending a final decision. When hearings concern a denied new license application, the applicant will not be allowed to conduct any alcoholic beverages business pending a final decision. The ABD administrator's final decision is final agency action. The next step in the appeal process is to district court.

### **Cigarette/Tobacco/Nicotine/Vapor Permits: (Code of Iowa 453A)**

Enforcement of Iowa's tobacco laws is accomplished through a cooperative agreement between ABD and state, county or local law enforcement agencies. The ABD contracts with agencies for compliance checks at all tobacco retail outlets located within their jurisdiction and reimbursement is made by the ABD for each check conducted. The ABD should be contacted with any related questions.

Every distributor, wholesaler, cigarette vendor and retailer now engaged or who desires to become engaged in the sale or use of cigarettes, tobacco, nicotine, alternative nicotine or vapor products has to obtain a state or retail permit. The department shall issue state permits, and cities may also issue retail permits to dealers within their respective jurisdiction. Cities issuing permits shall submit a duplicate of any application for a retail permit issued by the entity under this subsection to the Iowa Department of Public Health within 30 days of the issuance. All permits expire on June 30 of each year.

Cigarette/tobacco/nicotine/vapor permit application in PDF format can be downloaded online at: [abd.iowa.gov/tobacco/how-obtain-tobacco-alternative-nicotine-and-vapor-permit](http://abd.iowa.gov/tobacco/how-obtain-tobacco-alternative-nicotine-and-vapor-permit). The retail permit fee depends on two things: (1) the location of the business and, (2) the month issued as Table A details.

This fee should accompany the application to the city clerk and is deposited into the city's general fund. After the council has reviewed the applications, the clerk must complete the bottom portion of the application, and complete/print the Retail Cigarette/Tobacco Permit ([abd.iowa.gov/tobacco/how-obtain-tobacco-alternative-nicotine-and-vapor-permit](http://abd.iowa.gov/tobacco/how-obtain-tobacco-alternative-nicotine-and-vapor-permit))

If the retail business goes out of business or stops selling cigarettes and tobacco products, the city can prorate a refund according to Table B.

See Code Sections 453A.13(4) and 453A.47A for additional information, or [abd.iowa.gov](http://abd.iowa.gov) for more assistance.

**Table A**

Location	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun
Outside city limits	\$50.00	\$37.50	\$25.00	\$12.50
City of less than 15,000	\$75.00	\$56.25	\$37.50	\$18.75
City of 15,000 or more	\$100.00	\$75.00	\$50.00	\$25.00

**Table B**

If surrendered in	Refund is
Jul-Sep	3/4 of the amount of fee
Oct-Dec	1/2 of the amount of fee
Jan-Mar	1/4 of the amount of fee
Apr-Jun	no refund given

# Chapter 7

## Insurance

Cities have several types of insurance coverage. Some insurance is provided to employees as a benefit of employment and is required by law, while some insurance coverage options are optional benefits. Additionally, cities must carry insurance on their property, vehicles, and operations, just as businesses and individuals do.

### Health Insurance

Health insurance is a common benefit provided by employers. Employees often expect their employer to provide some form of health insurance coverage and may contribute to the cost. The legal requirements for health insurance coverage changed dramatically with the Patient Protection and Affordable Care Act of 2010. Two provisions of the law as of this writing affect all cities offering health insurance to their employees:

- Health coverage for an employee's children under 27 years of age is generally tax-free to the employee. This expanded healthcare tax benefit applies to various workplace and retiree health plans.
- Employers are required to report the cost of coverage under an employer-sponsored group health plan on an employee's W-2 form (Box 12), using Code DD, if the employer issues 250 or more W-2 forms.

You can find more information about the Affordable Care Act on the League's website at the following [link](#).

As new legislation becomes available, the League will report information to its membership.

There are many options for health insurance coverage, so each city should investigate all options and discuss them with a health insurance professional. The best plan for one city might not be appropriate for another, depending on the number of employees, past claim usage, costs, and other factors. Typically, the city and its employees share the cost of the various plans discussed below.

### Traditional Group Healthcare Plans

The most common type of coverage involves paying group healthcare premiums to a licensed health insurance provider. These plans come in various forms, allowing for different types and levels of coverage. Under a traditional group health insurance plan, rates may vary from year to year based on the vendor's estimates.

### Self-Funded Plans

Larger cities may choose to self-fund their insurance costs. Under this funding method, the city assumes the risk of healthcare costs. They typically use a third-party administrator for the plan and contract with a re-insurer to cover the costs of large and catastrophic claims that exceed a specified dollar amount. *Code* Sections 509A.14 and 15 and applicable portions of the Administrative Code require these cities to submit an annual actuarial report and their annual financial report to the state's Insurance Division. They must also pay a fee based on the premiums and financial health of the fund. Additionally, *Code* Section 513C.10 requires filing the Iowa Individual Health Benefit Reinsurance Program report by March 15.

To control costs, many cities are now self-funding higher deductibles or out-of-pocket costs for their employees. Councils are encouraged to clearly define these benefits through the passage of a resolution.

### Cafeteria Plans

Cafeteria plans provide maximum flexibility and allow employees to choose among different coverage options they prefer, such as dental, vision, and other types of coverage. A formal plan document must be adopted in accordance with IRS guidelines under IRS Code Section 125. One benefit of this type of plan is that deductions under an approved plan can be made on a pre-tax basis, which means that deductions can be made prior to calculating most types of taxes due to the IRS for both the employee and the city.



### Healthcare Savings Account (HSA)

Another option in health coverage is the Healthcare Savings Account (HSA). This type of plan allows employees to contribute money on a pre-tax basis to establish an account for use toward healthcare costs. Although related health insurance plans often have higher deductibles and/or out-of-pocket expenses, the premiums are generally lower. It is important to note that the HSA account belongs to the employee for use in paying medical expenses, even after they leave the city.

### Insurance Stipend

Some cities, particularly those with a small number of employees, choose not to establish a relationship with an insurance provider. Instead, they provide employees with a fixed monetary contribution to purchase their own healthcare coverage. If a city adopts this approach, it should be aware that such a stipend is considered taxable compensation and should be treated as such when calculating taxable wages and compensations for IRS, Social Security, Medicare, and pension plan contribution purposes.

### Minimum Options

At a minimum, the city must provide a written referral to an insurance company. Essentially, the city must write a letter that outlines at least one insurance coverage option the employee could pursue. Additionally, the city must agree to make a payroll deduction for health insurance coverage if the employee requests it. The city is not obligated to contribute to the cost of the coverage.

*Code* Section 509A.13 also stipulates that if a city provides health insurance, an employee who retires (receives a retirement benefit) shall be allowed to maintain the same insurance coverage until age 65 at the employee's expense.

### Property/Casualty

As with any property owner, the city needs to carry insurance coverage on its property. It also needs to carry coverage on its equipment and vehicles in case of accidents and other risks. If a city does not own any vehicles, at a minimum, it should carry "hired and non-owned" liability coverage for city officials or staff who use their own vehicles for city business.

### General Liability

Cities are subject to certain exceptions from liability under *Code* Chapter 670. However, they must maintain general liability coverage. The purpose of this coverage is to protect

the city, its employees, and its officials against mistakes not resulting from gross negligence.

The coverage does not protect individual employees or officials if gross negligence or deliberate wrongdoing can be proven. Some policies have exclusions that may require separate or additional insurance to cover risks such as police and public officials' liability.

### Workers' Compensation

Cities are required by law to provide workers' compensation coverage for their employees. The purpose of this coverage is to protect employees in case they are injured on the job. It compensates for medical costs related to injuries, as well as lost time from work. All city employees are covered, except for police officers and firefighters in cities participating in the retirement system pursuant to *Code* Chapter 411.

Additionally, elected officials are covered when performing duties within the scope of their roles, such as attending council and committee meetings.

Coverage for volunteer public safety personnel is required under Iowa workers' compensation laws. If a volunteer firefighter, emergency medical technician, or reserve peace officer is injured while responding to a fire or emergency, or while performing other tasks within the scope of their duties, they are entitled to workers' compensation benefits as if they were city employees.

Cities often utilize other volunteers, sometimes referred to as casual volunteers, to perform work for the city. This might include library volunteers, special event volunteers, or volunteers for city clean-up days. These volunteers are not eligible for workers' compensation coverage, but a city may still be liable for the medical costs should these individuals be injured while performing volunteer work for the city. Therefore, many insurance providers offer a special coverage endorsement for these types of volunteer workers.

### Certificates of Insurance

Before any work begins on a contract, the city clerk or designee should require the contractor to provide a certificate of insurance proving that the contractor has the necessary types and limits of insurance coverage in place. If a contractor does not have the required coverage or sufficient limits, the city may be held liable for any damages arising from the contractor's activities while performing work for the city.

## Risk-Sharing Pools

It is recommended that each city have an experienced insurance professional periodically review the city's insurance coverage. Gaps in coverage may result from policy exclusions and other factors. The adequacy of coverage amounts should also be re-evaluated periodically and after any major acquisitions or changes occur.

Cities can participate in risk-sharing pools, which reduce administrative duplication and self-insurance concerns. The Iowa Municipalities Workers' Compensation Association (IMWCA) is an association formed for cities, counties, and 28E organizations in Iowa. IMWCA is administered by the Iowa League of Cities.

The Iowa Communities Assurance Pool (ICAP), another city risk-sharing pool, offers general, auto, inland marine, and law enforcement professional liability and property coverage. Members of the Iowa Association of Municipal Utilities have yet another option for purchasing insurance coverage through that association.

## Unemployment Insurance

Unemployment insurance is legally required for nearly all employers in the state of Iowa. This insurance provides monetary compensation for those who are laid off from work through no fault of their own. Occasionally, cities might find themselves in situations where they need to make layoffs due to budget constraints or other circumstances. In these instances, the city must be prepared to handle potential unemployment claims and related costs. For unemployment insurance, cities either reimburse the state through Iowa Workforce Development (IWD) for actual unemployment insurance claims or contribute through payroll taxes throughout the year.

Cities can choose to be reimbursable upon application unless they elect to be contributory by completing an additional form indicating such. Most cities in Iowa have reimbursable status. Cities must reimburse the state for actual unemployment benefits paid out by IWD within 30 days following the billing for any quarter in which the state has made payments to the city's former employees.

Contributory tax rates are determined based on the extent to which tax payments made by the city exceed benefits paid out by IWD. This reserve balance is then divided by the average taxable payroll. IWD will mail tax rate notices giving the percentage for each city in November. The city has 30 days from the date on the rate notice form to appeal their contribution rate.

All cities have the option to change from contributory to reimbursable status, or vice versa. Cities can change their status by December 1 for the next calendar year by contacting IWD for the appropriate forms in advance of the December 1 deadline. However, if a city opts to switch from contributory to reimbursable, it is required to pay IWD any deficit due to claims against its current account in excess of contributions.

More information regarding IWD can be found at [workforce.iowa.gov](https://workforce.iowa.gov).

# Chapter 8

## Planning and Zoning and the Board of Adjustment

In many Iowa cities the clerk or finance officer is also responsible for zoning administration. Even though at first it may appear to be one of those “other duties as described,” zoning administration is an important task. Not only are there specific legal requirements associated with the administration of zoning, but land use decisions made through the planning and zoning process will have implications on the physical and financial health of the city for many years. This chapter provides an overview of a city’s comprehensive plan and zoning and subdivision regulations. Iowa State University (ISU) Extension and Outreach publishes the Iowa Land Use Planning Notebook, an excellent reference on planning and zoning in Iowa. ISU Extension and Outreach also provides planning and zoning training workshops throughout the state. To find out more visit: [blogs.extension.iastate.edu/planningBLUZ](https://blogs.extension.iastate.edu/planningBLUZ).

Some small towns may not see the need for full planning and zoning codes. In these communities the council may adopt ‘restricted residence districts’ under *Code* Section 414.24, which are simpler to administer. The council, by ordinance, establishes rules for land uses that are allowed in such districts; but, in general, only houses, schools, churches, and similar structures are authorized. Restricted residence districts are less flexible and the council cannot, for example, regulate commercial or industrial uses. Still, they can be a good option for smaller communities. A good publication to look to for more information is the Zoning Option for Small Communities series which can be downloaded at [store.extension.iastate.edu/product/5450](https://store.extension.iastate.edu/product/5450).

### The Purpose of the Comprehensive Land Use Plan

The comprehensive plan, also known as a general plan, master plan, or land use plan, is a document designed to guide the future development of the city. It presents a vision for the future and identifies actions the local government should take to see that development is done according to that vision. Most plans are written to provide direction for future activities over a 10-to-20-year period after plan

adoption; however, plans should receive a thorough review every five years to determine whether it still accurately describes the community and its goals for the future.

A comprehensive plan serves the following functions:

- *The plan provides continuity.* The plan provides a stable vision across time and gives successive public bodies a common framework for addressing land use issues.
- *It informs the public of the city’s plans for the future.* The plan is a policy statement, complete with maps, that reflects the city’s intentions for how it wants to develop. As such, it provides landowners and citizens with information critical to planning their own decisions about buying, selling and developing their properties.
- *It is the means by which a city can balance competing private interests.* Planning seeks to strike a balance among the many competing demands on land by creating development patterns that are orderly and rational, provide the greatest benefits for individuals and the city as a whole, and avoid conflicts between land uses.
- *It is the means by which a city can protect public investments.* Planning helps a city avoid digging up last year’s new road to lay this year’s sewer pipe. Well-planned, orderly development patterns are also less expensive for a city to provide public services than low-density, scattered development.
- *It provides justification for decisions.* Plans provide a factual and objective basis to inform and support zoning decisions and can be used by communities to defend their decisions if challenged in court.
- *It promotes economic development.* The plan contains valuable information that drives the location decisions of prospective firms. It also allows a community to engage in more creative ways to promote development,

such as the creation of tax increment financing (TIF) districts which are consistent with the comprehensive plan.

- *It allows communities to plan development in a way that protects valued resources.* Planning can identify unique environmental features and suggest strategies for preserving those features from destruction or degradation by inappropriate development.
- *It provides guidance for shaping the appearance of the city.* A plan can set forth policies that foster a distinctive sense of place. For example, it can ensure that future development is consistent with the overall architectural, cultural and historical character of the community.
- *Through public dialogue, citizens express a collective vision for the future.* Last, but certainly not least, the planning process provides citizens an opportunity to brainstorm, debate and discuss the future of their city. A plan developed through a robust public input process enjoys strong community support. Subsequent decisions that are consistent with the plan's policies are less likely to become embroiled in public controversy.

### The Elements of a Comprehensive Plan

Broadly speaking, comprehensive plans address four topics:

- (1) A thorough review of the city's existing conditions;
- (2) goals and objectives for development;
- (3) implementation strategies for achieving those goals; and
- (4) the future land use map.

In 2010, the Iowa Smart Planning Act gave specificity to the preferred contents of a comprehensive plan. *Code* Section 18B.2 captures these four broad topics in 13 "elements" (think of "chapters") that should be included in a comprehensive plan:

- (1) public participation in the planning process;
- (2) existing community characteristics;
- (3) land use;
- (4) housing and neighborhoods;
- (5) public infrastructure and utilities;
- (6) transportation systems;
- (7) economic development;
- (8) agricultural and natural resources;
- (9) community facilities;
- (10) community character;
- (11) hazards;
- (12) intergovernmental collaboration; and
- (13) plan implementation.

### Legal Authority

Cities derive planning and zoning authority from *Code* Chapter 414. With regard to the comprehensive plan, Section 414.3 states that zoning regulations, if adopted, "shall be made in accordance with a comprehensive plan." Despite the specificity of this language, courts in Iowa have never interpreted it to mean that a separate, written document called a comprehensive plan must be adopted for zoning to be legal. Courts have made it clear, however, that they are much more likely to support a city's zoning decision if there is an adopted comprehensive plan in place and the zoning decision being challenged is consistent with the policies found in that plan.

### The Zoning Ordinance

The zoning ordinance is one of the primary mechanisms for implementing the policies of the comprehensive plan. The zoning ordinance assigns compatible land uses to defined districts ("zones") throughout the city. In addition to regulating uses, zoning controls lot sizes and the placement, height, bulk and coverage of structures. Further, the ordinance can regulate site features such as landscaping, driveways, parking and loading areas. Some ordinances specify performance characteristics such as noise, runoff and illumination standards.

The zoning ordinance is composed of a map and text. It is common for people to talk about the "zoning ordinance" when simply referring to the text, but because the same process must be followed for adopting and amending both the text and the map, both documents together constitute the ordinance.

The zoning map shows the boundaries and labels of the districts into which the city has been divided. Every parcel of land will be identified as being in one zoning district. Local government staff and officials, landowners, residents and developers all refer to the map to determine how a particular parcel of land is zoned. If the zoning ordinance utilizes overlay districts, some properties may lie in two or more districts, the underlying district and the overlay district. These overlay districts normally include special supplemental regulations that apply across several zoning districts, such as floodplain or wellhead protection areas.

The zoning text contains the regulations. The text will set forth the district regulations that apply within each zoning district. These include: permitted uses, minimum lot size for development and how far buildings must be set back from property lines. The district regulations may also contain

provisions related to building height, parking requirements, lighting, signage and other miscellaneous matters.

The zoning text will also contain regulations that apply to all properties, regardless of the zoning district in which they lie. Usually these general provisions include guidance as to the interpretation of the ordinance and its relationship to other laws. A definitions section is typically provided to explain the specific meaning of terms used throughout the rest of the ordinance. Procedures for administering the zoning regulations and the penalties for violation of the ordinance will appear in the text as well.

### The Role of the Zoning Administrator

The zoning ordinance establishes the procedures that citizens must follow any time they wish to build or alter any structure in the city or put their land to a use different than its current use. The zoning administrator is typically the first contact for citizens applying for any type of permit required by the zoning ordinance. They also are available for residents simply seeking answers to questions about zoning and their property. The principal duties of the zoning administrator include:

- Assisting citizens in determining what zoning forms apply to their requested action and answering questions about how to complete them.
- Helping citizens follow the required procedures.
- Reviewing applications and supporting documentation to determine compliance with the ordinance.
- Issuing permits when all ordinance requirements are met and involvement of the planning commission or board of adjustment is not required. These typically include zoning permits, temporary use permits, certificates of occupancy and others as specified by the ordinance.
- Advising citizens on alternatives if a proposal is not in compliance. This may mean suggesting different site designs that will better comply with the ordinance, suggesting alternative procedures (such as a variance or special exception) or advising on the appeal process should the applicant disagree with the administrator's decision.
- Performing inspections during the building process to ensure that the development complies with the site plan submitted and the zoning regulations.
- Investigating alleged violations of the ordinance.
- Initiating enforcement proceedings when necessary to correct a violation.

- Monitoring nonconforming uses.
- Keeping zoning records up to date by recording all amendments.
- Staffing the planning commission and board of adjustment. Writing reports and recommendations when requested or when required by ordinance.
- Providing information on planning and zoning to citizens and other governmental agencies upon request.

The most important principle for any zoning administrator to follow is to implement the ordinance as it is written. In working with the regulations, the administrator has no authority to ignore a particular clause, modify procedural requirements, or apply an interpretation that is contrary to its clear, literal meaning. If an applicant disagrees with the administrator's application of procedures or interpretation of provisions, the applicant should be advised that the appropriate recourse is to file an appeal with the board of adjustment.

The job of a zoning administrator is an important, albeit thankless one. As the most visible representative of the community on land use matters, the administrator must always be courteous and professional; however, a good zoning administrator cannot afford to always be agreeable. Some citizens will be seeking a break, looking for a shortcut around the ordinance or asking the administrator to ignore violations. An administrator that goes along to get along is not discharging their duties properly and is creating potential legal problems for the community.

### Common Zoning Procedures

Each city's zoning ordinance contains a section that explains the procedures for reviewing and deciding on the various types of land use actions, including outlining the exact procedural steps that must happen to take action and setting forth the criteria, where applicable, that the ultimate decision-making body must use in deciding on the action.

Find the roles and functions of each decision-making body as found in typical local zoning ordinances [here](#).

### Zoning Ordinance Adoption

When a city is adopting a zoning ordinance for the first time, *Code* Section 414.6 requires the planning commission to recommend the original draft and hold at least one public hearing to receive citizen input. Notice of the hearing must comply with Section 362.3; "not less than four nor more than twenty days" prior to the hearing. After

the planning commission holds its hearing and forwards its recommendation to the city council, the council must hold its own hearing. This hearing must follow the notice provisions of Section 414.4 requiring that “at least seven days notice must be given and in no case shall the public hearing be held earlier than the next regularly scheduled city council meeting following the published notice.”

The ordinance must be considered and voted on at three meetings unless this requirement is suspended by a vote of at least three-fourths of the council members (Section 414.5).

The clerk must publish a summary or complete text of the ordinance consistent with Section 362.3, maintain copies of the ordinance for public use (Section 380.7) and record the ordinance with the county recorder (Section 380.11).

### **Zoning Ordinance Amendments**

The zoning amendment procedure is initiated when a landowner, or the city itself, wishes to make a change to the map or text (typically referred to as a rezoning). Cities must follow the same procedures for adopting amendments as for initial adoption of the ordinance.

### **Board of Adjustment**

The board of adjustment is an independent body, meaning that an individual must go to court to appeal a decision of the board. The city council does not have the authority to override a board of adjustment decision; likewise, the board does not have the authority to override the decision of the council on matters such as rezonings or text amendments. *Code* Section 414.9 requires the board to adopt and maintain rules of procedure that will govern the conduct of board meetings and set deadlines for action consistent with those found in the zoning ordinance.

Section 414.12 is very specific in defining the three functions of the board of adjustment:

1. **Appeals** of decisions of zoning administrator. *Code* Section 414.12(1) gives the board of adjustment authority to hear and decide on appeals of decisions of the zoning administrator. The circumstances for appeal usually involve a permit denial or an interpretation of a provision of the ordinance with which the appealing party disagrees.
2. **Special exceptions.** *Code* Section 414.12(2) vests the board of adjustment with authority to approve special exceptions. The terms “special use,” “conditional use” and “use exception” are frequently found in zoning

ordinances. They are generally synonymous with the term “special exception” found in the *Code*. Zoning districts usually have two use categories: (1) permitted uses, which are those listed by the ordinance as being allowed by right in any location and can be approved by the zoning administrator and (2) special exceptions (special uses, conditional uses, etc.), which are approved at the discretion of the zoning board of adjustment. They are generally uses that are unique and slightly out of character, with permitted uses. With conditions imposed by the board of adjustment, a special exception is an appropriate use that can be made to “fit” into its surroundings. The ordinance will contain criteria for the board to consider before approving any application for a special exception.

3. **Variances.** *Code* Section 414.12(3) authorizes variances. The variance is an authorization to use property in a manner generally forbidden by the ordinance; for example, extending a building, deck, garage or other structure into the setback area where structures are forbidden. To be granted a variance, the applicant carries the burden of proving that strict enforcement of the ordinance will inflict an “unnecessary hardship” on the landowner. This is a difficult standard to meet. Variances are not to be granted simply because the neighbors do not object, or because the board “can’t see the harm in it.” Granting too many variances that do not meet the unnecessary hardship standard damages the integrity of the ordinance and opens the city to possible future legal challenges.

### **Site Plans and As-Built Drawings**

The zoning ordinances of almost all communities require that a site plan or, at minimum, a sketch plan be submitted as part of the approval process for many types of development. Depending on the complexity of the project, this document can range from a certified drawing of a new building by an engineer to a hand drawn sketch showing the extent of a proposed fence. The site plan allows the zoning administrator to ensure compliance with zoning code requirements such as landscaping, lighting and parking.

Depending on the development, other various regulations and standards may apply including those governing land division, access, traffic flow, storm drainage, erosion, grading and others. The zoning ordinance will specify the circumstances under which site plans are required and the information required to be included with the official submission. The site plan can vary in detail depending

on the size and complexity of the project and the administrative needs and capacity of the local government. It is often helpful for local governments to develop checklists for commonly used permits to simplify the review process and ensure that nothing is missed.

In addition to the site plan, zoning administrators should request an as-built drawing after any construction is completed before issuing any final permits or certificates of occupancy (see below). This drawing should then be reviewed once again to ensure compliance with the relevant sections of the zoning code before filing. The zoning administrator may also make a site visit to verify that the as-built drawing accurately reflects the reality on the ground.

### **Zoning Permits and Certificates of Occupancy**

Proposed land use activities consistent with the zoning ordinance are monitored by an administrative permit system. The permit system ensures that the activities proposed and carried on are consistent with the ordinance. Zoning permits, the first step in the system, ensure that planned uses and structures comply with the zoning ordinance. This is done generally through a review of a site plan and other supplementary material defined in the local zoning code.

Certificates of occupancy, the last step in the system, guarantee that the use and/or structure as completed comply with the approved permits. The as-built drawing along with any additional information and inspections required by the code serve as the primary criteria for assessing whether a certificate can be issued. The zoning administrator has primary responsibility for both zoning permits and certificates of occupancy.

### **Zoning Enforcement**

Enforcement actions can arise in a number of circumstances:

- When a provision of the zoning ordinance is violated. For example, a prohibited use is commenced or a prohibited structure is built.
- When a permitted use is commenced, or an allowable structure is built, but the applicant fails to obtain the proper permits.
- When a landowner makes alterations to the use or structure that are not authorized by the terms of the approved permit.
- When a landowner violates the conditions attached to an approved variance or special exception.

*Code* Section 414.20 provides the authority for zoning enforcement and the remedies available to correct violations. It enables a community to provide for enforcement procedures either through the zoning ordinance itself (by writing enforcement procedure into the ordinance) or through other city/county ordinances. For example, the community may provide in the zoning ordinance that violations will be treated as nuisances and handled through the community's nuisance ordinance.

Many violations occur innocently because a landowner is unaware of the applicable regulation. Often a good zoning administrator can eliminate the need for formal enforcement procedures through informal contact with the landowner, either face-to-face or correspondence, by providing an explanation of the regulation and how it is being violated with advice on concrete steps the landowner should take to remedy the violation.

If informal contact fails to remedy the situation, or if contact is not possible because the landowner cannot be reached, the city's ordinances will specify the process for issuing a notice of violation. The notice will generally state the ordinance provision being violated, the circumstances of the violation, including the date the administrator most recently documented the violation, steps to be taken to correct the violation, and a deadline by which the violation must be corrected.

# Chapter 9

## Municipal Accounting and Reports

As the finance officer, one of your essential duties is maintaining the financial records for the city and accounting for the various funds received and expended. This chapter provides an overview of the restrictions relating to the use of public funds, the organization of city finances into funding categories, the regulations relating to financial audits or examinations, and an explanation of the various financial management policies that your city should develop and maintain.

### Municipal Finance

*Code* Chapter 384 provides the framework for much of the city's financial operation. This chapter establishes the city's authority to levy property taxes, determines that the city fiscal year runs from July 1 to June 30, and establishes and defines the various funds that cities are required to establish. This chapter of the state code also authorizes the City Finance Committee.

The City Finance Committee is a state-level committee whose duties include creating rules relating to preparation of city budgets and budget amendments, guidelines for budgeting and accounting, and the other rules necessary to improve the sound financial operations of cities. Located within the Iowa Department of Management, the membership of the committee includes the Auditor of State or the auditor's designee, a designee of the Governor, a Certified Public Accountant experienced in city accounting and five city officials who are regularly involved in budget operations and represent cities of various population ranges.

Another entity that has an indirect but significant impact on city financial operations is the Government Accounting Standards Board (GASB). GASB was organized in 1984 to establish standards of financial accounting and reporting for state and local governmental entities. Its standards guide the preparation of external financial reports of those entities and can have a significant impact on how cities are required to operate financially.

### The Basis for Municipal Accounting

The majority of cities in Iowa operate on a cash basis, with primarily the larger population cities operating on a form of accrual basis or do the end of year conversion to accrual for their financial statements. The essential difference between the two relates to determining when to recognize and record revenue and expenditures in financial records.

Cash basis revenues are recognized when cash is received and deposited. Expenditures are recorded in the accounting period when they are paid. In accrual basis accounting, income is realized in the fiscal year in which it is earned, regardless of when the revenue is received. Expenditures are recorded as they are owed instead of when they are paid. Accrual basis also incorporates the concept of capitalization and depreciation of equipment and assets.

Cities operating on a cash basis operate in much the same manner that most of us organize our personal finances and checking accounts. Cities operating on an accrual basis operate in a manner similar to large businesses and corporations.

### Uniform Chart of Accounts

The document that provides the structure for city financial reporting in Iowa is the *Uniform Chart of Accounts for City Governments in Iowa*. The most recent version was adopted by the City Finance Committee in October 2023 and can be downloaded from the Iowa League of Cities website ([www.iowaleague.org](http://www.iowaleague.org)). The chart incorporates the financial reporting requirements that GASB adopted in 1999 in its Statement 34 - Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments and the accounts needed for Iowa's 2013 and 2023 property taxation changes.

While operating under the guidance of the *Uniform Chart of Accounts* is not mandatory, the majority of cities in Iowa utilize the chart due to the fact that the required state



budget forms and Annual Financial Report are consistent with its structure.

While the *Uniform Chart of Accounts* establishes the organization of funding categories, the city is not required to have separate bank accounts for each fund. Typically, the city only has one bank account with its revenues and expenditures tracked on the city's general ledger either manually or through the use of various software packages.

## Types of Funds

Based on the *Uniform Chart of Accounts*, city operations are broadly separated into *Governmental Activities* and *Business Type Activities*. Business type activities account for the *proprietary* or *utility* operations that the city may operate. For this manual, the term enterprise will be used for business type activities such as utility operations. Governmental activities account for the remainder of city operations not operated in the same manner as a business.

### Governmental activities include the following funds:

#### General Fund

The General Fund is the chief operating fund of the city. All general tax revenues and other receipts that are not allocated by law or contractual agreement to some other funds are accounted for in this fund. General operating expenses, the fixed charges and the capital improvement costs that are not paid from other funds are paid from this fund. In order to accurately track the taxes received from voted and non-voted levies, as well as other revenues, cities may establish separate accounts within the General Fund.

#### Special Revenue Funds

These funds account for proceeds received from specific sources, other than those accounted for within capital projects funds, that are required by law or regulation to be accounted for in separate funds and to be expended for specific purposes. The types of revenues that are typically accounted for as special revenues include Road Use Tax Fund receipts, property taxes levied for retirement and benefits, local option sales tax receipts, tax increment financing revenues, and most grants.

#### Debt Service Funds

These funds account for the payment of interest and principal on the city's general obligation long-term debt. *Code* Section 384.4 requires that general obligation debt be paid from the debt service fund; they cannot be paid from another fund.

#### Capital Project Funds

These optional funds account for resources used in the acquisition or construction of major capital facilities and capital assets. Even if a capital project fund is used, not all capital acquisitions and projects need be accounted for in the fund. For example, the routine purchases of capitalized items such as police vehicles and office equipment are typically budgeted and reported in the General Fund or other governmental fund.

#### Permanent Funds

These funds account for resources that are legally restricted to the extent that only the earnings, and not principal, may be used for purposes that support the reporting of governmental programs (i.e., for the benefit of the government or its citizenry). The funds previously classified as non-expendable trusts, such as a Perpetual Care Cemetery fund, should be reported here.

### Business type activities include the following funds:

#### Enterprise Funds

These funds account for operations: (a) that are financed and operated in a manner similar to private business enterprises – where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user fees; or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability or other purposes.

If the governing body's intent is not to report the activity as a business type activity, the transactions should be reported in the appropriate governmental activity in the General Fund or other governmental fund.

#### Internal Service Funds

These optional funds account for the financing of goods or services provided by one department or agency to other departments or agencies of the governmental unit, or to other governmental units, on a cost-reimbursement basis. An internal service fund should only be used if a government intends to recover the full cost of providing a service (including any depreciation expense) through user charges. The major use of internal service funds by city governments in Iowa is for self-funded insurance or inventory pools.

**Fiduciary Activities:**

***Pension Trust Funds***

These funds account for assets of pension plans held by a government in a trustee capacity. (This does not apply to Chapter 411 or IPERS retirement systems.)

***Private Purpose Trust Funds***

These funds account for trust arrangements, including those for escheat or abandoned property, when property and/or an estate is transferred to the government because a person has died without a will or an heir to his or her estate, where the principal and income benefits individuals, private organizations or other governments. The major use of private purpose funds is for escheat property.

***Custodial Funds***

These funds account for those assets held solely in a custodial capacity by a governmental unit as an agent for individuals, private organizations, other governmental units, and/or other funds.

***Expenditure Functions***

The term function refers to the major program areas referenced by the *Iowa Administrative Code*. The published budget forms required by the State of Iowa mandate the reporting of expenditures within one of nine major expenditure classes for governmental activities and reporting within those business type activities that are appropriate for the city. Within each function are activities associated with the function.

**Governmental Activities – Function Areas**

***Public Safety Function***

- Police Operations/Crime Prevention
- Jail
- Emergency Management
- Flood Control
- Fire Department
- Ambulance
- Building Inspections
- Miscellaneous Protective Services
- Animal Control
- Other Public Safety

***Public Works Function***

- Roads, Bridges, Sidewalks
- Parking-Meter & Off Street
- Street Lighting
- Traffic Control & Safety
- Snow Removal
- Highway Engineering
- Street Cleaning
- Airport (if not an enterprise)
- Garbage (if not an enterprise)
- Other Public Works

***Health & Social Services Function***

- Welfare Assistance
- City Hospital
- Payments to Private Hospitals
- Health Regulation & Inspections
- Water, Air, Mosquito Control
- Community Mental Health
- Other Health & Social Services

***Culture & Recreation Function***

- Library Services
- Museum, Band, Theater
- Parks
- Recreation
- Cemetery
- Community Center, Zoo & Marina
- Other Culture & Recreation

***Community & Economic Development Function***

- Community Beautification
- Economic Development
- Housing & Urban Renewal
- Planning & Zoning
- Other Community & Economic Development

***General Government Function***

- Mayor, Council & City Manager
- Clerk, Treasurer & Financial Administration
- Elections
- Legal Services & City Attorney
- City Hall & General Buildings
- Tort Liability
- Other General Government

***Debt Service Function***

- Payments of principal and interest for general obligation bonds

**Capital Projects Function**

- Governmental Capital Projects
- TIF Capital Projects

**Business Type Activities – Function Areas**

- Water
- Sewer & Sewage Disposal
- Electric
- Gas
- Parking
- Airport
- Landfill/Garbage
- Hospital
- Transit
- Cable TV, Telephone, Internet
- Housing Authority
- Stormwater
- Other Business Type

*Note: Business type activities for capital projects and debt service are listed on a separate line from the operating activity*

**Revenues Sources**

While Iowa is a Home Rule state with cities enjoying a significant degree of flexibility and authority, the ability to raise and generate revenues is restricted. These restrictions either include the type of revenue source available, the amount of revenue that can be raised or the source available to generate revenues.

**The Uniform Chart of Accounts recognizes the following revenue sources:**

**Taxes**

Includes levied property taxes but does not include state property tax replacements against those taxes. Also includes other city taxes, local option sales taxes, gambling taxes, hotel/motel tax, tax increment financing revenue and utility tax replacement excise tax.

**Licenses and Permits**

Includes building structure and environmental permits, health and environmental licenses and permits, and other licenses and permits.

**Use of Money and Property**

Includes earnings from investments, rents, royalties and other miscellaneous related income. Does not include proceeds from sale of real property or equipment.

**Intergovernmental**

Includes state-shared revenues, state and federal grants and reimbursements, contributions and reimbursements from other governmental units and agencies, and payments in lieu of taxes.

**Charges for Services**

Includes charges for pertinent utility service, as well as related charges and connect/re-connect and penalty/forfeiture fees charged. Also includes any charges for other city services in the governmental funds.

**Special Assessments**

Includes charges for any city assessments (further discussed in Chapter 14).

**Miscellaneous Revenues**

Includes contributions, deposits and refunds, sale of merchandise, fines and internal service charges.

**Other Financing Sources**

Includes transfers in and interfund loans, proceeds from the sale of real and personal property, and proceeds from debt.

*Note: Starting in FY 2017 transfers in and interfund loans have been recognized separately from Other Financing Sources.*

**Annual Financial Reports**

Cities are required to prepare and file a City Annual Financial Report (AFR) with the Office of the Auditor of the State (and by using an online system with the Department of Management). The report is designed to report the city's financial activities for the fiscal year and is due no later than December 1. While the forms are filed with the Auditor of the State, they are shared with the U.S. Census Bureau which uses the information for data purposes.

Following completion of the AFR, cities are required to publish, or post if the city's population is less than 200, a single page summary prior to submission. Failure to complete and file the AFR will result in an inability to certify city property taxes and acceptance of the budget for the upcoming fiscal year. A tutorial video is available for completion of this report.

The Department of Transportation requires an annual financial report be filed reflecting street-related projects. The Street Financial Report includes all funds and equipment used for street maintenance, construction, reconstruction and debt-related expenses. The council must approve this report by resolution, but no publication is required. The due date is December 1 of each year.

The State Treasurer's Office requires annual reports on the total outstanding debt by August 31 of each year. Completed online at [www.debtreportingiowa.gov/](http://www.debtreportingiowa.gov/), this report does not require any publication or approval by the council.

Cities with urban renewal areas also must complete and submit the Annual Urban Renewal Report to the Department of Management by December 1 of each year that provides details on related activities and finances.

### Audits, Examinations and Other Internal Oversight

The financial condition of the city is ultimately the responsibility of the mayor and city council. The mayor, council and city staff must work together to: 1) ensure the quality of the financial reporting is adequate to make sound decisions, 2) ensure compliance with state and federal regulations, and 3) provide the best internal controls possible. Cities subject to audits or examinations may also receive guidance, including findings and recommendations, from their independent auditors.

An internal audit committee is one way for a council to provide independent review and oversight over the city's financial reporting processes, internal controls and independent (external) auditors. An audit committee also provides a forum separate from city staff in which auditors and other interested parties can candidly discuss concerns. Here are some recommendations to establish an audit committee. (Note: the Government Finance Officers Association, Association of Government Accountants and other organizations have suggested audit committee structures which are more comprehensive than what is noted below.)

- Most cities establish a Council Finance Committee (or the mayor and an interested council member) to do these duties.
- The committee should be formally established by resolution or as part of the city's financial management policy. The policy should include the scope of the committee's responsibilities, its structure, processes, or any membership requirements. The committee should review its responsibilities periodically, but no less than once every five years, to assess its role in the city's financial reporting.
- Ideally, members of the committee should have or obtain an understanding of governmental budgeting, financial accounting, and reporting and auditing requirements.
- At least one member of the committee should be a member of the city council. To ensure the committee's independence and effectiveness, no member should have management responsibilities that fall within the scope of the audit. For example: the city clerk or finance director should work with the committee, but not be a member.
- Ideally the committee could have three or more members, but not so large that they impede its efficient operation.
- It is the responsibility of the committee to provide independent review and oversight over the government's financial reporting processes, internal controls and independent auditors, including a duty to exercise an appropriate degree of professional skepticism. A periodic review of original invoices and bank statements would be considered appropriate in this area.
- The committee should be involved in the creation and review of the request for proposal (RFP) for audit or examination services to make a recommendation to the council. During the audit or examination engagement, the committee should be available for consultation with the independent auditors.
- The committee should provide for the confidential, anonymous submission by employees of the government of concerns, if any, regarding questionable accounting or auditing matters.
- The committee should report to the city council at least annually on its activities. In its report the committee should specifically state that it has discussed the financial statements with staff and with the independent auditors.

A financial audit or examination consists of procedures performed by external, independent auditors of the financial condition and transactions and compliance with legal requirements of a city for a specific period or fiscal year. A city may fall within one of the following three categories under *Code* Chapter 11:

1. Cities with population 2,000 and greater are required to be audited by a qualified firm or CPA identified through a request for proposal process. All audit reports and the appropriate filing fee is to be submitted to the Auditor of State's Office annually within 9 months from the end of the fiscal period.
2. Cities with populations less than 2,000 but with budgeted expenditures in excess of \$1 million for

two consecutive years are required to have an annual examination. They are to select and contract with a qualified CPA firm through the request for proposal process, file the examination report and pay the appropriate filing fee to the Auditor of State.

3. Cities with budgeted expenditures less than \$1 million each year and under the 2,000-population threshold will submit a periodic examination fee to the Auditor of State by March 31 each year and are eligible for periodic examinations on a random selection basis. The Auditor of State will arrange for these examinations. Each city is subject to an examination at least once every eight years.

Cities not required to have an annual audit are always able to have an audit conducted on their own initiative. All cities may be compelled to have an audit conducted upon receipt of a qualified petition from the citizens of the city. When engaging the services of an auditor, the city has the option of hiring the Auditor of the State to perform the audit or annual examination or it may seek the services of a private CPA firm. If the city chooses to seek the services of a private CPA firm, it is required to issue a RFP seeking qualified bids. See a [sample audit services RFP here](#) and a [sample examination RFP here](#). More information is found on the State Auditor's website, [www.auditor.iowa.gov](http://www.auditor.iowa.gov).

The audit is required to be completed within nine months of the end of the fiscal year, and a copy of the report, including the aforementioned filing fee, is required to be filed with the Auditor of the State. In addition, a public notice of the completion of the audit is required prior to filing with the Auditor of State.

All city activities are eligible for scrutiny by the auditor; however, specific items are likely to be requested by the auditor based upon generally accepted auditing standards and guidelines from the Auditor of State. A city would do well to review a list of these items to ensure compliance and adequate preparation for the audit or examination. A list of major items can be found [here](#).

### Audit Findings

Auditors prepare a report which includes the findings resulting from their review of internal control and related procedures performed during the audit or examination. As part of the report, the auditors include recommendations for corrective action to the city. However, city officials and employees are responsible for responding to the findings and implementing corrective action.

Internal control is a process, affected by an entity's governing body, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

1. Reliability of financial reporting;
2. Compliance with applicable laws and regulations; and
3. Effectiveness and efficiency of operations.

Governmental audits are required to include both financial information and findings pertaining to internal control and statutory or legal compliance. Deficiencies in internal control exist when the design or operation of a control does not allow the city management or staff, in the normal course of performing their assigned duties, to prevent, detect and correct misstatements on a timely basis.

Segregation of duties is an internal control mechanism whereby no one individual is placed in a position of being able to both commit and conceal an irregularity by performing incompatible duties and may allow errors to go undetected. Accordingly, auditors may have a finding and recommendation pertaining to the city's entire system of internal control or just certain aspects of internal control such as the city's receipt process, disbursement process or payroll process. Hiring additional personnel is not always feasible or even necessary. To mitigate the weakness in internal control, auditors often recommend administrative oversight by the mayor, a member of the city council or if available, the city administrator or other employee.

Internal control deficiencies are required to be communicated to city officials by the independent auditors. Statutory findings may include compliance issues relating to city ordinances and resolutions, the *Code of Iowa* and federal laws.

### Financial Policies

Financial policies are designed to provide an overall direction and establish parameters within which the city can make decisions concerning its financial operations. In some cases, financial policies are required by the state while others are optional. As the city's finance officer, you may wish to consider having your city adopt the following financial policies:

#### **Internal Control Policy**

This policy details how a city will institute good monitoring of accounting practices within its operations. Four areas are particularly important in the protection of public funds and assets of the city.

Every internal control policy should address these areas:

1. Effective council oversight;
2. Segregation of duties;
3. Standard operations in place and documented for all staff; and
4. Monitoring the key processes, control and reports.

### **Segregation of Duties**

There are several functions that are always going on in the accounting department of a city which must be monitored. Segregation of duties is a policy where two different people handle the accounts and physical operation of assets.

This policy also involves a series of cross checks and tallies. The double entry system is a crucial instrument for such a process. In practice this is impractical in most cities due to a lack of staff and resources. But council oversight, reporting and auditing assist in the prevention of fraud where the segregation of duties is difficult.

### **Transactional Authorization**

All transactions are authorized by the council. Written policies on internal control and purchasing policies are also implemented, which further defines how individual transactions can be approved. It means that when purchasing items for the city, employees need to follow a particular upper and lower limit for each transaction along with specific procedures. It also means that the council reviews all claims before approval at a council meeting.

### **Documents and Records**

There are several different documents and records that are stored in the city's computer systems with the help of accounting software. These systems basically ensure a simple functionality, easier cross checks and more reliable audits.

### **Independent Checks**

Internal or external auditors of the city can conduct audits and surprise checks at any time in order to ensure that the internal controls are effectively working.

### **Fund Balance Policy**

This policy establishes the acceptable level for the city's undesignated fund balance or surplus. Cities use their fund balance to ensure that they have enough funds to maintain cash flow, even out swings in revenues, and deal with emergencies. While there is no set formula or percentage, many cities use two months operating costs or 25 percent of their revenues as a general fund balance or six months

operating costs for utility operations benchmarks. The city will want to review its own needs to determine the level that it finds appropriate for its policy.

### **Purchasing Policy**

A purchasing policy is designed to ensure consistency and good management on department purchasing. The policy typically addresses conflicts of interest, the city's purchase order system and the process for soliciting quotes or bids. An effective policy ensures sound, consistent and efficient purchasing, and safeguards against inappropriate use of funds and purchasing/credit cards.

### **Capital Reserve Policy**

While the Fund Balance Policy addresses undesignated funds, the Capital Reserve Policy establishes a framework for designating funding for major purchases, capital maintenance and future purchases. Capital reserve funds can help cities avoid, minimize or smooth the cost associated with borrowing for major purchases.

### **Debt Policy**

A debt policy establishes a ceiling for the city when it comes to borrowing and issuing debt. At a minimum, a city debt policy will need to acknowledge the debt limitation established for cities by the Iowa Constitution of five percent of total assessed property values of taxable properties. However, some cities may determine that a more restrictive debt policy is in the city's best interest. Determining an appropriate debt burden can be subjective. Common benchmarks include a per capita limit, a percentage of valuation or a percentage of the city's budget. This also provides capacity should an emergency occur.

### **Investment Policy**

*Code* Chapter 12B requires that cities adopt an investment policy that gives direction to their finance officers when investing funds. A model investment policy has been drafted by the Iowa Public Agency Investment Trust (IPAIT), for use by cities to develop their own investment policy, and is included here: [Investment Policy Model](#). The investment policy is required to incorporate the guidelines specified in *Code* Section 12B.10, and Sections 12B.10A through 12B.10C and include any other provisions necessary to adequately safeguard invested public funds. The written investment policy is required to be delivered to the governing body or officer of the public entity to which the policy applies, all depository institutions or fiduciaries for public funds of the public entity, and the auditor of the public entity.

**Capital Improvement Plan (CIP)**

The CIP is basically a long-range program for the planning, scheduling and financing of major construction projects and the purchasing of major pieces of equipment by the city. It is a written document that links together the city's comprehensive plan and the city's annual budget. The CIP describes in detail individual projects that need to be accomplished in order to implement the comprehensive plan and community objectives. The CIP then provides the blueprint to complete those projects that will be authorized in the city's annual budget. *This topic is discussed further in Chapter 15.*

**Enterprise Fund Management Policy**

By its very nature city enterprise funds are designed for the creation, maintenance and all improvements of complex systems such as water treatment and distribution or sewer collection and treatment plants. Large projects require lots of capital and long-range planning which are unique to the service. Enterprise planning therefore is usually longer than the normal five to 10 years, and projects and equipment purchases are usually done on a more predictable basis. Components of this plan will reflect portions of other policies such as cash and reserve balances, debt management and major construction projects but usually in much greater detail.

# Chapter 10

## Accounting for Cash Received

Accounting for receipts and disbursements is vital for proper and accurate financial management. Adequate safeguards are essential, as this area is especially vulnerable to improper and illegal activity. While the Chief Financial Officer is responsible for establishing and overseeing these safeguards and controls, they benefit not only public funds but also city staff.

### Handling Cash

There are two fundamental rules for handling cash:

1. Issue a receipt for all received funds.
2. Deposit all funds daily with the designated city officer.

Whenever payments are received, a receipt should be generated. The receipt serves as evidence that a payment was made and provides a means for tracking. The monies received for a set period should equal the record of receipts for the same period. Receipts often show details such as the payer's method of payment: cash, check, money order, credit, or debit card payment. They often list the city's invoice or bill reference number, whether full or partial payment has been made, and details of the purpose for the payment. They may also list the account to which the payment should be credited on the city's ledgers.

All receipts should be pre-numbered (either by the printer or cash register software) and capable of generating a duplicate copy or a digital copy. Many cities also use a manual or software-generated receipt register to indicate which fund(s) each receipt applies to. The register should include the:

- Payer's name
- Payment purpose
- Receipt date
- Receipt number
- Received amount
- Account(s) to be credited
- General ledger account for the payment
- Payment type (cash, check, credit/debit card)
- Employee's signature or initials receiving the money

### Deposits and Internal Controls

All received funds must be deposited “with reasonable promptness” in a legally designated depository. Segregating the duties of receiving and depositing funds is recommended as an internal control measure. Another method is rotating duties between the staff member taking funds to the bank and the one receiving payments (over the counter or via mail or electronically).

Furthermore, whenever possible, the person generating invoices (e.g., utilities) should not be the same person collecting or posting payments. This minimizes opportunities for manipulation. Some communities utilize drop boxes or automatic debiting with customer approval for utility payments, reducing initial exposure to funds. However, safeguards are still necessary to ensure timely and accurate maintenance of customer ledgers.

### Compliance with *Code of Iowa Section 384.20*

All city funds, including those received by other departments (fire department, library, parks, and recreation), must be remitted to the city for deposit in a depository approved by the city council pursuant to *Code Section 12C.1*.

### Deposit of Public Funds

The deposit of public funds is regulated by *Code Section 12C.1*. Public funds must be deposited in financial institutions, such as banks, savings and loans, or credit unions, which have been approved by the city council. This approval must be in the form of a resolution that names each depository and establishes the maximum amount of funds that may be kept on deposit in each depository. If the name of the financial institution changes or the city needs to increase the maximum deposit amount, the city must approve a new resolution.

[See Depository Resolution-Sample.](#)



According to *Code* Section 12C.4, cities are required to use depositories located in the county or an adjoining county, if applicable. Deposits may be made in depositories outside of Iowa for the purpose of paying principal and interest on bonded indebtedness when the deposit is made not more than 10 days before the date the principal and interest are due.

Deposited public funds are protected by both state and federal programs. Cities are automatically protected up to \$250,000 by the Federal Depository Insurance Corporation (FDIC). In addition, financial institutions accepting public funds are required to secure the deposit by participating in a state-administered program that guarantees that public deposits will be protected if the institution fails. Financial institutions unwilling or unable to participate in this program may not accept public deposits.

### **Auto Deposits**

Payments due from state and federal agencies are deposited directly into the city's accounts. This is a more controlled and secure way for these agencies to disburse funds. They have control over when the funds will be deposited into the city's account, and fewer checks will be lost in the mail, creating an unpredictable float. The city clerk or treasurer may have to go to multiple websites to determine what the deposit is for. However, most of the disbursements can be found on the Vendor Payment Portal. It is essential to keep track of which agencies you have authorized to make payments in this manner in case there is a change in banking institutions or personnel.

### **Auto Debit**

Electronic banking has made it very easy for cities to arrange for utility and other bills to be directly debited from the customer's bank account and credited to the city's bank account. This creates one entry on the city's checking account, but proper documentation must be maintained to ensure that each customer gets the credit posted on their utility or miscellaneous account(s).

### **Bank Lock Boxes**

Many cities use the services of their local banks to collect items for utility billing. The customer sends payment to a P.O. Box, which is counted by the bank. Proper documentation must be maintained to ensure that each customer gets the credit posted on their utility or miscellaneous account(s).

### **Web Payments**

Increasingly popular are online payment systems providing citizens the option of paying fees, charges, and taxes. If a city does this in-house, or by agreement with another agency or third-party provider, the city clerk's office will be responsible for the security of credit and debit card numbers, proper accounting for the funds coming in, and posting the accounts for those paying in this manner.

### **Red Flag Regulations**

The Federal Trade Commission (FTC) requires enforcement of the Red Flags Rule for identity theft protection as of November 1, 2009. The Red Flags Rule mandates that utilities and government entities implement identity theft prevention programs. As part of the Fair and Accurate Credit Transactions (FACT) Act of 2003, the Red Flags Rule requires the development and implementation of a written identity theft prevention program. Note: The Rule was amended in 2010 by the Red Flag Program Clarification Act of 2010, 15 U.S.C. 1681m(e)(4), Pub. L. 111-319, 124 Stat. 3457 (Dec. 18, 2010). You can find more information on which businesses are covered [www.ftc.gov/business-guidance/privacy-security/red-flags-rule](http://www.ftc.gov/business-guidance/privacy-security/red-flags-rule).

### **Keeping Track of Your Cash**

This section explains how to ensure your organization's cash deposits are accurate and secure.

#### **Daily Deposits**

- It's recommended to **balance your cash drawer daily**. This means comparing the money you received with the amount you plan to deposit.
- **Exclude petty cash** used for giving change from the deposit amount.
- Daily balancing makes error detection much easier.

#### **Deposit Frequency**

- If you don't have a local bank, consider how often you receive payments and how important it is to close your accounts monthly.
- Remember, keeping a lot of cash on hand increases the risk of theft.

#### **Separate Duties**

- Ideally, the person handling cash or opening mail shouldn't be the same person making the deposit. This helps prevent fraud.

### Monthly Reconciliation

- This involves a more detailed check of your finances:
  - Compare your cash, checks, and electronic deposits (electronic transactions, ACH, etc.) with the treasurer's records and the clerk's tallies.
  - Make sure the clerk's register matches your accounting records, showing monthly and year-to-date totals for each fund.

### Who Reconciles?

- Depending on your local laws, the treasurer (who might be a bank officer) or the city clerk might handle reconciliations.

### Reporting

- Regardless of who does it, reconciliation reports should be submitted to the council. These reports should show:
  - Cash balances for each fund
  - How your budget compares to actual spending so far

### Reconciling Utility Bills (if applicable):

- If you manage utilities, compare your utility records with deposits and customer accounts.
- Any adjustments made to customer accounts (amount, reason, and person responsible) should be detailed in the reconciliation report.

### Investment of Public Funds

Closely related to deposits, the investment of city funds is a distinct aspect of financial management. Cities often accumulate significant revenue balances earmarked for future needs rather than immediate operations. Recognizing their fiduciary duty, prudent finance officers must invest these funds wisely to enhance their value. This duty demands a standard of care ensuring diligence, prudence, and skill, akin to a prudent person experienced in such matters (*Code* Chapter 12B).

Regulation of city investments is outlined in *Code* Chapters 12B and 12C. *Code* Section 12B.10 establishes investment standards with primary goals prioritized as:

1. Safety of the principal.
2. Maintaining necessary liquidity to meet expected liabilities.
3. Obtaining a reasonable return on investment.

To meet these goals, the state allows cities to invest in:

- Obligations of the U.S. government, its agencies, and instrumentalities.
- Certificates of deposit and other evidence of deposit at federally insured depository institutions approved under Chapter 12C.
- Prime bankers' acceptances maturing within 270 days and eligible for purchase by a Federal Reserve bank. However, no more than 10 percent of the investment portfolio may be in such investments, and no more than 5 percent in the securities of a single issuer at the time of purchase.
- Commercial paper or other short-term corporate debt maturing within 270 days and rated within the two highest classifications by approved rating services. Similarly, no more than 10 percent of the portfolio may be in these instruments, with a maximum of 5 percent in securities of a single issuer at purchase.
- Repurchase agreements with underlying collateral of the above investments, with direct delivery to the political subdivision or authorized custodian (excluding reverse repurchase agreements).
- Open-end management investment companies registered under the Federal Investment Company Act of 1940 and operated according to 17 C.F.R. § 270.2a-7.
- Joint investment trusts under *Code* Chapter 28E, rated within the top two classifications by an approved rating service or registered under the Federal Investment Company Act of 1940, with the trust manager or investment advisor registered under the Investment Advisor Act of 1940.
- Warrants or improvement certificates of a levee or drainage district.

### Prohibited Investments

- The trading of securities for the purpose of speculation and realization of short-term trading profits, *Code* Section 12B.10(3).
- Reverse repurchase agreements, *Code* Section 12B.10(5)(e).
- Futures and options contracts, *Code* Section 12B.10(5)(g).

### **Maturity and Procedural Limitations**

In addition to the types of investments that are permitted or prohibited, *Code* Section 12B.10A establishes maturity and procedural limitations. The "operating" funds of the city must mature in 397 days or less and must be invested in investments authorized by state law. Funds not designated as operating funds may be invested in maturities longer than 397 days. Additionally, a contract for the investment or deposit of public funds shall not provide for compensation for the investment agent based upon investment performance.

The city's portfolio shall be diversified to eliminate the risk of loss resulting from an over-concentration of assets in a specific maturity, a specific issuer, or a specific class of securities.

### **Investment Policy Required**

Cities are required by state law to approve written investment policies that incorporate the guidelines specified in *Code* Section 12B.10, *Code* Sections 12B.10A through 12B.10C, and any other provision deemed necessary to adequately safeguard invested public funds. The written investment policy is required to be provided to:

- The city council
- All depository institutions or fiduciaries for public funds of the city
- The city's auditing firm

[See Investment Policy Model.](#)

### **Grants Management**

This section guides city clerks or finance officers who are not directly involved in writing grant applications but play a crucial role in managing awarded grants.

#### **Understanding Grant Reimbursement**

- **Grant Terms Dictate Process:** The specific terms outlined in the grant agreement will determine how the city receives funding from the granting agency. Reimbursement is a common approach, meaning the city expends its funds for project activities before requesting repayment.

### **Reimbursement Process Phases**

The reimbursement process typically involves two main phases:

- **Activity Reimbursement Report:** This report, often filed by the clerk or a designated department representative, details project activities and requires documentation to ensure:
  - Only approved activities are included in the reimbursement request.
  - City funds have been spent upfront for the reported activities.
- **Drawdown Request:** After submitting the activity reimbursement report, the city submits a drawdown request. This request confirms:
  - The activity reimbursement report has been completed.
  - The requested drawdown amount aligns with the value of completed activities (similar to a partial reimbursement based on progress).
  - Most grants reimburse a certain percentage of completed activities, akin to a retainer system.

### **Grant Completion and Closeout**

Upon project completion, a final "settlement" process occurs to officially close out the grant.

### **Accounts Receivable**

The city clerk may also be responsible for the preparation and collection of utility and other miscellaneous invoices. As a general rule, most utility and miscellaneous invoice payments are received without additional collection efforts. However, every effort should be made to ensure that all funds due to the city are collected. This usually falls within the responsibility of the clerk's office. The city's ordinance should include any penalties or fees that it plans to impose on late payments. Additionally, city policy should detail any other collection methods to be used in collecting outstanding amounts. Below are some of the methods currently used:

- **Shut-offs:** Electric, gas, and water utilities can generally stop serving customers who refuse to pay. Certain moratoriums exist on electric and gas shut-offs, addressed by the Iowa Utility Board (IUB). See Chapter 12 for more information on utility shut-off guidelines.
- **Assessment to taxes:** *Code* Section 384.84 allows the city to assess outstanding balances for water, sewer, stormwater and solid waste collection bills to the

property. Time-sensitive notices and billing procedures should be strictly adhered to in the assessment process. This assessment, similar to a lien on the property, does not guarantee payment if the property taxes are not paid and go to tax sale. Many nuisance abatement costs can also use the assessment to tax process to secure payments.

- **Collection Agencies:** Many cities use third-party collection agencies to collect outstanding amounts. Collection agencies make a profit from the fees they assess the city, so the city will have to determine if this is the route they want to go.
- **28E Agreements:** Many counties are willing to enter into a 28E agreement to withhold car registrations to assist the city in collecting delinquent accounts, charges, fees, loans, taxes, or other indebtedness under *Code* Section 321.40(6). For delinquent parking tickets, see *Code* Section 321.40(8).
- **Township Trustee Agreements:** Under *Code* Chapter 28E, many cities enter agreements with neighboring townships to provide fire and/or EMS services. The cost and collection of these agreements should be monitored or updated regularly.
- **Setoff Program (formally known as Income Offset program):** The State of Iowa operates a setoff program to recover delinquent debts owed to public agencies. This program matches individuals and businesses with outstanding debts to state payments owed to them, such as tax refunds, casino winnings, state vendor payments, and lottery prizes. The program allows for the withholding of funds to satisfy these debts within the bounds of *Code* Section 421.65 and *Iowa Administrative Code* rule 701—Chapter 26. More information for cities interested in participating can be found at [tax.iowa.gov/setoffs](http://tax.iowa.gov/setoffs).

*Note: A city may request a social security number but cannot refuse service if a customer refuses to provide it. Collection of SSNs will require compliance with the Federal Red Flag Requirements. See [Red Flag Model Policy](#).*

# Chapter 11

## Accounting for Cash Disbursements

In private, nonprofit and public organizations nothing gets done without incurring costs. In the city environment, the clerk or finance director is required to process the bills and keep an accurate accounting of the finances for required reporting. Accounting for cash disbursements involves more than a proper accounting of money spent; it also includes assurances that all funds are for publicly-approved purposes specified by federal and state laws and by council directive. It also includes an established system of planning and reporting controls necessary for good management of the city.

*Code* Section 15A.1 and Iowa Constitution Article III, Section 31 prohibit disbursements, grants or loans of property or funds for private purposes. The council must document a determination of the public purpose (i.e., public benefit) for all disbursements which are not clearly for a public purpose. In the reporting of cash disbursements, there should be a record or audit trail of every dollar spent. Every payment should be made by a warrant or check or pre-approved, secure e-payments. Policies and procedure manuals should be available within each community, but on a practical basis, this manual may be used as a basis for those documents.

### Checks, Warrants and Electronic Payments

Prior to Home Rule legislation, warrants were used to request the treasurer of the community pay a specified amount to the person with possession of the warrant. The issuing of checks is still used while many cities are using electronic banking and payments to disburse certain funds. This manual will use the term “warrant/check/e-payment” to indicate this system.

### Required and Recommended Procedures

*Code* Section 384.20 requires that separate accounts be maintained corresponding to the programs and items in its adopted budget. This enables the city to generate reports on the function, activity or object basis similar to the budget

or adopted budget amendment. Each transaction should reflect the date, amount, person paid and the purpose of the expenditure.

The city council should designate who has authority to issue payments and how many signatures are required. Two people signing the warrants/checks adds a level of internal control, so the city has an extra layer of protection against fraud and embezzlement. Online banking also allows two individual authorizations before release of funds to ensure good internal control procedures are followed. In most communities this would be the mayor; however, larger communities may have other internal controls in place.

All payment methods should be pre-numbered sequentially either by the printer or by financial software. Those signing the checks should not be able to manipulate the numbering of the checks. Warrant/check and online registers should be able to account for every transaction, including spoiled checks and voided payments.

Each item paid must be supported by original documents, invoices or payroll records. The documents should be reviewed and approved by a person knowledgeable that the service or item was received and acceptable to the city. In the case of an invoice, the document should also be reviewed for the agreed upon price. Payments should only be made based upon the original invoice, not statements or other summary reports. Many software applications allow only unique invoice numbers to be used to reduce duplicate payments. For manual systems, each paid original invoice should be marked with the date of payment and check number to easily track payments and avoid duplicate payments.

The clerk, or other officer authorized by the council, should ensure that no purchase is authorized or payment made which would exceed amounts budgeted. Depending on the size of the community, this responsibility may lie with the person authorized to make the purchase (department staff), a purchasing agent or the financial officer.

## P-Card/Credit Card Use and Policies

Many cities allow selected city officials to use procurement or credit cards to make city purchases. Procurement cards are easy to use and a cost-effective way to make purchases. However, the city should create policies that establish allowed usage, protect against potential fraud and abuse, and require adequate oversight. Debit cards should never be used by a city as it allows immediate, unprotected access to the city's funds. Having an open line of credit at the local store and issuing a procurement or credit card also results in liability exposure for the city.

Policies for how the card is to be used should be clearly written and approved by the council. Some general guidelines should include:

- Be selective on who is authorized to use a procurement/credit card. Each card should identify that it is a city card and show the individual cardholder by name. This person is responsible for the safekeeping and use of the card.
- The policy should address when and how the card can be used over the phone, by fax or online.
- Allow the smallest limit as is practical. Many cards can be limited in dollar amount and merchant category code (MCC), which classifies the business by the type of goods or services it provides.
- Spending and transaction limits should be imposed upon individual cardholders on a per transaction and a monthly basis. The administrator of the account is automatically notified under some systems.
- Any requests for new cards or for higher spending limits should be in writing and approved by the council or appropriate authorizing person, not the person making the request.
- Detailed original receipts should be required on all transactions. Payment should never be made from statements.
- Cards should never be used for personal items or for any non-city purposes.
- All card holders should read and sign an agreement to follow the card use policy.

The city's ability to maintain security and control must be the primary consideration. Internal review and processing procedures should be as transparent as making payments with a check. All transactions made with a procurement/credit card are still subject to the publication requirements of claims paid by the city and IRS reporting requirements.

## Reconciliations

Recommended accounting standards suggest monthly reconciliations. 1) Monthly balancing the cash balance in the bank (treasurer's cash balance) with the amount on the clerk's records; 2) reconciliation between the clerk's registers and the accounting or general ledger, which shows the month-to-date and year-to-date expense and cash totals; and 3) utility account reconciliation, adjustments and outstanding balances.

*Note: In some communities the treasurer may be a bank officer or other individual who performs reconciliation duties on a monthly basis. In other communities this duty is combined with that of the city clerk. Local ordinances and policies will dictate the method for each community. Regardless of who does the reconciliation, at a minimum, reports should be submitted to the council with one reflecting cash balances by fund, the other should reflect budget comparisons to date and the status of utility outstanding balances. If there is only one person doing all of these duties, the council should find procedures to interject internal control safeguards. See Chapter 10 and the [here](#) for suggestions on internal control procedures.*

## Issuance of Payments

The city clerk or finance director typically is responsible for the preparation of warrants, checks or e-payments. The council, however, must approve the payments before disbursement of the checks.

Usually the clerk will prepare a list of the claims or bills for the council to approve. This list should include all personnel costs as well. This list can be distributed in advance of the council meeting or can be designated to a committee for review and approval. Only those items questioned need to be examined and discussed during the meeting, but all claims must be approved by formal action of the council. For additional oversight, at a minimum, original invoices should be periodically requested for review. To document such review the reviewer should initial and date the invoices examined.

Due to the timing of due dates for certain city liabilities, the council may pass a resolution authorizing the payment of specific bills without prior council approval. These bills may include payroll and the associated taxes, bond and interest payments, discounted invoices and other routine items named in the resolution. Even when bills are paid in advance of council approval, they should all be listed in the bill list for council approval at the next meeting and included in the publication of the claims.

## Form of Warrants, Checks and E-Payments

All warrants, checks and e-payments should be pre-numbered by the printing company or financial software used to print the payments. Cancelled and voided warrants/checks must be retained for five years unless they pertain to real property transactions or bond issues, which must be maintained five years after final recall.

With the federal requirements that banking institutions reduce the transmission of paper documents, the city should ensure that a five-year history of both sides of the checks is maintained through a contract with the banking institution or imaging (or copies) which is controlled by the city for access of these documents.

## Stamped or Anticipatory Warrants

Stamped or anticipatory warrants may be issued by the city upon negotiation (usually with the local bank) in amounts less than its estimated revenues for the current fiscal year. Recommended accounting practices would encourage this practice be reserved for capital or grant funded projects, not ordinary operations. Natural disaster loans and grants where the funds have been guaranteed by the state or federal government may use anticipatory warrants even if the receipt of monies will not be in hand by the end of the fiscal year. As this is considered short-term borrowing (interest expense may be incurred as part of the cost of the project) cities should work with their attorney to make sure proper authorization procedures have been followed before negotiating with the local bank.

The procedure for issuing these stamped or anticipatory warrants would require the bank to honor or pay the warrant/check when presented. The bank (or treasurer if a bank official) would then hold these warrants/checks until funds are received, paying them in the order in which they were received, with the associated interest expense.

Another method used to pay for projects until expected revenues are received is anticipatory bonds/notes (see Chapter 14 for more detail). In this situation, the funds are advanced to the city with the expectation that part of the project will be financed with permanent bonds, when a final amount can be determined. Again, the city will be incurring interest expense on the short-term borrowed money, which require additional authorization procedures and should be considered as part of the project expense. Project and financial planning can minimize or eliminate the need for this interest expense in many projects; please see Chapters 15 and 17 in this manual for more information.

## Steps to Complete the Clerk's Records for Issuing a Warrant/Check

The clerk first enters each warrant/check in the disbursement register at the time of issue. In manual systems the clerk's register has separate columns for each fund which shares in the expense of the warrant/check. For computerized systems, this information may be captured on one or more screens depending on the software that is utilized.

The second step (sometimes done automatically by the software) is to record the expenses by object and function within the fund or funds (budget ledger). This can be done by column record or by using ledger cards if software is not available. Be sure the following is recorded:

- Name of person or firm to whom check is paid
- Date of check
- Number of the check
- Amount of the check(s)
- Reason for payment(s)

The third step (usually done automatically by the software) is to post according to the account number assigned to the expense item for further distribution to activity and object subsidiary appropriation/expenditure ledger accounts.

See [Uniform Chart of Accounts](#). For manual systems a subsidiary ledger is used for this purpose.

## If the City Treasurer is a Separate Appointment or Staff Person

If the city treasurer is a separate appointment, all the relevant information will need to be transmitted for each warrant/check issued by the clerk or finance officer.

- Date of warrant/check
- Number of warrant/check(s)
- Amount of warrant/check
- Fund breakdown of warrant/check

Some communities have the treasurer reconcile by checking account and by fund. If this is the case, the breakdown by fund for each deposit and warrant/check will also need to be included in the information supplied to the treasurer.

## Petty Cash

Petty cash is used for two purposes: 1) to have adequate change on hand for utility and other bill payments to the city which are received at the counter; 2) to allow small items to be paid without issuing a check or e-payment.

### **Petty Cash Used to Make Change**

A petty cash policy should set the amount of petty cash available to make change for utility and other bills paid in person. This policy should also set the amount of petty cash for other sites such as the swimming pool or golf course. These amounts will be recorded as an asset of the city. This amount should be returned to the city at the end of each season (or sooner, as dictated by policy) and recorded as petty cash returned (not a receipt for services). Reconciliation of the receipts taken in and the amount of petty cash on hand for making change should be done with every deposit. Daily reconciliation is recommended depending upon the size of the community and the amount of cash activity for each day. To reduce theft exposure, receipts should be deposited as soon as possible. Overnight storage of petty cash and any receipts should be in a secure location, not necessarily onsite.

### **Petty Cash Used to Purchase Small Items**

The petty cash policy should set the rules for the use of petty cash to purchase small items. What items are allowed and the spending limit(s) should be included in the policy. For example, the clerk may need to purchase additional postage on an envelope; it is not practical to write a check below the limit set out in the policy.

Detailed receipts should always be required for any petty cash purchase. Each transaction should have the expense account noted. Periodically all expense documents should be totaled to replenish the petty cash and post the expenses against the appropriate expense account.

### **Payroll Accounting Records and Procedures**

Payroll accounting is the accumulation of information to pay and to record the salaries, wages, benefits and deductions of each city officer and employee. Federal and state laws and pension and retirement programs influence the importance of these records for current and future informational needs. Clerks should also be aware of state and federal requirements on minimum wage, overtime pay, child labor and record retention requirements, particularly under the provisions of the Fair Labor Standards Act, Health Insurance Portability and Accountability Action (HIPAA) of 1996, Family and Medical Leave Act and various military leave acts.

Individual earnings records should be kept for each employee. The employee's earnings for each period should be recorded separately. Each record should reflect the name and address of the employee, social security number, job

title, total time worked for each pay period, total earnings, deductions made, net amount paid and the warrant/check or auto-deposit number. If an employee is entitled to be paid sick leave or vacation, this information should also be included. Due to the sensitive information on this record, public inquiries should be referred to the payroll journal.

A payroll journal should be maintained which shows the total amount paid to each employee for each pay period. This journal will at a minimum show the total amount of the wages or salary and the expense account and fund from which each payment is to be made to reflect the budget allocation for each expense. One employee may work in different areas requiring a pro-rating of the wages and benefits. In these cases, only one warrant/check/auto-deposit is to be issued, but the salary and benefits may be charged to one or more funds. Remember, utilities should pay for all expenses associated with the operation of the utility. Many cities pro-rate the time the clerk spends on preparing and collecting utility bills.

Some of the most time-sensitive bills to be paid are the IRS and other payroll withholding and reporting requirements. Please refer to Chapter 13 in this manual for a more complete listing. Many communities include the payment of salaries and the associated payroll taxes in a resolution which authorizes the clerk to release items prior to council approval for each pay period. In addition, the council in January and/or July should pass a salary resolution listing the name, position and salary/wage of each employee; it can also authorize the payment of these salaries/wages without further approval by the council unless a change is made during the period noted in the resolution. See [Salary Resolution-Sample](#). Benefits and other information may also be included as part of this resolution. The resolution (in whole) should be published as part of the council minutes.

A publication of the gross salaries/wages of all city employees is required once each year in the newspaper of general circulation in the city (or posted if the city is not required to publish). The timing for this publication is up to the city. After W-2 forms are issued at the end of the calendar year or at the end of each fiscal year are two popular times to comply with the regulation. Each employee/official, including elected officials, must be listed by name (not position) with the gross amount paid (include overtime, bonus and other compensation). See [Sample Salary Publication](#).



Remember, the wage of an employee or city official is public information. The amount withheld for deductions such as child support is not public information. The payroll registers mentioned above should not be confused with personnel files. Personnel files may contain other confidential information.

# Chapter 12

## Utility and Proprietary Management

While many of the services that cities provide are supported by property taxes and other general fund revenues, cities frequently offer services that are financed and operated through direct charges for services, very much like a business. These include city-owned utilities also known as proprietary operations. As with a business, the key to successfully operating a utility is management. The role of the city clerk or finance officer in utility management will vary from city to city.

In some communities, the clerk is responsible for the generation and collection of utility fees, while in other communities the administrative involvement is much broader. The discussion that follows should serve as an overview. Additional information can be obtained through the Iowa Utilities Board, Iowa Department of Natural Resources and membership with the Iowa Association of Municipal Utilities.

### Proprietary Operations

Utilities are proprietary operations financed and operated in a manner similar to private business enterprises – where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability or other purposes.

The types of operations that cities operate on a proprietary basis include:

- Water Utility
- Sewer Utility
- Electric Utility
- Housing Authority
- Parking
- Golf Courses
- Airport
- Forest Utility
- Hospital
- Transit
- Gas Utility
- Stormwater Utility
- Landfill/Garbage
- Cable TV, Internet & Telephone

### Establishing a Utility

*Code of Iowa* Chapter 388 requires an election to establish, acquire, lease or dispose of any city utility except a sanitary sewage or stormwater drainage system. The proposed governance of the utility, by the city council or a separate utility board and the number (3 or 5 members pursuant to Section 388.2(1)(d)), needs to be set out in the language of the ballot. If the election passes in favor of establishing a separate utility board, the mayor shall appoint the board members with the approval of the council. The make-up of the board is further restricted because a public officer or salaried employee of the city may not serve on the utility board. The council shall by resolution provide for staggered six-year terms and shall set the compensation of board members (Section 388.3). A utility board has all the powers of the city except the ability to levy taxes, pass ordinances, issue general obligation or special assessment bonds or to hold title to property.

### Public Meetings, Publication Requirements and Public Records

Utilities governed by city councils or boards, and entities that are created for the management of utilities under Chapter 28E, are required to follow all open meeting and publication requirements as discussed in Chapters 3 and 4 of this manual. However, due to the unique nature of managing a utility, *Code* Section 384.84 and Chapter 388 have additional guidance for municipal utilities.

After each meeting, Section 388.4(4) requires a condensed statement of the proceedings of the board to be prepared and published in a newspaper of general circulation in the city. The state code goes on to require the statement to include a list of bills paid, listing the vendor, what supply or services was provided, and the gross amount of the claim. Additionally, wages paid must list gross amounts, except that those regularly employed shall have an annual publication listing the gross wages. Cities with populations of 150,000 or more may generate and distribute pamphlets to fulfill the publication requirement. Also, Section 384.84(7)(a)(1)

requires utility board resolutions to be published in the same manner as ordinances.

All records of the utility fall under *Code* Chapter 22 unless specifically exempted in Chapter 388. Such exemptions may include proprietary information, records associated with marketing or pricing strategies, preliminary work papers, spreadsheet scenarios and cost data, if the competitive position of the utility would be harmed and no public benefit would be served. Of note, Section 388.9A grants discretion to utilities concerning the release of specified information that otherwise would be subject to release as a matter of right under Section 22.2. Specifically, this addresses concerns about the release of individual customer information that has the potential of violating consumer credit and debt collection statutes at both the state and federal levels. This has essentially allowed the holders of utility customer account records (the city) to determine whether to release them if requested.

### Other Restrictions and Oversight

The Iowa Utilities Board (IUB) has limited jurisdiction over municipal electric and gas utilities under *Code* Section 476.1B. Municipal utilities are not rate-regulated by the IUB or required to file tariffs with the IUB. However, the IUB does have jurisdiction in areas such as disconnection rules and safety standards. Municipal utilities are also required to pay IUB assessments for the consumer advocate, state fees, file energy efficiency reports, alternate energy purchase plans, and a few other requirements which are included in Section 476.1B. The IUB also has authority over assigned areas for electric service.

The Iowa Department of Natural Resources (IDNR) has regulatory authority in areas of stormwater discharge, wastewater treatment plants, landfills, airports, power plants and water systems. Various federal regulations affecting city utilities are administered through IDNR, and any questions should be directed to the agency. The following is a list of some of the major federal regulations:

- Clean Air Act
- Safe Drinking Water Act
- Clean Water State Revolving Fund
- Stormwater Discharge Permit (only if your city is above a population threshold or if the city owns a landfill, airport or power plant)
- Operation and discharge of treated wastewater
- Iowa Groundwater Protection Act
- Landfill Permit

### Audits and Examinations for Utilities Created under Code Chapter 388

*Code* Sections 11.6 and 388.10 govern the scope of audits or examinations to be performed on cities and their associated utilities. In addition, Section 388.4(3) requires the board to provide the council a detailed annual report, including a complete financial statement. These reports may reflect June 30 or December 31 as the ending date depending on the reporting period adopted by the utility board.

Under Section 11.6, a financial audit or examination consists of procedures performed by external independent auditors of the financial condition, transactions and compliance with legal requirements of a city and utility for a specific period or fiscal year. A city and its utility board may fall within one of the following four categories:

1. Utilities with bond covenants requiring an audit must do so on an annual basis.
2. Cities with a population of 2,000 and greater and their associated utility are required to be audited. All audit reports and the appropriate filing fees are to be submitted to the Auditor of State's Office annually.
3. Cities with populations less than 2,000 but with budgeted expenditures in excess of \$1 million for two consecutive years are required to have an annual examination and pay the CPA firm fee and the appropriate filing fee to the Auditor of State. The utility of these communities will also be required to have an annual examination either in combination with the city examination or as a separate report.
4. The utility of cities with budgeted expenditures less than \$1 million each year and under the 2,000-population threshold will submit a periodic examination fee to the Auditor of State and are eligible for periodic examinations on a random selection basis. The Auditor of State will arrange for these examinations. Each city is subject to an examination at least once every eight years. Communities required to have a periodic examination may decide to participate either in combination with the city examination or as a separate report.

Utilities created under Chapter 388 not required to have an annual audit may have an audit conducted on their own initiative but may be compelled to have an audit conducted upon receipt of a qualified petition from the citizens of the city. Utilities subject to periodic examination may elect to have an audit or annual examination performed at any time. When engaging the services of an auditor, the city/

utility has the option of hiring the Auditor of the State to perform the audit or annual examination or it may seek the services of a private Certified Public Accounting (CPA) firm. If the city/utility chooses to seek the services of a private CPA firm, it is required to issue a Request for Proposal (RFP) seeking qualified bids. A sample RFP and other audit resources can be found on the State Auditor's website.

## Establishing Charges and Fees

### Utility Rates

The bulk of the city's total revenues may well be derived from charges for various utility services. Cities should operate each utility as a standalone fund so the revenues and expenditures associated with each utility can be easily identified and evaluated for financial management. Some utilities may have auxiliary services such as lab testing, connection or reconnection fees, non-metered services and other miscellaneous permits which should be billed and receipted by each respective fund.

The utility rates and charges should be reviewed on a regular basis. This is usually done as part of the budgeting process but can also be done as part of the financial analysis for a capital project. Due to the large investment in the infrastructure of utilities, many communities set up depreciation or capital improvement funds for each of their utilities to finance future improvements or the replacement of equipment.

In order to change utility rates a number of steps must be followed, and it is wise to calculate the amount of funds needed for the increase. Financial consultants can help with complicated utilities but at a minimum the city should consider:

- **Short Term Needs** - Revenues over/under expenses to include debt service, the current year's depreciation (if your city funds depreciation), and any amounts to be used to fund a capital improvement fund as directed by city policy.
- **Long Term Needs** - The capital improvement plan needs to be considered in any utility rate calculation. Earmarking a portion of the rate to be designated to capital maintenance and future improvements will ensure a stabilization of the rate (avoiding large spikes) and can provide seed money for major projects. Many capital projects are scheduled when other funds are available to complete the financing.

If your community seeks grant funds one of the most common requirements is that the city has funds on

hand to contribute to the overall project. Similarly, if bonds are to be used to finance the project, having some funds on hand can 1) buy down the cost of the borrowing and; 2) provide part of the first principal and interest payment. See Chapters 14, 15 and 17 for a more detailed discussion on bonding and other public improvement projects.

- Utility support for administrative services provided by other city departments can be considered when setting the utility rates. Some utilities pay directly for hours worked to prepare and collect utility bills, or the amount of time the administrator spends negotiating contracts, for example. In other communities, a straight percent of the administration is paid. A word of caution, the amount billed to the utility should be 'reasonable', so be prepared to defend the amount used.

### Special Rate Increase Procedures

Municipal electric and gas utilities should provide at least 30 days' notice of a proposed rate increase to all affected customers. No IUB approval is needed. The rate increase should be adopted by ordinance of the council, or by resolution of the utility board trustees, published in the same manner as an ordinance (see *Code* Section 384.84). There is no requirement that a public hearing be held.

Transfers from a utility fund to the general fund are governed under Administrative Rule 545-2.5 and Section 384.89 of the state code. If the council declares a surplus of funds in the enterprise, a transfer of such funds to any other city fund, except the emergency fund, may be done by resolution. A surplus is defined in that same section of the Administrative Rules as "cash balance in the operating account or the unrestricted net position as calculated in accordance with GAAP in excess of: 1) The amount of the expenses of disbursements for operating and maintaining the utility or enterprise for the preceding three months, and 2) The amount necessary to make all required transfers to restricted accounts for the succeeding three months."

### Customer Deposits

City ordinance establishes the amount required for deposits. The city code must limit deposit amount calculation for gas and electric to 60 days (instead of the 90 days allowed for other city utility services). Generally, the utility returns the deposit after 12 months of prompt payments (allowing a one-month grace period). Interest may be paid on the deposit; however, an interest payment is not required. Some

utilities open sub-accounts at a financial institution for each customer's deposit. The interest paid by the institution accrues to the sub-account, relieving the utility of any obligation to calculate varying interest rates over time.

### **Billing**

Every community needs to establish billing cycles and procedures by ordinance. Are all the meters read each month; are they read once a quarter but estimated the two other months? The type of utilities in the community and the capacity of the software or clerical staff will also dictate the billing cycles. When considering billing and collection options, be mindful of all your customers; some have difficulties with cash management or access to online payment systems. Online payment options must also consider who will pay the convenience fee, the city or the customer. Either decision may have an impact on the rate-setting process as well.

Increasing energy costs and regulatory policy initiatives are leading many utilities to install electric and gas meters capable of registering not only how much energy is used but when it is used. This allows for rates that vary by time of use. Smart meters are generally capable of transmitting data to the utility for peak management and billing purposes.

### **Late Fees**

IUB rules do not apply to municipal utilities but can be used as a model; their rules do not allow late fees in excess of 1.5 percent per month of the delinquent bill. This could compound to an annualized rate of 18 percent. The city ordinance should spell out what the late fee is, and it should be applied uniformly.

### **Disconnection of Utility Service**

The rules for running the utilities, as has been discussed, are a blend of the ordinances approved by the council and regulations of the IUB. As was discussed in Chapter 10, most of the receipts are collected in the city clerk or utility office which requires the city clerk or utility clerk to execute the rules on disconnections due to nonpayment.

### **Electric and Gas Utilities**

Municipal utilities are covered by IUB regulations concerning disconnection of electric and gas services. Most of the disconnection issues relate to electric services, so that is what is discussed here. Gas disconnection is basically the same.

Generally, disconnection of a customer due to non-payment can occur if the utility has made a reasonable attempt to collect, has given the customer 12 days' notice to pay, and has provided the customer a copy of the Customers Rights and Remedies sheet.

Disconnection of a residential customer, however, may not take place on a weekend, holiday or after 2 p.m. unless the utility is prepared to reconnect the same day. Disconnection of a residential customer shall be postponed if the disconnection would present a special danger to the health of any permanent resident of the premises.

### **Winter Moratorium**

Disconnection of residential electric or gas service is subject to special requirements from November 1 through April 1. If the customer might be eligible for low-income energy assistance or weatherization funds, they must be given 12 days to apply. If the community action agency certifies within 30 days that the customer is eligible, then disconnection is prohibited between November 1 and April 1.

The "20 degree" rule applies only to delinquent customers who received notice of termination, failed to qualify for any kind of energy assistance, agreed to a payment plan, then defaulted again on the payment plan. Service to such customers can be terminated unless the temperature is forecast to go below 20 degrees. After such a delay, such customers can be terminated at such time as the temperature reaches 20 degrees and at any time if the forecast is for 20 degrees or higher. Specific laws pertain for head of households who are deployed in military service.

### **Water**

There are few restrictions on the disconnection of water. The applicable state code section relating to disconnection of water is Section 384.84, which contains provisions relating to hearing, notice to landlords and placing liens on property for nonpayment. Section 384.84 allows disconnection of one city utility service for non-payment of another (usually disconnection of water for nonpayment of sewer or garbage). This does not apply to gas and electric disconnections. Therefore, gas and electric cannot be disconnected for nonpayment of any other utility service.

## Liens

Section 384.84 provides that a lien may be placed on a property for non-payment of water, sewer and solid waste collection bills. Chapter 10 discusses other collection methods such as the state's Offset Program. Utility collections can be included in these methods as well. Various provisions in the state code place restrictions on the use of liens in certain landlord/tenant relations. For example, if a tenant of rental property is responsible for the payment of utility services, the landlord may give notice to the utility of the name and address of the responsible tenant. This notice forbids the city or utility from placing a lien on the landlord's property for the tenant's unpaid bill. For each time the tenant changes, the landlord must notify the city of this arrangement change. If a tenant wishes to change the name on the utility account, a copy of the request must be sent to the landlord providing the landlord has requested this notification in writing. To protect the utility from unpaid tenant bills, in its ordinance the utility can require a deposit of up to 90-days for each service (except electric and gas).

## Municipal Telecommunication Services

Municipal telecommunications services are regulated by the IUB and are subject to certain restrictions pursuant to *Code* Section 476.1B(3). Services subject to the restrictions include the telecommunications services of local exchange telephone services, long distance telephone services, Internet access services and cable television services.

A city that operates a telecommunications utility may use revenue generated from electric, gas, water, sewage or garbage services provided by the city to offset the capital costs involved in forming a telecommunications utility, but may not use such funds for ongoing support, or to otherwise cross-subsidize the telecommunications utility. A city may market the bundling of city services with municipal telecommunications services if a separate charge for each service is provided.

## City Regulation of Other Utilities

### Franchises

A franchise is an agreement that grants a non-municipal utility the right to operate within the city right-of-way, sets terms and conditions of operation, and may provide for compensation for use of the right-of-way. Any utility, other than a municipally-owned one, that operates within a city should hold a franchise for its operations within that city.

### Franchise Fees

*Code* Section 384.3A authorizes cities to grant non-exclusive franchises for the construction and operation of "plants and systems for electric light and power, heating, telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit, waterworks, or gasworks, within the city for a term of not more than 25 years." After July 1, 2009 Section 364.2(f) allows cities to collect franchise fees up to five percent based upon the franchisee's gross revenues. Those revenues in excess of the costs associated with regulating or maintaining the city right-of-way must be expended for any public purpose as listed in Section 384.3A. Some of those purposes include property tax relief, repair and maintenance on city owned buildings and facilities, public safety and economic development.

In 2007, legislation was enacted authorizing the IUB to issue statewide certificates of franchise authority for cable and video services. That legislation preserved the right of cities to grant such franchises, but left it up to providers to decide whether to obtain a city franchise or a certificate of franchise authority from the IUB. More importantly, that legislation authorized cities to impose five percent of gross revenues on cable and video providers, and legalized such fees both prospectively and retroactively. A subsequent Iowa Supreme Court ruling also authorized cities to collect a public right-of-way permit fee for telephone and companies not paying a franchise fee, provided the city can document the cost to oversee and maintain the right-of-way is reasonable. Cities should carefully review their franchise fees to assure they meet the required standards. Federal law requires that fees be imposed on telephone utilities in a competitively neutral manner; accordingly, municipal telephone utilities must be required to pay the same fees required of other telephone utilities. A rural electric cooperative or investor-owned utility is not exempt from a franchise fee, but the fee should be no higher than that of any other franchised electric utility serving a city or no higher than the in-lieu of tax a municipal utility pays, if the city has its own electric utility.

### Payment in Lieu of Taxes (PILOT)

A municipal utility can make an in-lieu-of-tax transfer in an agreed upon amount. It cannot pay a franchise fee because a municipal utility does not need a franchise to operate. It is recommended that any formula or agreement for the payment of PILOTs should be in writing and approved by

the board of trustees and the council.

## Exclusive Service Territories

### **Electric**

*Code* Sections 476.22-.26 establishes service territories for all electric utilities. These territories were established in the late 1970's and are generally the mid-points between facilities as they existed at that time. They seldom match or are limited to the city boundaries. Even if an area is annexed, the service area will not automatically become the city's service area. Utilities are obligated to serve all customers within their service area and are prohibited from serving customers outside their area.

### **Water**

A rural water district desiring to provide services within two miles of a city must provide the city a notice of intent to provide water service to the area and provide a plan indicating the area to be served (see *Code* Section 357A.2). The city must respond within 75 days or the water district can provide service to the area. The city may either waive its right to serve the area or reserve its right, in which case the city must provide service to the area within three years. If an area is annexed into the city, the city may extend water service to the area. The city may request additional time or information to study the plan. Another drawback is the conflict in pipe standards between rural and city provided services. *Code* Section 357A.1 provides protection from liability for failure to provide fire protection outside city limits and allows a city to put in lower capacity pipes to provide service. Be sure to work with an engineer to provide adequate information before decisions are made in this area.

### **Management of Public Right-of-way**

As noted above, the city can charge for access to the right-of-way (ROW) using reasonable fees. But the management of the ROW must be done as a coordinated effort between the city staff, all the utilities that have infrastructure in the right-of-way and Iowa One Call. State law requires the use of Iowa One Call before any excavation is done. Accurate "as built" maps must be available. The city may also include the county government in efforts to create accurate electronic mapping. Depending upon the size of your community, this may also be under the supervision of the city clerk.

# Chapter 13

## Reports (as of 2024)

Throughout the year the city clerk/finance officer has many reports that must be filed for outside governments and agencies. This certainly is not an exhaustive list for every community; however, it is a general idea of the number of reports and where additional instructions may be found. Because of the number of changes that occur to each report, this list will be updated on a regular basis and posted on the Iowa League of Cities website at [www.iowaleague.org](http://www.iowaleague.org).

### Annual Financial Report

Each year by December 1, cities must submit their Annual Financial Report to the State Auditor. This report summarizes the city's financial position at the end of the year. This report must be published before submission to the auditor. This report must be completed before the city can conduct the required public hearings as part of the annual budget approval process. The Iowa Department of Management (IDOM) has forms, submission instructions and helpful guidance on its website: [dom.iowa.gov/local-government/city-resources](http://dom.iowa.gov/local-government/city-resources).

### Budget Amendments

As with the annual budget file, budget amendments must be filed with the county auditor and IDOM. Remember that a budget amendment requires the same public hearing notice, proof of publication and approval by council resolution as a new budget and must be done before the total budgeted program expenditures exceed the amount published/posted in the original budget or any subsequent amendments in any single program. Forms and related resources can be found on the IDOM website: [dom.iowa.gov/local-government/city-resources](http://dom.iowa.gov/local-government/city-resources).

### Budget Certification

The city's annual budget must be certified to the county auditor with a proof of publication for the public hearing no later than April 30. As of 2024, city governments must also submit a Proposed Property Tax Statement to the

county by March 5. The annual budget file must also be submitted to the IDOM through its electronic portal by April 30. The Iowa League of Cities conducts annual, in-person training to assist in the budget preparation and much more guidance is available at [www.iowaleague.org](http://www.iowaleague.org).

### Budget Report

Each month the clerk/treasurer should submit a financial report to the council reflecting the prior month's activity and year-to-date progress of actual versus budgeted revenues and expenditures along with other pertinent financial information. Most accounting software will generate such a report. A sample can be found here: [Budget Reports for Council](#).

### Consumer Confidence Report

A consumer confidence report is required of those cities that have a water utility. The deadline is July 1 of each year. This report provides information regarding the water system and testing to water consumers. More information is available at [www.epa.gov/ccr](http://www.epa.gov/ccr).

### Debt Service-Form 8038, Form 8038-G or Form 8038-GC

The taxable status of the city's bonds is filed with the IRS at or soon after closing the bond issue. Seek bond counsel for assistance with the preparation of the appropriate form.

### Debt Service-EMMA Disclosure Portal

The Security and Exchange Commission (SEC) and Municipal Securities Rule Making Board (MSRB) prescribe procedures for electronically filing your annual continuing disclosure requirements and other important information through one centralized depository, MSRB's Electronic Municipal Market Access (EMMA).

Cities that have issued bonds and entities working on their behalf (financial advisors or bond attorneys) disclose



material information to the marketplace, such as annual financial information and material event notices. To collect continuing disclosure documents from the cities, EMMA makes the information available to the public for free at [emma.msrb.org](http://emma.msrb.org).

### Group Health Insurance-Code Chapter 509A-Self Funded Plans

Chapter 509A of the *Code* requires a certification of all self-insurance plans within 90 days following the end of each year. The governing body of a self-insurance plan of a political subdivision or a school corporation shall file with the commissioner of insurance a certificate of compliance, actuarial opinion and an annual financial report. The filing shall be accompanied by a \$100 fee. A penalty of \$15 per day shall be assessed for failure to comply with the 90-day filing requirement, except that the commissioner may waive the penalty upon a showing that special circumstances exist which justify the waiver. The certificate shall be signed and dated by the appropriate public official representing the governing body.

### Group Health Insurance Code Chapter 513C10 Report

The Iowa Individual Health Benefit Reinsurance Program report is due by March 15 of each year. Late fees are applicable.

### Chapter 28E Agency Biennial Report

Each city that has intergovernmental agreements created under *Code* Section 28E.5 must submit an electronically formatted biennial report to the Secretary of State in a manner prescribed by the secretary of state by April 1 of every odd-numbered year.

### Occupational Safety and Health Administration (OSHA) Log

Cities must post the Occupational Safety and Health Administration (OSHA) Log February 1-April 30. This log includes information documenting “recordable” injuries. The city’s workers’ compensation carrier can provide assistance with questions regarding this report. This does not need to be filed with OSHA, but there are penalties if it is not done properly or displayed.

## Report Due Dates

### January 31

- Payroll Reports - W-2 Forms to EE

### January 31

- 1099 Forms - Federal and State to EE
- Payroll Reports - W-2/1099 Forms Due to Federal/State Governments

### March 5

- Proposed Property Tax Statement

### April 1

- 28E.5 Agency Biennial Report

### April 30

- Budget Certification
- Perpetual Care Cemetery Report

### July 1

- Consumer Confidence Report

### August 31

- Outstanding Obligations Report

### November 1

- Unclaimed Property Report

### December 1

- Annual Financial Report
- Tax Increment Financing Certification
- Annual Urban Renewal Report
- Street Finance Report

### After closing the bond issue

- Debt Service-Form 8038, Form 8038-G or Form 8038-GC

### 15th of each month

- Payroll Reports - Iowa Public Employees Retirement System (IPERS)

### Monthly

- Treasurer’s Report

### Quarterly

- Unemployment (Workforce Development)

## Outstanding Obligations Report

The State Treasurer of Iowa requires cities to complete an outstanding obligations report each year. The deadline is August 31. For this report, cities need to report on all their outstanding debt. Reporting instructions can be accessed at [www.iowatreasurer.gov/for-governments/outstanding-obligations-report](http://www.iowatreasurer.gov/for-governments/outstanding-obligations-report).

## Payroll Reports

### 941 FICA or Social Security, Federal Withholding, Medicare

This form is filed quarterly with the IRS for payments made the prior quarter.

*Note: Payments of the employee's withholding and the city's share of Social Security and Medicare are made to the IRS either monthly or semiweekly. Reference [www.eftps.gov/eftps/index.jsp](http://www.eftps.gov/eftps/index.jsp) to determine when you must deposit Social Security, Medicare and withhold income taxes and if you need to enroll for e-filing.*

In Iowa, if an elected official opts to have IPERS withheld, then Social Security is not withheld. Use the IPERS form to document their intention.

*Note: Police and firefighters in the Municipal Fire & Police Retirement System of Iowa (MFPRSI) before 1984 are not eligible for Medicare coverage and should not have Medicare withheld.*

### Iowa Public Employees Retirement System (IPERS)

Monthly web-based reports for wages and remittance of both the employee and city portions are due the 15th of each month for the prior month. See [ipers.org/employers](http://ipers.org/employers) for more information.

### New Employee Registration

Each employee must be registered within 15 days of their hire date on [secureapp.dhs.state.ia.us/epay](http://secureapp.dhs.state.ia.us/epay). This will take you to the Department of Human Services Child Support site to get further information on how to sign on and register electronically.

*Note: This is also the site for registering new contractors, unless they are incorporated.*

### State Income Withholdings

State income taxes withheld for employees must be remitted to the state on the following schedule:

- More than \$10,000 tax/month or more than \$5,000 semi-monthly: semi-monthly
- More than \$500-\$10,000 tax/month: monthly
- Less than \$500 tax/month: quarterly

See [revenue.iowa.gov/taxes/tax-guidance/withholding-tax/iowa-withholding-tax-information](http://revenue.iowa.gov/taxes/tax-guidance/withholding-tax/iowa-withholding-tax-information) for more information. The schedule on which cities must remit withheld employee state income taxes depends on the total amount of taxes the city withholds from all employees per month and the frequency of withholding. Electronic payments are transmitted through the Department of Revenue.

### W-2 Forms/1099 Non-Employee Compensation

Completed Federal and State W-2 forms are due to employees and non-employees no later than January 31 of each year. Provide 1099-MISC to payees for nonemployee compensation. For full instructions see [www.irs.gov/pub/irs-pdf/p15.pdf](http://www.irs.gov/pub/irs-pdf/p15.pdf) or Publication 15 (also known as Circular E).

### W-2/1099 Forms Due to Federal/State Governments

File paper Forms 1099 and 1096. File Copy A of all Forms 1099 with Form 1096, Annual Summary and Transmittal of U.S. Information Returns, with the IRS by January 31.

### File Forms W-2 and W-3

File Copy A of all Forms W-2 with Form W-3, Transmittal of Wage and Tax Statements, with the Social Security Administration (SSA) by January 31. Full instructions are available at [www.irs.gov/pub/irs-pdf/iw2w3.pdf](http://www.irs.gov/pub/irs-pdf/iw2w3.pdf).

## Perpetual Care Cemetery Report

Within four months after the end of the calendar year, cities with a perpetual care cemetery must submit an annual report to the Iowa Insurance Division: [iid.iowa.gov/consumers/securities-regulated-businesses/cemeteries-burial-sites](http://iid.iowa.gov/consumers/securities-regulated-businesses/cemeteries-burial-sites).

## Salaries Publication

Each year the gross amount of salaries for each employee must be published (or posted) in accordance with publication rules for your community. This can be done on a fiscal year or a calendar year at the discretion of the city. An April 12, 1978, Iowa Attorney General Opinion indicates that the monthly salaries of each employee need not be published with the council minutes if the gross yearly salaries are otherwise published.

■ A sample publication can be found [here](#).

## Sales Tax Reports

Certain city activities are taxable under Iowa Sales and Use tax laws. The amount of taxes your community collects dictates the schedule for remission to the state as follows:

- More than \$5,000 tax/month: semi-monthly
- More than \$500-\$5,000 tax/month: monthly
- Less than \$10-\$500 tax/month: quarterly
- Less than \$120 tax/year: annual

See [revenue.iowa.gov/taxes/file-my-taxes/business-taxes/filing-frequency-return-due-dates](https://revenue.iowa.gov/taxes/file-my-taxes/business-taxes/filing-frequency-return-due-dates) for more information. All Iowa fuel taxes, including liquid propane gas, must be paid electronically through ePay or ACH Credit.

Penalties are high if you do not make the payments in a timely manner as listed below:

- Penalty for failure to timely file = 10% of the tax due, if 90% of the tax isn't paid by the due date.
- Penalty for failure to timely pay the tax due = 5% of the tax due, if 90% isn't paid by the due date.
- The city is not subject to both penalties.

eFile & Pay will automatically calculate the interest due if the return is filed late. Interest is computed on an entire-month basis, not daily.

## Street Finance Report

The Iowa Department of Transportation (DOT) requires the completion of a Street Finance Report (SFR) by December 1 of each year. This requires cities to report all street-related expenditures, including the use of their Road Use Tax Fund dollars. The report also requires cities to list their equipment, describe street projects and payments of principal and interest for street-related debt. This report is prepared on through the DOT website and must be approved by council resolution. Failure to complete and file the SFR will result in the city's Road Use Tax Fund (RUTF) allocation being withheld until the city completes the SFR. If the city does not file its SFR, its RUTF allocation may be permanently withheld. For more information about this report, visit [secure.iowadot.gov/sfr](https://secure.iowadot.gov/sfr).

## Tax Increment Financing (TIF) Debt Certification

Cities that have TIF districts with debt must submit their debt requirements to the county auditor by December 1 of each year to be able to capture those revenues to repay outstanding obligations.

■ A sample workbook can be found [here](#).

## Annual Urban Renewal Report

Cities with an urban renewal area must complete a report details related activities, which is also due to the Department of Management by December 1 of each year. The report can be found at [www.legis.iowa.gov/tif/public](http://www.legis.iowa.gov/tif/public). This report requires a great deal of detail, and ample time should be allotted for preparation and council approval, which is required prior to submission.

## Treasurer's Report

Each month the clerk/treasurer should submit a report to the council which lists the fund activity and ending balances for the preceding month along with other pertinent financial information. This report is generated by most accounting software.

■ Treasurer's Report samples can be found [here](#) and [here](#).

## Unclaimed Property Report

Cities must complete an unclaimed property report each year, with a deadline of November 1. The purpose of this report is to inform the State Treasurer of any money the city is holding that is owed to another person. This includes items such as uncashed paychecks or unclaimed water deposits. A city must complete the report via Treasurer of State website: [greatiowatreasurehunt.gov/app/reporting-overview](https://greatiowatreasurehunt.gov/app/reporting-overview). A form and any remittance must be mailed in by the deadline.

## Unemployment (Workforce Development)

Quarterly Reports are required for each city. Cities have the option of the "pay-as-you-go" method or a "reimbursable" method for unemployment claims against the city. Reports must be done online at [workforce.iowa.gov/unemployment](https://workforce.iowa.gov/unemployment). In preparation of filing this report the clerk should have the wages paid this quarter and wages paid this year to date. Quarterly reports and payments are due the month after quarter end.

## Utility Reports

Due to the large number of utility reports (gas and electric utilities) to be filed each year, a listing supplied by the Iowa Association of Municipal Utilities is an excellent resource to better understand what is required.

## W-9

Though not a report, IRS form W-9 should be used to get information from all vendors in order to complete the 1099-Misc filings. These forms can be found at [www.irs.gov/forms-pubs/about-form-w-9](https://www.irs.gov/forms-pubs/about-form-w-9).

# Chapter 14

## Debt

### Debt Limit

Cities may incur different types of debt and issue bonds or notes for a number of different reasons. There are some general guidelines regarding debt with which cities should be familiar. While there is no legal limit on the amount of debt a city may have that is secured by and payable solely from city utility or enterprise revenues, the Iowa Constitution places a limit on the amount of debt a city can incur that is payable from property taxes. This limit is commonly called the Constitutional Debt Limit, and it is equal to 5 percent of the assessed valuation (pre-rollback) of taxable property within the city.

### Debt Policies

As part of their comprehensive financial policies cities should consider adopting their own debt policy. This policy sets out limits for items such as how much debt or what kinds of debt will be used for various projects. Staff and outside consultants, bond rating agencies, and various federal agencies can review the policy for an understanding of the goals for the community's debt issuance, retirement and overall management. Rating agencies in particular ask cities whether or not they have established financial and debt policies and if those have been formally adopted by city council. This is important as it helps present a framework for decision making that can be evaluated.

### General Obligation Debt

One type of debt that cities issue, called general obligation debt, is described in *Code* Chapter 384, Div. III. General obligation, or "G.O." debt is debt that is to be repaid with the city's property tax revenue through a debt service levy.

There are two major categories of purposes for which G.O. debt may be issued: Essential Corporate Purposes and General Corporate Purposes. Essential corporate purposes include many common city expense such as streets, stormwater management, water works, sanitary sewer, solid waste management, nuisance abatement and equipping

of police, fire and emergency services and several other purposes listed in Chapter 384.

The process to issue G.O. debt for essential corporate purposes for is simpler than the process to issue general corporate purposes. A city needs to work with bond counsel to draw up the appropriate paperwork and processes. The city must publish a notice of the amount and purpose of the bonds and alert the public of the time, date and place of a public hearing during which the council will receive oral and written objections regarding the debt issuance. After this hearing the council may vote to approve the G.O. debt by passage of a resolution.

The other category of G.O. debt is for general corporate purposes. These purposes include many less frequent city expenses, such as public buildings, swimming pools, recreation trails, new city parks, economic development grants and several other purposes listed in Chapter 384.

To authorize G.O. debt for general corporate purposes, the law ordinarily requires a referendum on the debt proposal with at least 60% public approval needed at the special election. Again, the city would want to work with bond counsel to draw up the appropriate paperwork and be aware of the precise processes to notify the county auditor to schedule a bond referendum.

For certain amounts of issuances, G.O. debt for general corporate purposes may be authorized without a full referendum by a process commonly called a "reverse referendum" in which the citizens may petition for an election on the debt proposal. These amounts were amended by the legislature in 2023, which also indexed them to a consumer price index:

- For cities with a population of 5,000 or less, debt issuance up to \$520,000.
- For cities with a population between 5,001 and 75,000, debt issuance up to \$910,000.

- For cities with a population above 75,000, up to \$1,300,000 in debt issuance.

In these cases, the council must publish notice of the amount and purpose of the bond issue and must include a statement that the citizens have the right to file a petition asking for a referendum. If a timely petition is received, the city must call an election in order to proceed with the financing.

### **Loan Agreements**

Private placements with banks and other financial institutions have continued to be a growing choice for issuers. While these types of loans typically had been reserved for small or complex debt obligations, that is no longer the case. Whether it is the local bank or a national financial institution providing the financing, a private placement loan should be analyzed as a potential option when a community is seeking financing.

As a substitute for formal competitive sales, *Code* Section 384.24A allows cities to enter into loan agreements with banks and to negotiate all the terms of the transaction. Notes or bonds are issued to these lenders as evidence of a city's obligation under a loan agreement. Except for loan agreements that are payable from a city's general fund, all the statutory processes and procedures related to the issuance of general obligation or revenue bonds are equally applicable to loan agreements, including the need for a referendum for general corporate purpose projects.

In order to enter into a loan agreement payable from the city's general fund, a city must 1) show that its annual payments on all loan agreements payable from the general fund will not exceed 10 percent of the city's previous year's general fund budget amount, 2) for personal property and for real property up to certain dollar limits, hold a public hearing and 3) for real property above these limits, a city must follow the reverse referendum process. Advice from bond attorneys and financial advisors is as important to the loan agreement process as it is to the process of issuing bonds.

### **Leases**

Cities can also enter into leases, described in *Code* Section 364.4(4). Leases are most commonly used to purchase equipment. In particular, a lease may be useful for equipment that has a short lifespan, such as certain computer and office equipment. In general, lease agreements paid from the debt service fund carry with them some of the same procedural requirements as the issuance

of general obligation bonds issued for the same purpose. Lease agreements payable from property taxes count against a city's debt limit unless the agreement stipulates the payments are subject to annual appropriation action by the city council. The majority of lease agreements are structured with annual appropriation provisions.

### **Revenue Debt**

Cities can issue debt to be repaid by revenue generated from a utility or enterprise activity as described in *Code* Chapter 384, Div. V. This type of debt is typically used for utility projects, such as water or sewer, and repaid with the fees collected from the users of that utility or enterprise. A hearing and authorizing resolution are required to enter into this type of debt, which includes lease and lease purchase agreements under Section 364.4(4). Revenue debt is not secured by property taxes. Therefore, it does not count against the city's debt limit. However, revenue debt may be less attractive to investors because it is repaid with utility or enterprise revenues instead of property taxes, and therefore it may bear a higher interest rate than G.O. debt.

Most bond issues payable from utility or enterprise revenues will have bond covenants or requirements associated with them. One common practice is a requirement that a sinking fund be created and maintained, into which funds must be deposited monthly so that sufficient funds will be available on principal and interest payment dates. It is also common for investors in revenue bonds to require that a city establish and maintain a reserve fund, often equal to 10 percent of the principal amount of the revenue bonds, which can be drawn on if for some reason the city's utility or enterprise revenues are not adequate to make a regular payment of principal or interest.

### **Other Types of Debt**

There are other types of debt that cities may issue. A few of the more common types will be listed here, but this list is not exhaustive.

#### ***Bond or Loan Agreement Anticipatory Notes***

This type of debt, sometimes referred to as BANS, is used as temporary financing for a project or grant until the total amount of the project and financing costs can be determined.

#### ***Tax Increment Financing (TIF) Debt***

This is debt issued to be repaid from the proceeds of incremental property tax increases found in a TIF district. Through court decisions, it has been deemed that TIF debt

counts against the constitutional debt limit. However, cities may have an agreement with a developer that they will be rebated the TIF revenue generated by the district and that this rebate is subject to annual approval by the council. Not all projects can be structured this way, but those that are structured this way with an annual appropriation do not count against the city's debt limit (beyond the amount appropriated in any given fiscal year).

### **Special Assessment Debt**

Cities may levy special assessments against abutting property owners who benefit from improvements to streets, utilities or other such infrastructure. The special assessment process in general is complicated, and a city must work with its engineers and attorneys to carry out this process. A city can issue debt to be repaid by the payments from the property owners, and such debt does not count against a city's debt limit.

### **State Revolving Fund (SRF) Loan Program**

For eligible water and sewer-related projects, the SRF program administered through the Iowa Finance Authority can often be the lowest cost option for cities. While certain projects may not be eligible and additional procedural steps are required for issuance, the benefit of low interest rates and the ability to draw funds as needed provide flexibility for cities that take advantage of the SRF program.

## **Other Resources for Debt Management**

### **Bond Attorney**

It is recommended that a bond attorney be used every time the city borrows money. When an issue is sold, various federal regulations apply in addition to the Iowa laws mentioned above.

### **Financial Consultants**

Depending on the size of the city and the expertise of city staff, some communities use the assistance of financial advisors. These advisors help the council identify opportunities to fund city activities using bonds and other forms of financial borrowings. Analysis of the repayment scheduling of a bond or the advertisements for the sale of bonds are only some of the services available.

These consultants usually charge based upon the volume of the bond issue or the number of issues a city has to set their contract. The city should use a consultant that is well versed in Iowa public financing. Bidding for this service is not required.

### **Bond Registrars**

Many bond issues are purchased by multiple individuals, banks or corporations. Keeping track of these owners to ensure that all principal and interest payments are delivered on time may be above the means of the small city staff. Registrars are usually associated with large banks and can handle multiple customers in this specialized area.

### **Bonds Sold Prior to April 1**

If general obligation bonds are sold after the budget public hearing but before April 1, the debt retirement schedule can be certified to the county auditor in order to amend the tax rate published as part of the budget process.

## **Other Debt Related Reporting**

### **Filing of Internal Revenue Service Form 8038, Form 8038-G or Form 8038-GC**

The tax-exempt status of the city's bonds depends upon forms being filed with the IRS at or soon after closing the issue (not at the end of the project where the bond proceeds are used). Seek assistance from bond counsel with the preparation of the appropriate form.

### **State Treasurer's Outstanding Obligation Report**

An annual report is required to be filed with the State Treasurer's office listing the total amount of principal outstanding for each bond issue, note or lease of a city. This report is to be filed online.

### **Annual Budget Appropriation**

The annual budget forms provided by the Iowa Department of Management have a long-term debt form. The form requires the following information:

- Name of the bond
- Date the bond was certified (to the county auditor)
- Amount of the original bond
- Amount of principal to be paid in the next fiscal year
- Amount of interest to be paid in the next fiscal year
- Amount to be paid for registrar fees in the next fiscal year
- Amount to be paid from sources other than property taxes

This form is reviewed by the County Auditor to verify debt certification for taxes requested.

**Arbitrage**

Under various IRS regulations that govern tax-exempt debt, the city must monitor its investment of bond proceeds and may have to pay to the IRS a portion of the city's interest earnings on invested bond proceeds that is in excess of the arbitrage yield on the tax-exempt bonds. Working with bond counsel or an arbitrage specialist is advisable, depending upon the amount of outstanding obligations and the size and expertise of staff.

**Continuing Disclosure**

Cities that issue debt may have agreed to enter into an agreement to make certain financial information publicly available for the life of the debt issue, including the annual update of financial information provided in the official statement, dates specified for when information must be posted, reporting of Significant Events as specified in the Continuing Disclosure Certificate, and the location where information must be made available (such as EMMA). This may be as simple as providing an annual audit but needs to be noted and maintained for each separate debt issue of the city.

Typical milestones for filing this information can include 180, 270 or 360 days after fiscal year end. Cities should be aware of these key reporting deadlines and should take steps to build this reporting into the appropriate audit/budget cycle and identify who will compile this information (staff, dissemination agent). Reporting of Significant Events must occur not later than 10 business days after the day of the occurrence of the event.

Timely reporting is important because, while the SEC does not directly regulate municipalities, the SEC does regulate underwriters that purchase the city's bonds and ultimately distribute those bonds to investors. Underwriters are prohibited from purchasing or selling bonds without determining the issuer has agreed to provide ongoing disclosure. Therefore, in the event a city is non-compliant it may limit future financing options.

**Electronic Municipal Market Access system (EMMA)**

Cities with outstanding bonds must disclose material information to the bond market such as annual financial information and material event notices within time sensitive deadlines. All continuing disclosure filings must be filed in the central repository, the Electronic Municipal Market Access system (EMMA). Most financial advisors and bond attorneys will coordinate/assist in filing these reports. These reports can be found at [emma.msrb.org](http://emma.msrb.org).

**Financial Statements, Audits and GASB 77**

Cities over 2,000 in population are required to complete an annual audit with financial statements that comply with the guidelines established by the Auditor of State. If a city chooses to participate in the Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting Program (CAFR Program), additional statistics and special formatting are required. Many larger cities active in the bond market to finance their projects find this program beneficial to demonstrate the city's financial position.

The Governmental Accounting Standards Board (GASB) also releases various statements which prescribe standards for governmental financial statement accounting and reporting. GASB 77 applies to all cities that utilize TIF or tax abatement agreements, or live in a county that uses tax abatement agreements which meet the GASB 77 definition of tax abatements, and must report those tax abatements and notify other reporting governments about the city's tax abatement agreements which reduce the revenues other governments. The GASB 77 definition of tax abatements is "A reduction in tax revenues that results from an agreement between one or more governments and an individual or entity in which (a) one or more governments promise to forgo tax revenues to which they are otherwise entitled and (b) the individual or entity promises to take a specific action after the agreement has been entered into that contributes to economic development or otherwise benefits the governments or the citizens of those governments."

DOM has a variety of resources available to assist cities with their GASB 77 reporting requirements.

# Chapter 15

## Capital Budget and Equipment Funds

Cities should adopt policies and plans for capital asset acquisition, maintenance, replacement and retirement. This plan should be crafted to carry out the goals of the Comprehensive Plan of the community.

The Capital Improvement Plan (CIP) is basically a long-range program for the planning, scheduling and financing of major construction projects and the purchasing of major pieces of equipment by the city. It is a written document that links together the city's comprehensive plan and the city's annual budget. The plan describes in detail the projects that need to be accomplished in order to implement the comprehensive plan or strategic plan. A plan then provides the blueprint needed to complete those projects that will be authorized in the city's annual budget.

Policies and plans for funding the acquisition, maintenance, replacement and retirement of capital assets help ensure that needed capital assets or improvements receive appropriate consideration in the overall budget process. These policies and plans are necessary to program large capital expenditures and to minimize deferred maintenance as older capital assets are considered for retirement or replacement over multiple years (usually three to 10 years).

Policies set forth by the council may establish procedures for the inventory of capital assets and evaluating their condition, criteria for acceptable condition, criteria for continued maintenance versus replacement or retirement of existing assets, and identification of funding sources for adequate maintenance and scheduled replacement of capital assets.

*Note: under Governmental Accounting Standards Board (GASB) 34 these policies must be in writing, adopted by the council and used for accounting standards in financial reporting.*

Plans should be developed to establish ongoing, multi-year replacement and renewal schedules. Plans for addressing deferred maintenance may also be a part of this policy.

Once adopted the policies and plans should be included in budget, management and planning documents. When developing a CIP, maintenance of existing facilities, including deferred maintenance, should be considered along with ongoing maintenance and operation costs of all new projects.

As part of the budgeting process cities should review the capital projects and equipment to be blended in the next year's budget. This systematic evaluation of all projects and equipment purchases will help elected officials and the public see the "big picture" which facilitates the prioritizing of projects. Available resources or the availability of future resources also helps stabilize or smooth out project requests to meet realistic scheduling.

When establishing projects using bonds, loans or other borrowings the council should consider how much the city can afford to spend under established debt policies. (See Chapter 14 on Debt.)

Other analysis should include the effect of the community's growth (or decline) on future revenues and expenditures. For example, a decline in the taxable valuation of the community does not reduce the number of miles of streets to be maintained or the distribution systems of the water and sewer utility.

### Preparing a Capital Improvements Plan (CIP)

An effective CIP extends a local government's financial policy and planning process over several years. A city's capital improvement budget defines what will be built or bought and how it will be financed. A successful capital improvement program enhances the city's overall financial position, community and economic development success, and citizen satisfaction.

The CIP is generally updated each year and covers a three to ten-year planning period (five years tends to be the typical CIP planning period). Such a long-range forecast



enables the city council to prepare a coherent plan that identifies, integrates and coordinates capital needs for the whole community, puts priorities on each project, works expenditures into a schedule, and calculates the money required and identifies funding options. The council needs to consider the continuing maintenance and operation costs that accompany a public facility when planning capital improvements. These costs also need to be projected into future operating budgets.

Capital improvements often are financed through long-term borrowing. A city could wait until it has all the money for a project before beginning it, but that may not be efficient or even possible if there is an urgent need for the project or matching grant funds are available.

### Reasons for Preparing a CIP

There are numerous reasons why a city should take the time and effort to prepare a CIP. The CIP is an important element of the council's decision-making process and overall vision for the city for the following reasons:

- A CIP involves the systematic evaluation of all potential projects at the same point in time. It helps the council to see the needs of the community and to judge and rank all projects at the same time, rather than on an individual or stand-alone basis. It will clearly present trade-offs that may occur as elected officials assign priorities.
- A CIP will help the city to stabilize the volume of expenditures and better manage the city's debt structure. It should remove the major peaks and valleys of the city's repayment of debt and thus eliminate any major fluctuation in the city's property tax requests and utility rates.
- A CIP will coordinate the financing of capital costs and hopefully lower the city's costs for borrowing money by consolidating the financing of these projects.
- A CIP can also be a valuable public relations tool that can be used to show citizens how their special projects, requests or suggestions fit into the city's overall plan for the future. A CIP will help reduce the political pressure to fund low priority projects suggested by a "vocal minority" of local citizens. Citizens can also be asked to consider how each project will fit into the city's overall plan of action or CIP.
- The CIP gives the city a workable plan to preserve the city's infrastructure – the publicly owned buildings, streets, sewers, water mains, equipment, storm sewers, parks, etc. It provides the city with the means of identifying and scheduling the maintenance work that is needed to preserve these assets of the city.
- A well-maintained community infrastructure and a level debt payment schedule will help make the city a better place to start a business or industry. In other words, a CIP will demonstrate to potential investors that the city has its act together and has a plan for the future.
- A CIP will encourage the most efficient use of public funds. Since the city's financial resources are limited, a CIP will provide a plan to make the most productive use of tax dollars.
- A CIP may promote a better understanding and help foster greater cooperation among the city departments and employees. If the city employees are allowed to comment and make recommendations regarding the CIP, it will also encourage them to see the big picture of the city's projects and overall needs.
- If the city shares the CIP with other governmental units, such as the county, school district and surrounding cities, it may promote regional cooperation. These entities may have similar projects or needs, and a CIP will alert them to the city's plans. It may then spark some interest in a service sharing, joint contracting or joint purchasing project. The city in turn should request and review the CIP of other governmental entities to determine the potential for regional cooperation and sharing.
- The adoption of a CIP allows the mayor and city council to work towards long term goals and an overall vision for the community. These goals could include economic development efforts, opening up land for housing developments and increasing recreational opportunities.

### Legal Aspects of a CIP

There are some legal aspects of capital improvements planning that need to be considered by the city.

- *Code* Section 384.15(3) requires the city to conduct a public hearing prior to the adoption of a CIP. It is recommended that adoption be by resolution.
- The voters of the city can authorize a levy of up to 67.5 cents per \$1,000 of taxable value to establish a capital improvements reserve fund in order to fund capital projects. Section 384.7 permits such a levy by referendum.

- Although the city has a CIP it must still follow the contract bid letting procedures set forth in the state code. (See Chapter 17 of this manual).
- Finally, the city needs to be aware that the Iowa Constitution restricts the overall general obligation debt limit to no more than 5% of the total assessed valuation of taxable property in the city. For example, if the city’s assessed value is \$65,000,000, the general obligation debt limit is \$3,250,700. This limit does not apply to revenue bonds that are repaid from utilities such as water and sewer user fees. Cities are encouraged to use not more than 80% of the general obligation debt capacity.

### The Contents of a CIP

The contents of a CIP will vary from city to city, depending upon the city council’s policy and the population of the community. The typical CIP will contain such capital projects as land acquisition for public improvements, public building replacements or additions, major public building repairs or renovations, street construction, storm sewer and drainage projects, wastewater facility improvements, water main construction, water facility renovations, park developments, library projects, public works equipment, fire trucks and police equipment.

### The Process of Preparing a CIP

The process of preparing a CIP could include the following steps and actions:

1. Define a capital project or expenditure in terms of minimum costs and frequency of occurrence. For example, a capital equipment expenditure might be something that costs \$10,000 or more and has a life expectancy of five years or more. If this definition is adopted by resolution, it only needs to be reviewed annually. All future changes would be made by resolution.
2. Organize the process by appointing one person, such as the city administrator or city clerk, as the overall coordinator of the process, and establish a committee to oversee the process.
3. Develop basic city policies and criteria, such as a goal to have curb and gutter on all streets and water mains of six inches or more. This might come from the Comprehensive Plan or a goal setting session of the council.
4. Forecast the demand for services and infrastructure by identifying areas for the future growth and development of the city.

5. Do an inventory of the existing facilities and assess the overall condition. Review previous studies and plans and conduct inspections. Prepare or update a maintenance plan.
6. Prepare project proposals or summaries with the available information. The summaries can contain a name or title, brief description, justification, schedule for completion, cost estimate, priority and map or site plan.
7. Seek the advice of department heads, employees, engineers, financial consultants, contractors, architects and consultants as the project proposals are prepared.
8. Review and analyze the city’s financial capacity by considering the past financial reports, revenue projections for the future and current debt repayment schedules.
9. Prepare level of service and revenue scenarios, and then schedule the high-priority projects over a specified period of time, such as five years.
10. Present the CIP to the city council for review and comment. Make corrections and changes as directed by the city council.
11. Conduct a public hearing on a draft of the CIP, and seek comments from local citizens.
12. Make the final revisions, set the priorities and adopt the CIP by council resolution.
13. Conduct an annual review and essentially repeat the same process. Continue to update the CIP on an annual basis.

### Time Table for the CIP

The implementation of a workable CIP does require time and a flexible schedule. A suggested schedule would be as follows:

1. Organizing the process	May – June
2. Develop goals, policies and forecast the demand for service	July
3. Inventory existing facilities and infrastructure	July
4. Prepare project proposals and analyze finances	August – September
5. Prepare a working draft of the CIP	October
6. Conduct council work sessions to discuss the draft proposal	November – December
7. Public hearing & final adoption by council resolution	January
8. Include CIP projects in annual budget	January

## Funding Sources for a CIP

The single most difficult task in developing a CIP may be identifying the revenue sources to fund the proposed projects or capital expenditures. The city needs to be creative and consider many options or combination of options. The following is a list of potential revenue sources that may be used to finance capital projects:

- Essential corporate purpose general obligation bonds for projects that do not require voter approval, such as streets, sanitary sewers, storm sewers and water main.
- General corporate purpose general obligation bonds for projects that do require voter approval, such as city halls, libraries, public works buildings, parks, recreation centers, etc.
- Utility revenue bonds for utility improvements, such as wastewater plants, water plants, sanitary sewers, water main, electric systems, natural gas systems, telecommunication systems and stormwater drainage districts.
- Special assessment bonds for projects, such as street construction, when part of the costs can be assessed back to the benefited property owners within a specified area.
- Loan agreements which allow the city to borrow funds like any other borrower, but subject to many of the same requirements as general obligation bond issues.
- Road use tax funds that can be used to fund specific projects, such as street construction, sidewalk construction, street lighting and public works equipment that is used for road infrastructure.
- Grants, loans and donations for certain projects, such as swimming pools, water plants, community centers, wastewater plants, libraries and other facilities.
- Lease purchase agreements to finance such things as major pieces of equipment like backhoes, end loaders and other major pieces of equipment as permitted by the state code.
- Tax Increment Financing (TIF) can be used to finance infrastructure improvements in an Urban Renewal Area, provided that there will be enough new private project building construction to generate the additional property tax revenues needed to repay the city's debt for these improvements.
- Local option sales tax revenue can sometimes be used for capital improvements provided that the voters implement the one-cent sales tax with that stipulation. See the actual ballot language to verify the intent when the election was held.
- User fees can be used to partially fund some capital improvements for their respective departments. For example, a recreation center could be partially funded with revenues from fees paid by the person using the center.
- Special taxing districts can be set up to fund specific improvements, such as storm drainage systems and downtown improvements.

The important thing to remember is that many capital projects may require a combination of funding sources. Cities need to consult their financial advisors and legal counsel to make certain that what is being proposed is legal and will not jeopardizes the city's financial condition.

# Chapter 16

## The Operating Budget

Central to the operation of the city is the annual budget. Every activity undertaken by the city requires the use of resources and expenditure of money. In most cities the preparation of the budget is the responsibility of the city clerk or finance officer. It is essential to understand how the city budget provides the legal authority for the expenditure of public funds, establishes the strategic policies of the city by prioritizing goals, and serves as a fiscal plan for the city.

### State Requirements: The Budget as an Appropriation

The operation of city budgets is directly supervised by the Iowa Department of Management (DOM). However, the *Code of Iowa* created the City Finance Committee (CFC) to establish the specific rules by which city budgets operate. See a copy of the *Iowa Administrative Code* sections pertaining to city budgets [here](#). In part, the statute says, “The city finance committee, in consultation with the department of management and the legislative services agency, shall determine reporting criteria and shall prepare a form for reports filed with the department pursuant to this section...” In other words, cities are required to prepare and adopt their city budget using these prescribed budget forms. Your city may have significant sources of revenues that can be spent, but without a certified budget the city lacks the legal authority to spend that money.

According to state law, city budgets operate on a fiscal year that runs from July 1 through June 30. Usually by mid-December, the DOM provides forms and instructions for the preparation of the budget for the next fiscal year. DOM houses the budget forms and related materials at [dom.iowa.gov/local-government/city-resources](http://dom.iowa.gov/local-government/city-resources).

The Iowa League of Cities, in coordination with other state agencies, prepares a budget publication which encapsulates information needed in the preparation of city budgets, such as a recommended schedule, revenue projections and expenditure estimates. The League also sponsors training

sessions in budgeting and the preparation of the Annual Financial Report (AFR).

See [IDOM website](#) for Budget Forms and [here](#) for Annual Financial Report.

The state budget forms follow the structure established by the Uniform Chart of Accounts for Iowa Cities described earlier. State law requires that cities provide three years’ worth of information on the budget forms:

- Actual revenues and expenditures for the previous fiscal year
- Re-estimates of revenues and expenditures for the current fiscal year
- Revenues and expenditures budgeted for the upcoming fiscal year

The figures for the prior fiscal year are prefilled from the AFR that is electronically filed with the DOM and State Auditor’s Office. The AFR must be properly filed before the annual budget hearings can be scheduled. The re-estimated figures for the current fiscal year are taken from the budget that was filed by the city the previous year, accounting for any unanticipated changes in revenues or expenditures. The re-estimating process assures the best possible estimate for each fund balance allowing the council to make an informed decision on expenditures and revenues for the upcoming fiscal year. Entry of the re-estimated numbers on the budget form does not substitute for a required budget amendment; however, these numbers can be used as a basis on which to prepare the budget amendment documents if one is needed.

Each community may choose their own method for completing the preparation of the budget. Whichever method is used, it is a cooperative effort between the council, city staff, volunteers, departments and citizens. Ample time should be allowed to collect, prioritize and balance the budget requests with the resources available.

Once the finance officer has completed the budget forms, state code requires a certain process to be followed. Legislation in 2023 and 2024 set requirements for cities to submit a Proposed Property Tax Statement to the county government by March 5. County governments are then mandate to mail a notice to each property owner with a consolidate listing of each local taxing authorities proposed taxes. City councils must then schedule and hold a public hearing on its Proposed Property Tax. The city must publish a notice regarding this hearing no less than 10 and no more than 20 days prior to the hearing. Cities with populations of 200 or less may post in the three locations specified by their city ordinance.

After that is completed, cities can move to the traditional requirement of the annual budget approval process by having the council set a date for a public hearing and publish notice of the public hearing using the Notice of Public Hearing Budget Estimate sheet provided by the DOM. This notice must also be published 10-20 days before the scheduled public hearing (again, cities with populations of 200 or less may post in the three locations specified by their city ordinance). Copies of the entire budget must also be available for public review 20 days prior to the public hearing.

At the public hearing any member of the public may present comments related to the proposed budget. Following the hearing and deliberation of the council, only changes which reduce the proposed published budget can be made (to include reduction of the requested tax levy). The council is required to approve the final budget by resolution, and the city clerk/finance officer is to prepare the final approved budget documents.

City budgets must be certified, or filed, by April 30 with the county auditor within the county or counties that the city is located and with the DOM through the electronic portal supplied. By statute, the county auditor is required to review and approve the certified budget paper forms before they are forwarded to the DOM. If the city fails to file a budget, any expenditure of city funds would be illegal. The DOM has authority to withhold all funds distributed by the state until a budget is filed. The DOM has the authority to grant extensions if the budget will be filed late due to circumstances out of the city's control.

### The Operating Budget as a Fiscal Plan

In order to operate effectively, most cities require a greater level of detail than provided by the state-required budget forms. While the state forms provide broad, aggregate

information, it is the city's operating budget that provides the detail necessary for transparency and for the city to operate an effective and efficient organization.

The city operating budget is also based on a detailed chart of accounts. However, the level of detail contained in the operating budget varies depending on the complexity of the city's operations. Generally speaking, smaller cities require less detail than large cities as they tend to have fewer revenue options and expenditure needs.

The greater detail that the operating budget provides allows the city to more effectively project revenues and expenditures and verify operating efficiencies. Sample workpapers for preparing the budget may be available from the city's accounting software. These work papers may include one or two years of historical information which may be helpful in re-estimating the current year's needs and the amount needed for the next budget year.

### Revenue Projections

Under the current system of property tax levy and assessment limits, the majority of cities in Iowa project revenues before establishing expenditures. This makes accurate revenue projections essential to a successful operating budget. In certain cases, the information required to project revenues is readily available and relatively accurate, such as calculating property taxes for the year. In other cases, the city can reasonably make accurate projections based on historical trends, such as with fines, licenses and charges for service.

Some revenues are, by their nature, less accurate due to environmental factors. For example, local option sales tax (LOST) is impacted by the strength of the local economy. For this reason, some cities collect local option sales tax a full year before they expend it. This assures their revenue for the year. There are other categories of revenue that are subject to self-imposed constraints. For example, cities that earn revenues from gambling facilities often establish policies that limit the use of this revenue to one-time projects. Regardless of their nature and source, effectively projecting revenues is essential for a successful budget.

### Municipal Revenue Sources

- **Taxes** – Includes levied property taxes. Also includes other city taxes, local option sales taxes, hotel/motel tax, gambling taxes and tax increment financing revenue (TIF). The deadline for requesting new tax increment financing revenues is December 1.

Please refer to Chapter 13 of this handbook and the Certification of Urban Renewal Debt forms on the DOM website at [dom.iowa.gov/local-government/city-resources](http://dom.iowa.gov/local-government/city-resources).

- **Licenses and Permits** – Includes building, structure and environmental permits, health and other licenses and permits.
- **Use of Money and Property** – Includes earnings from investments, rents, royalties and other miscellaneous related income. Does not include proceeds from sale of property.
- **Intergovernmental** – Includes state-shared revenues, state and federal grants and reimbursements, contributions and reimbursements from other governmental units and agencies, and payments in lieu

of taxes. Road Use Tax funds (RUTF) may be withheld if the annual Street Finance Report is not correctly filed by December 1.

- **Charges For Service** – Includes charges for pertinent utility service, as well as related charges and connect/re-connect and penalty/forfeiture fees charged. Also includes any charges for other city service.
- **Special Assessments** – Includes charges for any city assessments.
- **Miscellaneous Revenues** – Includes contributions, deposits and refunds, sale of merchandise, fines and internal service charges.
- **Other Financing Sources** – Includes transfers in and interfund loans, proceeds from the sale of real and personal property and proceeds from debt.

**Appeal to state board for suspension of limitations.**

If the city is at the \$8.10/\$1,000 levy limit in the general fund and wishes to request permission to exceed that limit, the following procedure must be followed to file an appeal by a city. Members of the State Appeal Board are the director of the Department of Management and the City Finance Committee.

If the property tax valuations effective January 1, 1979 and January 1 of any subsequent year are reduced or there is an unusually low growth rate in the property tax base of a political subdivision, the political subdivision may appeal to the State Appeal Board to request suspension of the statutory property tax levy limitations to continue to fund the present services provided. A political subdivision may also appeal to the State Appeal Board where the property tax base of the political subdivision has been reduced or there is an unusually low growth rate for any of the following reasons:

1. Any unusual increase in population as determined by the preceding certified federal census.
2. Natural disasters or other emergencies.
3. Unusual problems relating to major new functions required by state law.
4. Unusual staffing problems.
5. Unusual need for additional funds to permit continuance of a program which provides substantial benefit to its residents.
6. Unusual need for a new program which will provide substantial benefit to residents, if the political subdivision establishes the need and the amount of the necessary increased cost.

The State Appeal Board may approve or modify the request of the political subdivision for suspension of the statutory property tax levy limitations.

Upon decision of the State Appeal Board, the DOM shall make the necessary changes in the total budget of the political subdivision and certify the total budget to the governing body of the political subdivision and the appropriate county auditors.

The CFC shall have officially notified any city of its approval, modification or rejection of the city’s appeal of the decision of the director of the DOM regarding a city’s request for a suspension of the statutory property tax levy limitation prior to 35 days before March 15.

For purposes of this section only, “political subdivision” means a city, school district or any other special purpose district which certifies its budget to the county auditor and derives funds from a property tax levied against taxable property situated within the political subdivision.

If the city is already requesting taxes at the \$8.10/\$1,000 of taxable valuation limit and after examining all other general fund revenue projections the city needs to raise more property tax revenues, there are several options available. A listing of available tax levies can be found on the tax certification page of the budget documents. Some of these levies require a vote of the citizens, however, a few of them are available as necessary. The most commonly used levies are for liability, general and self-insurance, and employee benefits. The council can levy the amount of tax needed to pay the premium costs on tort liability insurance, property insurance, and any other insurance that may be necessary in the operation of the city, the costs of a self-insurance program, the costs of a local government risk pool and amounts payable under any insurance agreements to provide or procure such insurance services. For a definition of employee benefits eligible to be paid through a tax levy, see Chapter 4 of the *Iowa Administrative Code* [545]. See City Finance Committee-*Administrative Code* [545] [here](#). If the city feels these taxing options still cannot close the funding gap the city can appeal to the state as noted above.

### **Expenditure Projections**

Projecting expenditures, like revenues, relies on making assumptions and reviewing historical data. To a certain degree, expenditures can be divided into two categories.

- **Institutional Expenditures** - These include the ongoing costs relating to city operations such as personnel expenses, benefits and contractual obligations. There are also mandated services that cities are required to provide or support such as police protection, fire protection, library services, snow removal and street maintenance. These institutional expenditures often account for the majority of the city budget.
- **Discretionary Expenditure** - These expenditures relate to services that are sought by citizens and council members but the city is not required to provide. These often involve quality of life services, such as parks, recreation programs and cultural amenities. Adding these services can have unknown or ongoing costs and need to be carefully analyzed to determine whether sufficient revenues can be generated to cover their costs.

### **Governmental Activities as Classified by Function**

- **Public Safety** - Police, fire, ambulance/EMS, animal control and other public safety services

- **Public Works** - Roads, street lighting, engineering, airport, garbage (if not an enterprise) snow removal and other public works activities
- **Health and Social Services** - Health regulation and inspections, mosquito control, and other health and social services
- **Culture and Recreation** - Library, parks, recreation, cemetery and other culture
- **Community and Economic Development** - Community beautification, economic development, housing and urban renewal, planning & zoning, and other community and economic development
- **General Government** - Mayor, council, clerk, city hall, legal services and other administration
- **Debt Service** - Principal and interest payments on bonds, loans and other obligations
- **Capital Projects** - Governmental or tax increment financing capital projects (not proprietary)
- **Business Type Activities/Proprietary** - Water, storm sewer, sanitary sewer, electric, gas utilities to include debt and capital projects of the business type activities, usually self-supporting

### **Municipal Expenditure Categories**

- **Personal Services** - Includes expenditures for salaries, wages, and related employee benefits and staff development provided for all persons employed by the city. Employee benefits include contributions to retirement systems, insurance and similar benefits. Staff development includes association memberships, training and conferences.
- **Services and Commodities** - Includes articles and supplies that are consumed or materially altered when used. Repairs, maintenance and utility expenses are also contained in this area. Commodities include capital outlays for items below the city's capitalization threshold.
- **Capital Outlays** - Includes expenditures that result in the acquisition of, or additions to, capital assets. To be classified as a capital outlay an item must have generally an expected life of more than one year and a cost equal to or greater than the city's capitalization threshold. Each city should establish a reasonable threshold amount. Items meeting the established criteria should be added to the city's capital asset inventory value. Items failing to meet these criteria are classified as commodities. Capital outlays also include

additions to capital assets related to the acquisition, construction or reconstruction of major capital facilities and capital assets.

- **Debt Service** - Includes expenditures for the retirement of general obligation long-term debt, lease or lease purchase agreements, and for the payment of interest and bond registration fees. Professional fees relating to debt issuance should be recorded as a Contractual Service.
- **Transfers** - Accounts for interfund operating transfers out of budgeted funds to other budgeted funds. These transfers should also be reflected within the budget. Any monies transferred from budgeted funds to non-budgeted funds must be classified as expenditures within the proper expenditure class. An appropriate method of moving monies from budgeted to non-budgeted funds would be the use of a warrant or journal entry reflecting a charge to the appropriate expenditure area.

### Operating the Budget as a Policy Decision

If revenues were unlimited there would be no reason to budget. The budget provides the plan for allocating scarce financial resources. While much of the annual expenditures are institutional and cover ongoing costs, the determination for where to expend resources is a policy statement. As such, it is the responsibility of the city council to determine the spending priorities. While city staff, particularly the city clerk and finance officer, can and should provide technical assistance, it is up to the council to determine what the spending priorities are for the upcoming budget year.

### Strategic Goal Setting

For this reason, many cities find it beneficial to hold a strategic planning or goal setting session with the council in advance of budget preparation. Such a session is designed to acknowledge the achievements of the previous year, identify the challenging issues for the future and to establish agreed upon goals. Once staff has this information, a budget can be prepared and presented to the council that provides for the allocation of resources to achieve the strategic goals.

### Citizen Participation

In many cities, public participation is limited to attending and participating in the required public hearing for the budget. As a best practice, including ways for citizen participation during the budget preparation can improve the identification and prioritization of essential city services and improve public perception relating to city finances.

Examples of ways that cities utilize citizen participation include appointing citizen budget committees, capital improvement committees, community surveys and even seeking citizen-initiated performance measures.

### Budget Protest

Within a period of 10 days after the final date that a budget or amended budget is certified to the county auditor, persons affected by the budget may file a written protest with the county auditor specifying their objections to the budget or any part of it. The protest must be signed by registered voters equal in number to one-fourth of one percent of the votes cast for governor in the last preceding general election in the city, but the number shall not be less than 10 persons and the number need not be more than one 100 persons.

Upon the filing of any protest the county auditor shall immediately prepare a true and complete copy of the written protest, together with the budget to which the objections are made, and transmit the materials to the State Appeal Board and the council. The State Appeal Board consists of:

- Director of the Department of Management
- Auditor of the State
- Treasurer of the State

The state board, within a reasonable time, shall fix a date for an initial hearing on the protest and may designate a deputy to hold the hearing, which shall be held in the county or in one of the counties in which the municipality is located. Notice of the time and place of the hearing shall be given by certified mail to the appropriate officials of the local government and to the first 10 property owners whose names appear upon the protest, at least five days before the date fixed for the hearing.

At all hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the budget of the previous year, and which the objectors propose should be reduced or excluded; but the burden shall be upon the city to show that any new item in the budget, or any increase in any item in the budget, is necessary, reasonable and in the interest of the public welfare.

The State Appeal Board shall certify its decision with respect to the protest to the county auditor and to the parties to the appeal as provided by rule, and the decision shall be final. The county auditor shall make up the records in accordance



with the decision and the levying board shall make its levy in accordance with the decision. Upon receipt of the decision the council shall correct its records accordingly, if necessary.

## Budget Amendments

Cities are required to amend their annual budget if they anticipate or experience an increase in the amount of expenditures they appropriated in the city's original budget. The need to amend is triggered when the city anticipates an increase in any one of the nine expenditure programs/functions (previously listed in this chapter) over the budgeted amount.

The revenues triggering an amendment are to accommodate certain fund transfers. Transfers from the debt service fund, the tax increment fund, the capital improvements reserve fund, the emergency fund, or when funds are transferred into the debt service fund, the general fund or into the capital improvements reserve fund and those transfers were not previously budgeted. The amendment to the city budget needs to be made prior to making the expenditure or the fund transfers. While this cannot always be done for expenditures, a city should not wait to amend to see if any other programs will be exceeded. An opportune time to determine the potential need for a future amendment may be during the completion of the budget preparation process. There is no requirement to amend the budget merely to account for additional and unanticipated revenues.

The process for amending the city's budget is relatively simple. The amendment forms are provided on the DOM website at [dom.iowa.gov/local-government/city-resources](http://dom.iowa.gov/local-government/city-resources). The forms only require reporting aggregate information on the amounts the city originally certified or recently amended, the amount it intends to amend and the newly appropriated amounts. Once the amendment form is completed, the city council is required to schedule and publish notice of a public hearing on the amendment. The public hearing notice must be published no less than 10, but not more than 20 days before the hearing date. Following the hearing the city council may approve the amendment by resolution. Two copies of the budget amendment and one proof of publication are certified to the county auditor, who in turn transmits a copy of each to the DOM.

Cities can amend their budgets as many times as necessary except that the budget cannot be amended later than May 31. Any budget amended after this date could not withstand a possible protest of the amendment and would be summarily denied.

## Annual Financial Report

To a certain degree the final step in the budgeting cycle is the preparation and filing of the Annual Financial Report (AFR). The AFR reports the final, actual expenditures and revenues of the recently completed fiscal year. The forms are very similar in format to the state budget forms except they do not require the city report any information beyond that relating to the completed fiscal year.

Once completed, the AFR must be filed electronically with the DOM by December 1 of the year following the end of the fiscal year. Similar to the budget, the first page of the AFR must be published or posted if the city's population is less than 200. However, there is no requirement to hold a public hearing. While it is not required, it is a best practice to have the completed AFR approved by a resolution of the council. *Code* Section 384.16 requires each city to include the actual expenditures from the AFR to be used in the preparation of the state budget forms. A city that fails to comply with these requirements will not be able to publish or certify a budget and will lose their ability to levy property taxes and no appropriation will be authorized. As stated earlier, a city failing to file a budget will have all state funds withheld until the city complies. Information collected on the AFR is shared with the U.S. Census Bureau where it is collected as aggregate financial data on the financial condition of cities.

# Chapter 17

## Public Improvements Contracts

Depending on the nature of the project, the clerk or finance officer will need to seek the assistance of an engineer or architect and the city attorney to provide specialized guidance to ensure that public infrastructure projects are properly procured, contracted, and managed. This chapter is intended to explain the process for bidding on those projects and letting those contracts.

Since there are substantial differences between the process for the construction of public improvements and the process for the construction of street improvements, the procurement processes for each type of improvement will be covered in Parts II and III of this chapter.

### Part I: Public Construction Bidding

The term “public improvement” is defined as a building or construction work which is constructed under the control of a governmental entity and is paid for in whole or in part with funds of the governmental entity, including a building or improvement constructed or operated jointly with any other public or private agency, but excluding:

- Urban renewal demolition projects
- Low-rent housing projects
- Industrial aide projects authorized under *Code* Chapter 419
- Unforeseen emergency repairs
- Repair or maintenance work performed by employees of a governmental entity
- Construction or “repair or maintenance work” performed for a city utility under *Code* Chapter 388 by its employees or performed for a rural water district under *Code* Chapter 357A by its employees

### Adjustments to Competitive Bid Thresholds and Competitive Quotation Thresholds

For purposes of making adjustments, state law differentiates between vertical infrastructure and horizontal infrastructure.

- *Vertical infrastructure* means public improvements such as buildings and attached structures, site development features, recreational trails and parking facilities, and incidental utilities and street improvements including sidewalks that are constructed in conjunction with the construction of a building.
- *Horizontal infrastructure* includes highway, street, bridge, and culvert projects, and any work constructed in conjunction with such projects, including but not limited to utilities and sidewalks.

### Thresholds for Vertical Infrastructure

#### Competitive Quotation

Since 2006, the competitive quotation thresholds for public improvements (vertical infrastructure) have been subject to annual adjustment by the Vertical Infrastructure Advisory Committee of the Iowa Department of Transportation (IDOT) and have been adjusted most years since the law went into effect.

#### Competitive Bid

Under the law, the competitive bid threshold for public improvements (vertical infrastructure) is subject to periodic adjustment by the Vertical Infrastructure Advisory Committee of the IDOT.

## Graph A

*Competitive Bid and Competitive Quotation Thresholds for Public Improvements (vertical infrastructure). Bid and quote thresholds are reviewed and may adjust on an annual basis.*

Vertical Infrastructure			
Year Effective	Threshold	Cities or other Governmental Entities	
		≤ 50,000 population	> 50,000 population
2024	Competitive Bid	\$196,000	\$196,000
	Competitive Quote	\$81,000	\$109,000

Competitive bid and quote thresholds applicable to city public improvement projects are shown in Graph A. These thresholds determine the procurement procedure for construction contracts.

If the estimated cost of the improvement is higher than the competitive bid threshold, then the competitive bidding procedure must be used which includes having an engineer or architect put together plans and specifications, bidding the project, and selecting the contractor. If the estimated cost of the improvement is less than the competitive bid threshold but exceeds a lower threshold that varies depending on the population size of the city, then the competitive quotation procedure must be used to procure the construction contract.

### Thresholds for Horizontal Infrastructure

The competitive bid thresholds for highway, bridge, or culvert work (horizontal infrastructure/street improvements) have been subject to annual adjustment by the Horizontal Infrastructure Advisory Committee of the IDOT as provided in *Code* Sections 26.3 and 314.1B.

The competitive bid thresholds applicable to city horizontal infrastructure projects are shown in Graph B.

If the estimated cost of street improvement exceeds a threshold that varies depending on the population size of the city, then the competitive bidding procedure must be used which includes having an engineer or architect put together plans and specifications, bidding the project, and selecting the contractor. Note that the competitive bid thresholds for horizontal infrastructure are considerably lower than for vertical infrastructure, and the competitive quotation procedure has no application in the construction of horizontal infrastructure.

## Graph B

*Competitive Bid Thresholds for Highway, Bridge, or Culvert Work (horizontal infrastructure). Bid thresholds are reviewed and may adjust on an annual basis.*

Horizontal Infrastructure			
Year Effective	Threshold	Cities or other Governmental Entities	
		≤ 50,000 population	> 50,000 population
2024	Competitive Bid	\$65,000	\$93,000

### Part II: Vertical Infrastructure - Informal Procedure, Competitive Quotation and Bidding

*Code* Chapter 26 provides two methods or procedures for cities and other local government entities to construct or procure contracts for the construction of public improvements (vertical infrastructure.)

Those two processes are:

1. The competitive bidding procedure
2. The competitive quotation procedure

The “estimated total cost” of the project will determine which of the two procedures is the appropriate procedure to use.

### Informal Process for Construction of Vertical Infrastructure

*Code* Chapter 26 does not identify or require any procedures for the construction of public improvement projects when the estimated total cost of the work is less than the competitive quotation threshold for that city. (See Graph A).

When the estimated total cost of the work is less than the competitive quotation threshold, a city can utilize city employees to construct the public improvement or it can contract to have the public improvement constructed without using either the competitive quotation procedure or the competitive bidding procedure. However, cities should keep in mind that *Code* Section 26.3 requires an architect or engineer to prepare plans and specifications and calculate the estimated total cost of a proposed public improvement. Further, it is recommended that the city not use city employees to construct a public improvement unless those employees are qualified to construct that improvement.

If a city decides to contract for the construction of a public improvement without using the competitive bidding procedure or the competitive quotation procedure, it should

use a process that is fair, equitable, open, and reasonable, and it should only enter into a contract with a responsible contractor who has demonstrated its ability to perform the work. Finally, the city also needs to recognize that *Code* Section 573.2 requires a contract for the construction of a public improvement that equals or exceeds \$25,000 must be accompanied by a performance and payment bond.

### Competitive Quotation Procedure for Vertical Infrastructure

The competitive quotation procedure may be used by the city if the total estimated cost of the public improvement is greater than the competitive quotation threshold for that city but less than the competitive bid threshold. When the competitive quotation procedure is used, the city is required to make a good-faith effort to obtain quotations for the work from at least two contractors regularly engaged in the required work before awarding a contract.

Quotations may be obtained after the city provides a description of the work to be performed, including plans and specifications prepared by an architect or engineer, and provides all potential contractors an opportunity to inspect the site. In addition:

- The city must designate a time, place, and manner for filing quotations, which may be received by mail, fax email, or in-hand delivery.
- The contractor must include in the quotation the price for labor, materials, equipment, and supplies required to perform the work.
- The contractor should include evidence of insurance or commit to filing such upon award of the contract to perform the work.
- The city must award the contract to the contractor submitting the lowest responsive, responsible quotation subject to *Code* Section 26.9, or the city may reject all the quotations.

If the work can be performed by employees of the city, the city may file a competitive quotation for the work to be performed in the same manner as a contractor. For purposes of comparing the city's quotation to perform the work with city employees to a contractor's quotation to perform the work, the amount of estimated sales and fuel tax that a contractor identified in its quotation must be deducted from the contractor's quotation. If no quotations are received to perform the work or if the city's estimated cost to do the work with its employees is less than the lowest responsive, responsible quotation, the city may authorize

its employees to perform the work. The city is required to record the approved quotation in the minutes of the council meeting where it is approved, or if approved outside of a meeting, recorded in the minutes of the next meeting of the council.

Cities intending to use the competitive quotation procedure should also review the IDOT rules for use of the procedure found in 761 *Iowa Administrative Code*, Chapter 180.

### Competitive Bidding Procedure for Vertical Infrastructure

#### Notice to Bidders

If it is determined that the estimated total cost of a public improvement project requires the city to follow the competitive bidding procedure, the first step is for the city to publish a notice to bidders. In most cases, a city will work directly with its engineer or architect consultant for assistance with the entire bid process and the notice to bidders. The published notice must include the following:

- Time and place for filing sealed bids
- Time and place the bids will be opened and considered
- The general nature of the public improvement
- Generally, when the project is to begin and must be completed
- Each bid must include bid security as specified by the governing body to ensure that the successful bidder will enter into the contract and provide a corporate surety bond
- Specify that there is a required form for bidders to use in submitting their bids

The notice may also include any additional pertinent information. The city may also want to specifically state in the notice that it retains the right to reject any and all bids. The notice must be posted more than 13, but no more than 45 days before the date for filing the bids. The notice is required to be posted:

1. In a relevant contractor plan room service with statewide circulation;
2. In a relevant construction lead-generating service with statewide circulation; and
3. Either on an internet site sponsored by the city or a statewide association that represents the city.

You can find additional information on the League's website regarding posting these notices.

In most instances, it is beneficial for the city to prepare a bid packet that can be provided to interested parties. This bid packet may include a copy of the notice to bidders and the plans, specifications, and form of contract. It should include any information that the city believes would be beneficial to a prospective bidder. This helps to assure uniformity in the bids that are submitted, which in turn improves the bid review process.

#### Remaining Bidding Procedures:

- Bid Security Required
- Public Hearing on Plans, Specifications, Form of Contract, and Cost Estimate
- Pre-bidding Meeting
- Bid Opening and Award of Contract
- Responsible Bidder – Responsive Bid
- Delegation of Authority
- Evidence of Insurance
- Progress Payments and Retention of Funds from Progress Payments
- Completion and Final Acceptance
- Early Release of Retainage

Please go to page 103 “Part IV: Bidding Procedures” for details on the remaining bidding procedures.

### Exceptions to Bidding Requirement – Vertical Infrastructure

*Code* Section 384.103(2) recognizes that cities may face situations where they must undertake emergency repairs to public improvements, such as broken water or sewer mains. Recognizing that such events require immediate action, the law allows cities to proceed as follows:

“When emergency repair of a public improvement is necessary and the delay of advertising and a public letting might cause serious loss or injury to the city, the chief officer or official of the governing body of the city or the governing body shall make a finding of the necessity to institute emergency proceedings under this section and shall procure a certificate from a competent licensed professional engineer or registered architect, certifying that emergency repairs are necessary. In that event the chief officer or official of the governing body or the governing body may accept, enter into, and make payment under a contract for emergency repairs without holding a public hearing and advertising for bids, the provisions of *Code* Chapter 26 do not apply.”

“Many federal agencies, such as FEMA also require each city to have a policy in place explaining what constitutes an emergency and the procedures required to take action.”

### Construction or Repair or Maintenance Work Performed by a City Utility

The definition of “public improvement” in *Code* Chapter 26 excludes construction or repair or maintenance work performed by the employees of a city utility organized under *Code* Chapter 388. Such work is exempt from the competitive bidding and competitive quotation requirements of *Code* Chapter 26, as long as the work is performed by employees of the utility.

### Repair or Maintenance Work

Repair or maintenance work, as it applies to public improvements, is defined in *Code* Section 26.2 as: “the preservation of a building, storm sewer, sanitary sewer or other public facility or structure so that it remains in sound or proper condition, including minor replacements and additions as necessary to restore the public facility or structure to its original condition with the same design.”

A city may do repair and maintenance work with its employees, or the city can contract to have that work done. If the city contracts to have repair or maintenance work performed the estimated total cost of the work will determine whether the city will have to utilize the competitive bidding procedure, the competitive quotation procedure, or whether it can use the informal procedure, to secure the performance of that work. No formal guidance has been developed as to what types of work constitutes “repair or maintenance” work as compared with “construction” work. A city contemplating the use of city employees to perform what is believed to be repair and maintenance work should consult with its city attorney, architect, or engineer to make sure that the work is repair and maintenance work and not construction work.

### Donated Funds

If a public improvement is privately constructed with donated funds, and the city makes no contribution to the project, *Code* Chapter 26 does not apply. The project may be undertaken without following the competitive bidding or competitive quotation procedures.

### Part III: Construction of Horizontal Infrastructure - Informal Procedure and Competitive Bidding

*Code* Chapter 314 governs the construction of highway, bridge, or culvert projects, and Section 314.1 provides that cities that are required to competitively bid the “construction”, “reconstruction” or “improvement” of a highway, bridge, or culvert must do so in compliance with the contract letting procedures of Sections 26.3 through 26.13. The definition of “highway” in Section 321.1 includes “streets”.

*Note: Although highway, street, bridge, and culvert projects are not considered to be public improvements as defined in Chapter 26, those projects are required to be competitively bid as provided in Chapter 26.*

There are two procedures for cities and other local government entities to procure the construction of highway, street, bridge, and culvert projects/horizontal infrastructure. Those procedures are (1) the competitive bidding procedure and (2) the informal procedure. The “estimated total cost” of the project will determine which of these procurement procedures is the appropriate procedure to use to procure the construction of the project.

#### Informal Procedure for Horizontal Infrastructure

Neither *Code* Chapter 26 nor Chapter 314 identifies or requires any procedures for procuring the services of a contractor for highway, street, bridge, or culvert projects where the estimated total cost of the project is less than the competitive bidding threshold for that city. (See Graph B on page 99 of this chapter).

When the estimated total cost of such a project is less than its competitive bid threshold, a city can utilize city employees for the project or it can contract to have the project constructed without using the competitive bidding procedure. However, cities should keep in mind that Section 26.3 requires that an engineer must prepare plans and specifications and calculate the estimated total cost of a proposed highway, street, bridge, or culvert project. Further, it is recommended that the city does not use city employees to construct a highway, street, bridge, or culvert project unless those employees are truly qualified to construct that project.

If a city decides to contract for the construction of a highway, street, bridge, or culvert project without using the competitive bidding procedure, it should use a process that is fair, equitable, open, and reasonable, and it should only enter into a contract with a responsible contractor who has

demonstrated its ability to perform the work. Finally, the city also needs to recognize that Section 573.2 requires that when a contract for the construction of a highway, street, bridge, or culvert project equals or exceeds \$25,000, it must be accompanied by a performance and payment bond.

#### Competitive Bidding Procedure for Horizontal Infrastructure

##### Notice to Bidders

If it is determined that the estimated total cost of a public improvement project requires the city to follow the competitive bidding procedure, the first step is for the city to publish a notice to bidders. In most cases, a city will work directly with its engineer or architect consultant for assistance with the entire bid process and the notice to bidders. The published notice must include the following:

- Time and place for filing sealed bids
- Time and place the bids will be opened and considered
- The general nature of the public improvement
- Generally, when the project is to begin and must be completed
- Each bid must include bid security as specified by the governing body to ensure that the successful bidder will enter into the contract and provide a corporate surety bond
- Specify that there is a required form for bidders to use in submitting their bids

The notice may also include any additional pertinent information. The city may also want to specifically state in the notice that it retains the right to reject any and all bids. The notice must be posted more than 13, but no more than 45 days before the date for filing the bids. The notice is required to be posted:

1. In a relevant contractor plan room service with statewide circulation;
2. In a relevant construction lead-generating service with statewide circulation; and
3. Either on an internet site sponsored by the city or a statewide association that represents the city.

You can find additional information on the League’s website regarding posting these notices.

In most instances, it is beneficial for the city to prepare a bid packet that can be provided to interested parties. This bid packet may include a copy of the notice to bidders and the plans, specifications, and form of contract. It should include

any information that the city believes would be beneficial to a prospective bidder. This helps to assure uniformity in the bids that are submitted, which in turn improves the bid review process.

#### **Remaining Bidding Procedures:**

- Bid Security Required
- Public Hearing on Plans, Specifications, Form of Contract, and Cost Estimate
- Pre-bidding Meeting
- Bid Opening and Award of Contract
- Responsible Bidder – Responsive Bid
- Delegation of Authority
- Evidence of Insurance
- Progress Payments and Retention of Funds from Progress Payments
- Completion and Final Acceptance
- Early Release of Retainage

Please see “Part IV: Bidding Procedures” for details on the remaining bidding procedures.

### **Exceptions to Bidding Requirements – Horizontal Infrastructure**

#### ***Repair or Maintenance Work***

“Repair or maintenance work”, as it applies to highways, streets, bridges, or culverts, is defined in 761 *Iowa Administrative Code*, Chapter 178, sec. 178.3 as follows:

“the preservation of a road, street, bridge or culvert so that it is in sound or proper condition. The work may include minor replacements and additions necessary to restore the road, street, bridge, or culvert to its originally built condition with essentially the same design.”

#### ***Construction or Repair or Maintenance Work Performed by City Employees***

A city may self-perform repair and maintenance work with its employees, or the city can contract to have that work performed. If the city contracts to have repair or maintenance work performed, it can use the informal procedure to procure the contract. (See discussion of informal procedure on page 102).

In this instance, formal guidance has been developed as to what types of work constitutes “repair or maintenance” of highways, streets, bridges, and culverts and as to what types of work constitutes “construction, reconstruction, or improvement” of highways, streets, bridges, and culverts. That guidance is in the “City Street Financial Report”

published by the IDOT and is found in the instructions of that report. The Street Finance Report is available on the IDOT’s website at the following address:  
[iowadot.gov/local\\_systems/street-finance-report-sfr/sfr-system](http://iowadot.gov/local_systems/street-finance-report-sfr/sfr-system).

A city contemplating the use of city employees to perform what is believed to be repair or maintenance work on a highway, street, bridge, or culvert should review the guidance found in the City Street Financial Report and consult with its city attorney or engineer to make sure that the work is “repair and maintenance” and not “construction, reconstruction or improvement”.

### **Part IV: Bidding Procedures**

#### ***Bid Security Required***

Bid security, established by the city prior to notice publication, ensures the successful bidder’s commitment to a contract and provision of a corporate surety bond. It must range from five to ten percent of the estimated project cost or bid amount. Failure to fulfill the contract may result in forfeiture of the security. Unsuccessful bidders receive their bid security within 30 days of bid opening. The successful bidder retains security until contract execution and approval of a performance bond by the council.

#### ***Public Hearing on Plans, Specifications, Form of Contract, and Cost Estimate***

When the estimated total cost of a public improvement, including a highway, street, bridge, or culvert project, requires competitive bidding, the city cannot enter into a contract until after a public hearing is held on the proposed plans, specifications, and form of contract, as well as the estimated cost of the project or improvement. These plans, specifications, and cost estimates must be prepared by a licensed engineer, architect, or engineer.

The notice of the public hearing is to be published not more than 20 and not less than four days before the hearing and shall include a description of the improvement and its location. This notice is intended to inform the public and allow citizens to ask questions about, comment on, or object to the project at the hearing. For that reason, the plans, specifications, form of contract, and cost estimate must be filed in the office of the city clerk well in advance of the public hearing. Following the public hearing, the council must make its decision by resolution.

### **Pre-bidding Meeting**

Depending on the scope of the project, it may be beneficial for a city to hold a pre-bid meeting to allow interested bidders to attend and gather additional project information. This meeting can be announced alongside the notice to bidders, ideally scheduled a couple of weeks prior to the bid submission deadline. This timing ensures that bidders have ample time after the meeting to carefully consider their bids.

### **Bid Opening and Award of Contract**

The city must formally open the bids at the time and place specified in the notice to bidders. As to each bid received, the city must record on the envelope containing the bid the date and time it was received, and the name of the person receiving the bid. If bids are received in an electronic format, the person receiving bids shall electronically record the date and time each bid is received. *Code* Section 26.10 explicitly provides that bids received after the deadline for submission of bids cannot be considered and must be returned to the late bidder unopened. As the bids are opened, the city must announce the amount of the bids and file all proposals received.

### **Vertical Infrastructures**

After the bids have been opened and reviewed, the city has the following options (per *Code* Section 26.10):

- Award of contract - The city shall, by resolution, award the contract for the public improvement to the bidder submitting the lowest responsive, responsible bid.

OR

- Rejection of bids - The city may reject all bids received and fix a new date for receiving bids and order publication of a new notice to bidders.

### **Horizontal Infrastructures**

After the bids have been opened and reviewed, the city has one of the following options (per *Code* Sections 26.10, 26.9, and 314.1(3)):

- Award of contract - The city shall, by resolution, award the contract for the highway, street, bridge, or culvert project to the bidder submitting the lowest responsive, responsible bid, giving due consideration not only to the prices bid but also to the mechanical or other equipment and the financial responsibility and experience in the performance of like or similar contracts. A governmental entity shall not require a potential bidder on a public improvement to provide

any information that the potential bidder may deem to be confidential or proprietary as a requirement for being deemed a responsive, responsible bidder. Therefore, the city may only require evidence of financial resources, construction experience, and organization available for the performance of the proposed work from the apparent lowest responsive, responsible bidder, whose bid is under consideration for the award of a contract.

- Rejection of bids and re-let - The city may reject all bids received and re-advertise and re-let the project without conducting an additional public hearing if no substantial changes are made to the project's plans or specifications.
- Contract privately or construct with city employees - The city may contract privately with a contractor or construct the project with city employees, provided that the project can be constructed at a cost, not over the lowest bid received.

### **Responsible Bidder – Responsive Bid**

The responsible bid requirement focuses on the bidder. A responsible bid is one submitted by a bidder having the financial and technical capability to perform the work, as well as the ability to complete the work. The responsive bid requirement focuses on the bid. A bid is considered responsive if the bidder agrees to everything required by the plans, specifications, and other bid requirements without condition or qualification.

### **Delegation of Authority**

The city council may by resolution or ordinance delegate to a city manager, clerk, city engineer, or other public official the duty of receiving and opening bids and announcing the results. The officer must report the results with his or her recommendations at the next council meeting.

### **Evidence of Insurance**

Many cities require their construction contractors to have insurance as provided in the project specifications. The successful bidder is typically required to provide certificates of insurance proving the required insurance is in place before the city approves and executes the construction contract. In projects constructed with federal grant funds, there may be grant restrictions that prohibit or limit the types or amounts of insurance coverage that the city can require of the contractor.



### **Progress Payments and Retention of Funds from Progress Payments**

In compliance with *Code* Chapter 573, “Labor and Material on Public Improvements,” contract payments are contingent upon monthly estimates of labor performed and materials delivered, as determined by the project engineer or architect. Such payments are due within 14 days of the receipt of the payment request unless a longer period is specified in the contract; nevertheless, payments must be made within 30 days. Failure to meet this timeline will result in interest being applied to the payment. Should the city neglect payment within 40 days of work completion, interest will accrue on the outstanding amount, in accordance with rates approved by the state treasurer for public deposits.

The city is mandated to retain no more than five percent of each progress payment, with the amount retained (the retainage) serving as a fund for the payment of claims for materials furnished and labor performed on the project. This measure is intended to shield the city from being obligated to pay for claims not settled by the contractor. However, should the city fail to retain the required five percent on all progress payments, it could become liable to claims for payment from subcontractors or suppliers at the project’s conclusion, up to the extent of the shortfall in retained funds.

The retainage cannot be retained for any other reason than to pay for materials and labor not paid for by the contractor, serving to shield the city from bearing claims for unpaid labor and materials. It does not serve as a guarantee against unsatisfactory work. If the city finds the work unsatisfactory or incomplete within the specified timeframe, it must address these contractual matters with the contractor directly. The performance and payment bond, furnished by the contractor, acts as the city’s assurance for the contract’s proper and timely execution. If the city fails to resolve these issues with the contractor, it should then pursue a claim against the contractor’s surety on the bond.

### **Completion and Final Acceptance**

The retained funds must be held for a period of 30 days after the completion and final acceptance of the highway, street, bridge, or culvert work by the city, as well as for the improvement by the city. Acceptance of the project occurs when the city council adopts a resolution accepting the contract as completed. The resolution typically provides for the release of retained funds at the end of the 30 days

unless there are claims on file that have not been paid. If there are unpaid claims on file at the end of the 30 days, the law requires the city to continue to retain from the unpaid funds a sum equal to double the amount of all claims on file as security to secure payment for unpaid claims and as security for the unpaid claimants.

Subcontractors and suppliers that have claims for payment against the contractor are required to file those claims with the city, often referred to as “Chapter 573 claims”. These claims are typically filed in the office of the city clerk. The person receiving such claims on behalf of the city is required to sign the claim and record the date and time it was received. It’s important to note that these claims are also known as “*Code* Chapter 573 claims” and follow the same process of filing with the city clerk, with the recipient obligated to sign and record the date and time of receipt.

If the contractor does not pay or otherwise settle Chapter 573 claims filed with the city, those claimants may then file suit against the contractor and the surety on its performance and payment bond to secure payment. That lawsuit may be filed after the expiration of the 30 days following the city council’s final acceptance of the project, but not later than 60 days after final acceptance. Either the contractor or a claimant may cause an adjudication to be made by a court to determine the validity of such a claim and entitlement to the retained funds. The city is required to hold the retained funds until such claims are adjudicated, and the court determines whether the claims are valid and in what amount, and instructs the city and the contractor as to the appropriate disposition of the retained funds. For that reason, it is common for the city to be named as a party to the lawsuit brought to adjudicate such claims.

### **Early Release of Retainage**

*Code* Chapter 26 offers contractors the opportunity to request an early release of retained funds upon achieving “substantial completion” of a project. Section 573.28 delineates several conditions, or “triggers,” that signify a project’s substantial completion and eligibility for early retainage release. This status is attained when any of the following conditions occur first:

- **Substantial Completion According to Contract:** The project is substantially finished in accordance with the contract’s terms and conditions.
- **Occupancy by Public Entity:** The project is substantially complete when the governmental entity is occupying or utilizing the public improvement for its intended purpose.

- **Engineer’s Certification:** The public improvement has been designated substantially complete by the architect, engineer, or authorized contract representative.

### **Withholding Retained Funds for Pending Work**

When a contractor requests early release of retained funds, if labor or materials are still outstanding, the city has the authority to withhold an amount equal to twice the determined value of those items, as listed by the city’s architect or engineer. This withheld amount can remain in the city’s possession until the required labor or materials are provided. Similarly, if at the time of the release request, labor and materials have yet to be supplied, the city is entitled to withhold an amount equal to two hundred percent of the value of these outstanding items, as itemized by the city’s architect or engineer. This withholding can persist until the necessary labor or materials are furnished for the project.

### **Notification to Subcontractors and Suppliers**

Before requesting the early release of retained funds, the contractor must notify all subcontractors, sub-subcontractors, and suppliers that a request will be submitted to the public entity.

### **Contractor’s Sworn Statement**

The contractor’s request for early release of retainage must be accompanied by a sworn statement confirming that notice was given to all subcontractors and suppliers at least 10 calendar days prior to the request. This notification period ensures that subcontractors, sub-subcontractors, and suppliers have adequate time to assert claims against the retainage if payment has not been received.

### **Payment of Released Funds**

If the city approves the early release of retained funds, they must be paid to the contractor either at the next scheduled monthly progress payment or within 30 days, whichever comes sooner.

### **Performance Bond and Claims on Surety Bonds**

Section 573.2 of the *Code* mandates that for public improvement contracts valued at \$25,000 or more, the contractor must furnish a performance bond to the city, ensuring faithful contract performance, payment to subcontractors and suppliers, and compliance with other legal requirements. Hence, it’s commonly known as a “performance and payment bond.” This bond is obligatory and cannot be circumvented or restricted by contract. Even on projects below \$25,000, the city reserves the right

to demand a bond. Alternatively, contractors can provide financial securities like cash, certified checks, credit union-certified share drafts, or federal bonds. These options afford the city protection against contractor defaults, as outlined in the aforementioned code section.

Performance and payment bonds must be in the amount fixed by the city, but not less than 75 percent of the contract price. In contracts where no part of the contract is paid until after the completion of public improvement, highway, street, bridge, or culvert work, the bond amount may be fixed at not less than 25 percent of the contract price, which can be very beneficial for large dollar projects involving small local contractors.

A city may also require that the performance and payment bond include a maintenance bond component to ensure that the public improvements will function as required for a specific period of time. Some cities include the maintenance bond component in all public improvement projects that are locally funded.

The typical maintenance period for such bonds is two years, but there may be an extended maintenance period requirement for certain projects, including those constructed with federal grant funds, where grant restrictions may prohibit the inclusion of a maintenance bond requirement in the project or limit the terms of the maintenance bond.

When subcontractor and supplier claims are filed against a contractor and the required five percent retainage fund amount is insufficient to pay all claims, the claimants may then make a claim against the contractor’s surety on the performance and payment bond. If the required five percent retainage fund amount is insufficient to cover all claims, subcontractors and suppliers can file a claim against the contractor’s surety on the performance and payment bond.

Similarly, if a contractor is unable to complete a project due to financial difficulty, the city may make a demand on the contractor’s surety on the bond to complete the work. In those circumstances, the surety may be willing to enter into a “take-over agreement” with the city, pursuant to which the surety retains another contractor to complete the project. If the contractor fails to execute the work properly and declines to rectify any deficiencies, the city reserves the right to initiate a claim against the contractor’s surety under the performance aspect of the bond to address those shortcomings. Should these deficiencies surface after the

city has accepted the project and the contractor persists in refusing to address them, the city retains the option to pursue a claim against the contractor's surety under the maintenance component of the bond, provided the maintenance period remains in force.

If the contractor's surety refuses to pay claimants for unpaid labor or materials provided to the project, those claimants will then have to consider filing suit against the contractor and its surety on the bond to obtain payment, which may be filed after the expiration of the 30 days following the city council's final acceptance of the project, but not later than 60 days after final acceptance. If the contractor's surety refuses to complete the work or correct deficiencies, the city would then have to consider filing suit against the contractor and its surety on the bond, either to obtain performance under the contract or to recover damages sufficient to complete the work or correct the deficiencies.

### **Special Considerations**

Federal regulations applicable to projects that include federal money, such as Community Development Block Grant (CDBG) funds, Federal Aviation Administration (FAA) grant funds, State Revolving Fund (SRF) funds provided by the Iowa Department of Natural Resources utilizing Environmental Protection Agency (EPA) grant monies, or Federal Highway Administration grant funds administered through the IDOT, may change the above requirements or add additional requirements. Many of these projects require additional public hearings and compliance with Davis Bacon Act wage requirements, which must be included in the initial plans and specifications for the project. City personnel with project oversight responsibility should familiarize themselves with these grant requirements and restrictions to avoid compliance problems and additional expenses.