

TITLE 2

CLASSIFICATION, ADMINISTRATION AND PERSONNEL

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- 2.08 City and Ward Boundaries
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CHAPTER 2.04

CITY CLASSIFICATION

Sections:

- 2.04.01 Operation as first class city

2.04.01 Operation as first class city The city of Heber Springs, Arkansas, shall operate as a city of the first class under the laws of the state of Arkansas.
STATE LAW REFERENCE-See A.C.A. 14-37-104

CHAPTER 2.08

CITY AND WARD BOUNDARIES

Sections:

- 2.08.01 Ward map for city
- 2.08.02 Previous descriptions
- 2.08.03 Copy

2.08.01 Ward map for city The ward redistricting plan as shown on the map which is attached hereto and made a part hereof, be and is hereby adopted, with said map to serve hereafter as the official Ward Map for the city of Heber Springs, Arkansas. All previous ward maps and boundary descriptions are hereby repealed.

2.08.02 Previous descriptions All previous ward maps and boundary descriptions are hereby repealed. (Ord. No. 2011-12, Sec. 2.)

2.08.03 Copy A duly certified copy of said map shall be filed with the Cleburne County Election Commission, and filed in the office of the Cleburne County Clerk. (Ord. No. 2011-12, Sec. 3.)

Chapter 2.12

EMERGENCY SERVICES

Sections:

2.12.01 Workmen's Compensation benefits
for emergency services workers

2.12.01 Workmen's Compensation benefits for emergency services
workers.

(a) Benefits payable for the injury or death of persons appointed and regularly enrolled in accredited emergency services organizations and covered by Ark. Stats. 11-1934 - 11-1938, 11-1940 - 11-1957), while actually engaged in emergency service duties, either during training or during a period of emergency and subject to the order, or control of, or pursuant to a request of, and under the supervision and instruction of the Governor of the State of Arkansas; the State Office of Emergency Services, or the chief executive officer, or the designated Emergency Services Director, or a County of an accredited local government unit making use of emergency service volunteer workers, shall be limited to the provisions of the Arkansas Workers' Compensation Act, if such persons are regularly employed by a local government or the State of Arkansas, or if such person is a qualified emergency services volunteer worker of the State of Arkansas or an accredited local organization for emergency services, recovery shall be limited as hereinafter provided.

(b) The remedy provided herein shall be the exclusive remedy as against the State and political subdivisions thereof.

(c) For the purpose of workers' compensation coverage in cases of injury to or death of an individual, all duly registered and qualified emergency services volunteer workers shall be deemed local government or State employees and shall receive compensation and their survivors shall receive death benefits in like manner as regular local government or State employees for injury or death arising out of and in the course of their activities as emergency services volunteer workers. If a volunteer worker is injured or killed while subject to the order or control of an accredited local government, compensation and benefits shall be charged against the applicable local government's experience rate and paid from the appropriate State workers' compensation fund. If the emergency services volunteer worker was under the order or control of a State agency when injured or killed, compensation and benefits shall be charged against the experience rate of the State agency who exercised order or control at the time of injury or death and paid from the appropriate State workers' compensation fund.

(d) For the purpose of subsection (c) of this section, the weekly compensation benefits for such emergency services volunteer workers who receive no monetary compensation for services rendered as such workers shall be calculated based upon the wages received from their

regular or usual employments, the same as a regular local or State employee, with respect to injury, disability or death. The reimbursement of Twenty-Five Dollars (\$25.00) or less for out-of-pocket expenses incurred in response to an emergency situation, such as gasoline, oil, uniforms, and required equipment, etc., shall not be construed as monetary compensation for the volunteer worker.

(e) In the event that any person who is entitled to receive benefits through the application of subsection (c) of this section receives, in connection with the injury, disability or death giving rise to such entitlement benefits under an Act of Congress or Federal program providing benefits for emergency services workers or their survivors, the benefits payable hereunder shall be reduced to the extent of the benefits received under such other Act or program. Any person who performs the duties of such member or trainee as an adjunct to his regular employment and who otherwise would be entitled to receive Workers' Compensation benefits for his injury, disability, or death, if injured in the performance of such duties, shall be deemed to have been injured, disabled or killed in the course of his regular employment.

(f) An emergency services volunteer worker shall be deemed duly registered and qualified when he meets the following requirements:

When he is a member of and has on file in either an accredited local emergency services organization, or in the Office of Emergency Services the following information:

- (a) name and address
- (2) date enrolled
- (3) loyalty oath
- (4) class of service assigned

(g) Payments, death and disability benefits as herein provided shall be made from the Worker's Compensation revolving fund for state employees. (Acts 1973, No. 511, Sec. 22, page 1419; 1977, No. 408, Sec. 6, page 855; 1981, No. 891, Sec. 5, page 2067)

Chapter 2.16

SOCIAL SECURITY COVERAGE

Sections:

- 2.16.01 Contract
- 2.16.02 Withholding taxes from wages
- 2.16.03 City to match withholding

2.16.01 Contract. The Mayor and City Clerk are hereby authorized and directed to enter into an agreement with the state for the purpose of obtaining insurance coverage for the employees of the city under the terms and provisions of the Federal Social Security Act.

2.16.02 Withholding taxes from wages. Each employee's insurance contribution shall be deducted from his salary check in accordance with the terms and provisions of the Social Security Act.

2.16.03 City to match withholding There is hereby appropriated from the general fund of the city the sums of money necessary to pay the city's share of the insurance tax in accordance with the terms and provisions of the Social Security Act.

CHAPTER 2.20

UNCLAIMED PROPERTY

Sections:

- | | |
|---------|-------------------------------------|
| 2.20.01 | Disposal |
| 2.20.02 | Sale |
| 2.20.03 | Proceeds of sale to owner |
| 2.20.04 | Proceeds remaining after six months |

2.20.01 Disposal The Police Chief under the direction hereinafter set out is hereby authorized and directed to dispose of at public auction all unclaimed personal property rightfully coming into the hands of his office and to dispose of other confiscated property confiscated under the orders of the District Court with the exception of confiscated liquor.

STATE LAW REFERENCE-For procedure relating to liquor, see Ark. Stats. 48-926 - 48-929.1

2.20.02 Sale All unclaimed personal property coming into the hands of the Police Chief will be held by him for a period of six (6) weeks or longer. If property remains unclaimed, he shall periodically advertise such property in some newspaper of general circulation in the city once each week for three (3) consecutive weeks setting forth in notice the time for the sale which shall not be earlier than five (5) days after the last publishing of the notice and no later than ten (10) days thereafter, designating an easily accessible place for the sale thereof, and giving a complete list and description of unclaimed articles to be sold. The Police Chief shall have the right to refuse any and all bids not satisfactory and will then proceed to advertise these items for sale at a later date. Terms of such sale shall be for cash only. Nothing in this chapter shall prohibit any person who properly identifies any of the property as being their own before the sale from claiming and having property restored to them.

2.20.03 Proceeds of sale to owner The Police Chief shall deposit the receipt from the aforesaid sale of unclaimed property in the treasury and the Treasurer is to keep these funds in a special account for a period of six (6) months and any person identifying as his own any of such property within the six (6) month period shall upon the presentation of satisfactory proof be paid by the city out of the special account the amount for which the property was sold. The Police Chief or some person designated by him shall keep in a well-bound book an accurate record and description of each piece of unclaimed property passing through his office and the price for which it was sold and the

date, the name and address of those who purchased same, as well as a complete record of those who identified and claimed any of the property before it was sold.

2.20.04 Proceeds remaining after six months All proceeds from the sale remaining in the special fund for a period of six (6) months shall by the Treasurer be transferred to the city's general fund and no further payment shall be made therefrom to anyone who thereafter claims ownership.

CHAPTER 2.24

CITY COUNCIL

Sections:

- 2.24.01 Council meetings - regular
- 2.24.02 Council meetings - special
- 2.24.03 Freedom of information procedure
- 2.24.04 Order of business

2.24.01 Council meetings - regular All regular meetings of the Council shall be held at the municipal building on the third Thursday of each month. (Ord. No. 2009-10, Sec. 1.)

2.24.02 Council meetings - special Special meetings of the Council may be held upon the call of the Mayor, whenever in his opinion it shall be necessary, or by three (3) members of the Council by giving at least three (3) days' notice of such special meeting by giving notice in writing which notice shall be served personally or through the mails to all members of the Council which notice shall state the time of the meeting and purpose thereof.

STATE LAW REFERENCE-See A.C.A. 14-43-502

2.24.03 Freedom of information procedure All meetings of City Council shall be public meetings. Notice of the time, place and date of all special meetings shall be given to representatives of the newspapers and radio stations located in Cleburne County which have requested to be notified at least two (2) hours before the special meeting takes place.

2.24.04 Order of business At all meetings of the Council, the following shall be the order of business unless the Council by a majority vote shall order otherwise:

1. Call to order
2. Roll call
3. Reading of minutes of the previous meeting
4. Reports of boards and standing committees
5. Reports of special committees
6. Unfinished business
7. New business
8. Announcements
9. Adjournment

CHAPTER 2.28

MAYOR

Sections:

- | | |
|---------|-------------------------|
| 2.28.01 | Office created |
| 2.28.02 | Election |
| 2.28.03 | Duties |
| 2.28.04 | Appointment of officers |
| 2.28.05 | Salary |
| 2.28.06 | Survivor benefits |

2.28.01 Office created. The office of Mayor is hereby created.

2.28.02 Election. On the Tuesday following the first Monday in November, 1982, and every four (4) years thereafter, the qualified voters of Heber Springs shall elect a Mayor for four (4) years.

2.28.03 Duties. As chief executive of the city, the Mayor shall preside over all meetings of the City Council and shall perform such duties as may be required of him by State Statute or City Ordinance.

2.28.04 Appointment of officers. The Mayor shall appoint, with the approval of the City Council (where such approval or confirmation is required), all officers of the city whose election or appointment is not provided for by State Statute or city ordinance.

2.28.05 Salary. The rate of pay of the Mayor shall be determined by ordinance or resolution of the City Council from time to time in a manner that will comply with the Arkansas Constitution. (Ord. No. 89-1, Sec. 1)

2.28.06 Survivor benefits Under the authority of A.C.A. 24-12-123, it is hereby established that survivor benefits shall be created and approved for survivors of any Mayor entitled to retirement benefits.

On the death of any Mayor retired under the provisions of A.C.A. 24-12-123, the surviving spouse of the Mayor married to the Mayor for ten (10) years or longer, such spouse shall receive one-half (1/2) of the retirement benefit the retired Mayor was receiving or one-half (1/2) of the retirement benefit the Mayor who died in office was entitled to receive.

However, upon remarriage of the surviving spouse, the benefits shall cease. (Ord. No. 01-8, Sec. 1.)

CHAPTER 2.32

CITY CLERK

Sections:

- 2.32.01 Office separated
- 2.32.02 Compensation and duties of City Clerk

2.32.01 Office separated Effective January 1, 2007, the office of Clerk/Treasurer shall be several and separated, and from and after January 1, 2007, the positions of City Clerk and City Treasurer shall be separate and apart from each other, and each office shall be held by different persons. The office of City Clerk shall be held by a person elected to that position as provided by law and ordinance, and the office of City Treasurer shall be held by a person appointed to that position as provided by law and ordinance. Each such officer shall give bond for the performance of their respective duties as required by law. (Ord. No. 06-18, Sec. 1.)

2.32.02 Compensation and duties of City Clerk

- A. The salary of the City Clerk is set at \$8,794.56 per year. (Ord. No. 2020-10, Sec. 1)
- B. The City Clerk shall have the custody of all the laws and ordinances of the city, all codes and regulations adopted by the city and its boards and commissions, shall keep a regular and correct journal of the proceedings of the City Council, publish all ordinances and notices as are required by law, and such other duties as may from time to time, be prescribed by the City Council.

- C. The effective date of this ordinance, and all provisions set forth herein, shall be the first day of January 2007. (Ord. No. 2006-19, Secs. 1-3.)

CHAPTER 2.34

CITY TREASURER

Sections:

- 2.34.01 Appointed position
- 2.34.02 Duties
- 2.34.03 Effective date

2.34.01 Appointed position In accordance with A.C.A., 14-43-405, the office of the City Treasurer of Heber Springs, effective January 1, 2007, shall be an appointed position. The City Treasurer shall be appointed by the Mayor, and such appointment shall be confirmed by a majority of the City Council. (Ord. No. 2006-20, Sec. 1.)

2.34.02 Duties The City Treasurer shall have the custody of all financial records of each of the various departments and accounts of the city, publish all required accounts and statements, provide monthly financial records and reports to the Mayor and City Council, keep all records and perform all duties as required by the Arkansas Municipal Accounting Law and other state law and the ordinances of the city, and such other duties as may, from time to time, be prescribed by the City Council. (Ord. No. 2006-20, Sec. 2.)

2.34.03 Effective date The effective date of this ordinance, and all provisions set forth herein, shall be the first day of January, 2007. (Ord. No. 2006-20, Sec. 3.)

CHAPTER 2.36

CITY ATTORNEY

Sections:

2.36.01	Election
2.36.02	Duties
2.36.03	Salary
2.36.04	Retirement

2.36.01 Election On the Tuesday following the first Monday in November 1982, and every four (4) years thereafter, the qualified voters of Heber Springs shall elect a City Attorney for four (4) years.

2.36.02 Duties The duties of the City Attorney of the city of Heber Springs, Arkansas, shall be to represent the city of Heber Springs, Arkansas, in all actions, both civil and criminal, in all courts in which the city shall be a party. It shall further be the duty of such City Attorney to advise with all city officials at any time needed, and to prepare all legal papers, blank forms, ordinances, and any and all other legal requirements needed on behalf of the city. It shall further be the duty of the City Attorney to handle all legal requirements of all agencies and commissions of the city of Heber Springs, Arkansas, when specifically requested by such agency or commission. When a request is made by an agency or commission, the City Attorney shall be reasonably compensated by the requesting agency or commission. (Ord. No. 2011-4, Sec. 1)

2.36.03 Salary The salary of the City Attorney shall be set by the Mayor and City Council from time to time and paid from the general fund of the city. The salary of the City Attorney is set at \$47,689.46 per year. (Ord. No. 2020-10, Sec. 2)

2.36.04 Retirement

- A. In accordance with A.C.A. 20-12-120, as amended by Act 1066 of 1999, and upon the approval of the City Council as evidenced by the passage of this ordinance, there are hereby provided retirement benefits for a City Attorney, whether elected or appointed to office, as set forth herein.
- B. Any person who shall serve as City Attorney of the city for a period of not less than ten (10) years, upon reaching age sixty (60) years, or any person who shall serve as City Attorney for a period of not less than twenty (20) years, without regard to age, shall be entitled to retire at an annual retirement benefit during the remainder of his natural life, payable at the rate of one-half ($\frac{1}{2}$) of the salary payable to the City Attorney at the time of his retirement.
- C. All payments of retirement benefits under this ordinance shall be payable monthly and shall be paid from the general funds of the city.

- D. In the event that any provision or application of this ordinance is later ruled to be invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.
(Ord. No. 99-25, Secs. 1-4.)

CHAPTER 2.40

FIRE DEPARTMENT

Sections:

2.40.01	Creation and personnel
2.40.02	Appointment and removal of Fire Chief
2.40.03	Duties of Fire Chief
2.40.04	Compensation of volunteer firemen
2.40.05	Registration of volunteer firemen
2.40.06	Firemen's Pension and Relief Fund
2.40.07	Area responsibility
2.40.08	LOPFI

2.40.01 Creation and personnel The Heber Springs Fire Department is hereby created and shall consist of the following personnel:

One full-time Fire Chief, one full-time fireman, and any number of volunteer firemen as the Fire Chief shall determine as necessary from time to time. (Ord. No. 2003-16, Sec. 1.)

2.40.02 Appointment and removal of Fire Chief

The Fire Chief shall be appointed by the Mayor unless appointment is disapproved by a two-thirds vote of the Council membership. Such Fire Chief shall be subject to removal by the Mayor unless removal is overruled by Council by a two-thirds vote of the Council membership.

2.40.03 Duties of Fire Chief The Fire Chief shall be the head of the department and shall be fully responsible for the operation and the equipment of the department. It shall be his duty to determine all matters in connection with the operation, except the expenditures of city funds therein. He shall make periodic reports to the City Council, showing the names of paid firemen, number of hours on duty, the condition of the equipment of the department, and such other matters as shall be determined necessary by resolution or ordinance of the City Council.

2.40.04 Compensation for volunteer firemen The volunteer firemen shall be paid for such services as they render based upon the number of calls answered. The Chief shall attend all Council meetings for the purpose of furnishing any information required by the Council. Payment for services to be determined by the City Council on a periodical basis.

2.40.05 Registration of volunteer firemen All volunteer firemen shall be registered with the Chief and their names, addresses and phone numbers shall be posted in the fire department and also on file with the Clerk/Treasurer. Such lists shall be kept up to date by the Fire Chief.

2.40.06 Firemen's Pension and Relief Fund If other funds are not available or adequate, the City Council shall, on or before the time fixed by law for levying county taxes, make out and certify to the County Clerk the rate of taxation levied by the city on the real and personal property within the city, not to exceed one (1) mill on the dollar of the assessed value, for the purpose of paying pensions to retired firemen, and pensions to widows and minor children of deceased firemen and widows and minor children of deceased retired firemen, as provided by law. The Council shall make the rate of taxation, not to exceed one (1) mill on the dollar of the assessed value of the real and personal property within the city, sufficient to raise and provide such amount of money as the Board of Trustees of the Firemen's Pension and Relief Fund certified to the Council will be required to pay pensions to widows and minor children of deceased firemen and widows and minor children of deceased retired firemen, for the following year. If the amount certified to the Council by the Board of Trustees is more than a levy of one (1) mill will produce, the Council shall make the full levy of one (1) mill. All members of the fire department, whether past, present, or future, and whether they be paid, part paid or volunteer firemen, their widows and minor children, and who meet the requirements established by the laws of the state for such eligibility, shall be included in the estimate of the amount of money required to pay pensions, which said Board is required to submit to the City Council, and all persons eligible to receive such benefits shall be entitled to receive them.

This code shall at all times conform to state law governing the Firemen's Pension and Relief Fund and any amendment to such state law shall automatically amend this code to assure compliance with state law.

STATE LAW REFERENCE-see Ark. Stats. 19-2201 - 19-2229

Amend. 31, Ark. Const.; Hdbk 33-1.1 -- 33-1.38

2.40.07 Area responsibility

The primary area of responsibility for fire protection by the Heber Springs Fire Department shall be the incorporated limits of the city of Heber Springs plus the Heber Springs industrial park, which lies outside the city limits, but is adjacent thereto. (Ord. No. 460)

2.40.08 LOPFI

- A. If accepted by LOPFI, the administration of the Heber Springs Fire Pension and Relief Fund (Local Plan) shall be transferred to LOPFI under authority of Arkansas Code Annotated 24-10-101, et. seq., as amended. Such transfer shall mean the administration of the Local Plan only and not a change in the Local Plan's benefit program unless a benefit increase is approved by the City of Heber Springs, Arkansas.
- B. The Chief Administrative Officer is hereby authorized to enter into an irrevocable agreement, using a twenty-five (25) year amortization period, with LOPFI to administer the Local Plan as stated in Section 1 hereof. (Ord. No. 2017-09, Secs. 1-2.)

CHAPTER 2.44POLICE DEPARTMENTSections:

2.44.01	Established
2.44.02	Organization
2.44.03	Chief of Police - duties and responsibilities
2.44.04	Duties of officers
2.44.05	Adoption of rules and regulations
2.44.06	Police Department Policy Manual adopted by reference
2.44.07	Fee for service of process
2.44.08	Drug Control and Equipment Fund created
2.44.09	Departments combined
2.44.10	Warrant fees
2.44.11	Other revenues deposited
2.44.12	Expenditures
2.44.13	LOPFI
2.44.14	Number of Officers

2.44.01 Established There is hereby established the Police Department of the city, which shall consist of the Chief of Police and such police officers as the Council shall prescribe by resolution or ordinance. All officers of the Police Department are to be employed by the Civil Service Commission. They shall receive such compensation as shall be determined by ordinance or resolution and such compensation shall be in lieu of all special fees, rewards or remuneration arising from such police service.

2.44.02 Organization

- A. The Chief of Police shall be the chief executive officer and shall have direct control and management of all members of the department in the lawful exercise of their duties. He shall be responsible for the maintenance of order, the enforcement of laws, ordinances and resolutions of the city, the prevention of crime and the protection of life and property. In case of the absence or disability of the chief, the Mayor shall designate a police officer to be acting chief and such chief shall perform the duties and exercise the power and authority of the chief, but shall be entitled to no additional salary.
- B. The Chief of Police and each officer shall perform such duties as may be required by law, ordinance or city regulation. Each member of the department shall give such assistance as is necessary to any other city department or city employee.

2.44.03 Chief of Police - duties and responsibilities The duties of the Chief of Police and all other members of the Police Department shall be as set forth in the Civil Service Commission Rules and Regulations.

For serving city warrants only, the Chief of Police or his officers shall be entitled to the fees allowed to the Sheriffs under A.C.A. 21-6-307 for similar services in similar cases. All fees collected by the Police Chief and his officers for similar services shall be paid over to the City Treasury. (Ord. No. 89-14, Secs. 4-5)

2.44.08 Drug Control and Equipment Fund created There is hereby created the Heber Springs Police Department Drug Control and Equipment fund. (Ord. No. 2003-3, Sec. 1.)

2.44.09 Departments combined The Heber Springs Police Department Drug Control Fund and the Heber Springs Police Department Equipment Fund are hereby abolished. All funds remaining therein at the time the said funds are closed shall be deposited in the newly created Drug Control and Equipment Fund. (Ord. No. 2003-3, Sec. 2.)

2.44.10 Warrant fees The warrant fees collected by the Heber Springs Police Department in the sum of Fifty Dollars (\$50.00) as authorized by law (A.C.A. 14-52-202) and ordinance shall be deposited in the Drug Control and Equipment Fund. (Ord. No. 2014-10, Sec. 1.)

2.44.11 Other revenues deposited All forfeitures, proceeds from the sale of contraband and other revenues to, or inuring to the benefit of, the city, or the city Police Department, pursuant to A.C.A. 5-64-505, shall be deposited into the Drug Control and Equipment Fund. (Ord. No. 2003-3, Sec. 4.)

2.44.12 Expenditures

- A. In order to provide funds for cash expenditures necessary for drug control purposes, there is hereby authorized a cash disbursement procedure for the police department.
- B. The sum of One Thousand Dollars (\$1,000.00) shall be distributed to the Chief of the Police Department, and controlled by him or his designated representative. Such funds shall only be used in furtherance of the drug control efforts of the Police Department. Cash expenditures are authorized. All such expenditures shall be properly accounted for and receipted.
- C. Upon application by the Police Chief, accompanied by proper documentation and receipts for expenditures, the fund may be replenished from time to time by additional disbursements in the amounts of expenditures presented for reimbursement.
- D. The total cash available for drug control purposes shall not exceed the sum of One Thousand Dollars (\$1,000.00) at any time. (Ord. No. 2003-4, Secs. 1-4.)

2.44.13 LOPFI

- A. Once accepted by LOPFI, the administration of the Heber Springs Police Pension and Relief Fund shall be transferred to LOPFI under authority of A.C.A. 24-11-406, as amended. Such transfer shall mean the administration of the Pension Fund only and not a change in the Pension Fund's benefit program, unless the Pension Fund is actuarially sound and/or a benefit increase is approved by the city of Heber Springs, Arkansas, except the Heber Springs governing body approves the implementation of the 3% compound COLA.
- B. The Chief Administrative Officer is hereby authorized to enter into an irrevocable agreement with LOPFI to administer the Heber Springs Police Pension and Relief Fund as stated in Section (A). (Ord. No. 2011-5, Secs. 1-2.)

2.44.14 Number of Officers Pursuant to A.C.A. § 14-52-201 the City Council hereby establishes that the number of subordinate police officers to be appointed shall not exceed 25. (Ord. No. 2016-01, Sec. 2.)

CHAPTER 2.48

CIVIL SERVICE

Sections:

- 2.48.01 Created
- 2.48.02 Composition of Board
- 2.48.03 Initial commissioners
- 2.48.04 Power and authority
- 2.48.05 Dissolution

2.48.01 Created There is hereby created a Board of Civil Service Commissioners for the Salaried and Uniformed Employees of the Police Department, such employees shall include the Police Chief, intermediate officers, and patrolmen, but shall not include clerks, radio operators, animal control officers, volunteers or auxiliaries. (Ord. No. 412, Sec. I as amended by Ord. No. 432, Sec. 1)

2.48.02 Composition of Board The Board shall consist of five (5) upright and intelligent citizens who are residents of the city. The number of their position and term of office shall initially be as follows:

- A. One, until the first Monday in April of the second year after his appointment.
- B. Two, until the first Monday in April of the fourth year after his appointment.
- C. Three until the first Monday in April of the sixth year after his appointment.
- D. Four, until the first Monday in April of the eighth year after his appointment.
- E. Five, until the first Monday in April of the tenth year after his appointment.

Upon vacancy by death, resignation or expiration of term, such vacancy shall be governed by law. (Ord. No. 412, Sec. 2)

2.48.03 Initial commissioners The initial commissioners and their respective terms are as follows:

- | | | |
|----|---------------|-------------|
| 1. | Joe Brock | Two years |
| 2. | Loy Bartlett | Four years |
| 3. | Owen Gunsauls | Six years |
| 4. | Sam Haile | Eight years |
| 5. | Casey Staseka | Ten years |
- (Ord. No. 412, Sec. 3)

2.48.04 Power and authority The Board of Civil Service Commissioners shall be and hereby is granted all powers and authority and shall perform all duties now or hereafter vested in it by state law and shall perform such other duties as shall be necessary or proper for their office. (Ord. No. 412, Sec. 5)

2.48.05 Dissolution The City Council of the city of Heber Springs hereby specifically reserves the power and authority to dissolve the Civil Service Commission in whole by appropriate ordinance. (Ord. No. 412, Sec. 6)

CHAPTER 2.52

DISTRICT COURT

Sections:

2.52.01	District Court established
2.52.02	Qualifications, duties and salary of District Judge
2.52.03	Clerk
2.52.04	Conformance with state laws
2.52.05	Costs
2.52.06	Cleburne County Jail Maintenance Fund
2.52.07	Additional court costs
2.52.08	Judge's retirement account
2.52.09	Collection of fines

2.52.01 District Court established There is hereby created and established in Heber Springs, Arkansas, a Corporation Court to be styled the District Court of Heber Springs, Arkansas, which shall be presided over by a District Judge to be elected by the qualified electors of Heber Springs at the next regular election and who shall hold office for a period of four (4) years or until his successor is duly elected and qualified. (Ord. No. 246, Sec. 1)

2.52.02 Qualifications, duties and salary of District Judge The qualifications and duties of District Judge shall be those as prescribed by the law of the state of Arkansas and his salary shall be payable in equal monthly installments, one-half ($\frac{1}{2}$) to be paid by Heber Springs, Arkansas, and the other one-half ($\frac{1}{2}$) to be paid by Cleburne County, Arkansas. (Ord. No. 246, Sec. 2)

2.52.03 Clerk The Judge of the District Court may appoint a clerk for the Court, who shall be designated as District Court Clerk, the salary of such Clerk shall be payable in equal monthly installments, one-half ($\frac{1}{2}$) of which shall be paid by the city of Heber Springs,

Arkansas, and the other one-half (½) shall be paid by Cleburne County, Arkansas, and the Clerk shall perform in, and for the District Court, all clerical work required or permitted by the general laws to be performed by the Justice of the Peace in their won Courts, administer oaths and take affidavits in criminal cases in the absence of the Judge, keep the docket complete of all civil proceedings of the Court, and keep an alphabetical index thereto, issue and attest to all process, tax and collect alike fees and costs allowed by the laws of the state of Arkansas and the ordinances of the city of Heber Springs. Said Clerk shall report each month of all civil and criminal cases tried, showing all penalties, fines, forfeitures, fees and costs, taxed and assessed during the month and showing the nature of each case including the arresting officer, also all payment made on same and shall file with the City Clerk a copy of said report and pay all funds belonging to the city of Heber Springs, Arkansas, to the City Treasurer as required by law and shall also deliver one (1) copy of said report to the Mayor and the other copy to the Clerk of the County Court. Said Clerk, before entering upon the duties of said office, shall make and file a good and sufficient bond for the faithful performance of the duties of such Clerk as is required by law. (Ord. No. 508, Sec. 1)

2.52.04 Conformance with state laws The District Judge shall make such rules and operate and conduct his Court as permitted by the statute and in conformity with the administration of justice and jurisdiction of said Court shall be as provided by the laws of the state of Arkansas. (Act 60 of Arkansas General Assembly of 1927 as amended.) (Ord. No. 246, Sec. 4)

2.52.05 Costs The District Court of Heber Springs is hereby authorized and required to assess all court costs in cases where a finding or plea of guilty, or of nolo contendere is received against a defendant for an offense, such costs being all amounts authorized by law. (Ord. No. 415, Sec. 1)

2.52.06 Cleburne County Jail Maintenance Fund In addition to all other costs now or hereafter provided by law, there shall be levied and collected as costs, the following: From each defendant upon each judgment of conviction, plea of guilty or nolo contendere or forfeiture for failure to appear in all misdemeanor and traffic cases in the District Court of Heber Springs, Arkansas, the sum of Five Dollars (\$5.00). All District Clerks, Sheriffs, Police Officers, City Clerks or other officers who are now or who may hereafter be charged by law with collection of costs in such cases, are hereby required to collect the costs levied pursuant to this ordinance. Such costs shall be collected at the time and in the manner as are other costs in such cases.

All collections from costs levied pursuant to the provisions of this ordinance shall forthwith be paid over by the Heber Springs District Clerk to the Cleburne County Treasurer and by him credited on his records to a fund designated and known as the "Cleburne County Jail Maintenance Fund." Said costs levied pursuant to this ordinance shall be used for no other purpose other than the maintenance and repair of the Cleburne County Jail. (Ord. No. 502, Secs. 1-3)

- a. The Mayor is hereby authorized to execute, on behalf of the City of Heber Springs, State of Arkansas, the Interlocal Cooperative Agreement, with Cleburne County, Arkansas. (Ord. No. 2020-15, Sec. 1)
- b. That the Mayor is hereby authorized to sign any ancillary documents as necessary. (Ord. No., 2020-15, Sec. 3)
- c. The City Clerk is directed to attest to the Mayor's signature. (Ord. No. 2020-15, Sec. 4)

2.52.07 Additional court costs

- A. In accordance with A.C.A. 16-17-1 1 1, and in addition to all other costs now or hereafter provided by law, there shall be levied and collected as costs, the following: From each defendant upon each plea of guilty or nolo contendere, forfeiture of bond, or determination of guilt for misdemeanors or traffic violations, in all misdemeanor and traffic cases in the District Court of Heber Springs, Arkansas, the sum of Five Dollars (\$5.00). (Ord. No. 93-5, Sec. 1)
- B. This additional court cost shall be applied to all such cases regardless of whether the violations occur-red within or outside the municipality's boundaries. (Ord. No. 93-5, Sec. 2)
- C. The monies collected by the levy of this additional court cost shall be deposited in the city treasury and shall be expended only when the City Council of the city of Heber Springs and the Quorum Court of Cleburne County enter into an agreement concerning the portion of the court costs to be retained by the city and the portion to be received by the County. (Ord. No. 93-5, Sec. 3)
- D. The funds collected by the additional court cost authorized herein may be used for any permissible use in the administration of the District Court including, but not limited to, salaries and cost of incarceration of defendants. (Ord. No. 93-5, Sec. 4)
- E. All District Clerks, Sheriffs, Police Officers, City Clerks, or other officers who are now or who may be hereafter charged by law with collection of costs in such cases, are hereby required to collect the costs levied pursuant to this section. Such costs shall be collected at the time and in the manner as are other costs in such cases. (Ord. No. 93-5, Sec. 5)
- F. In addition to all other costs provided by law, the Court hereby orders a cost to be levied and collected from each defendant upon each plea of guilty or nolo contendere, forfeiture of bond, or determination of guilt for misdemeanors or

traffic violations in any municipal, police, or city court a sum not to exceed Five Dollars (\$5.00) (Ord. No. 95-4, Sec. 1.)

- G. In a District Court, this additional court cost shall be applied to all such cases regardless or whether the violation occurred within or outside the municipality's boundaries. (Ord. No. 95-4, Sec. 2.)
- H. The moneys collected by the levy of this additional court cost shall be deposited in the appropriate city treasury and shall be expended only when the governing body of the city and the quorum court enter into an agreement concerning the portion of the court costs to be retained by the municipality and the portion to be received by the county. (Ord. No. 95-4, Sec. 3.)

2.52.08 Judge's retirement account

- A. The City Council finds that, pursuant to the requirements of A.C.A. 24-4-751 and 24-8-902, the city has made all required contributions to the Arkansas Public Employees' Retirement System and a future obligation to fund the system no longer exists.
- B. Excess funds remain in the District Judge's retirement account, and, pursuant to A.C.A. 24-4-751(d)(2), said District Judge's retirement fund account shall be closed and the balance transferred to the general fund of the city. (Ord. No. 2014-11, Secs. 1-2.)

2.52.09 Collection of fines Pursuant to A.C.A. 16-13-709, the city of Heber Springs designates the District Court of Cleburne County as being primarily responsible for the collection of fines assessed in the Heber Springs Department of the District Court of Cleburne County, Arkansas, to be disbursed as provided therein. (Ord. No. 2014-4, Sec. 1.)

CHAPTER 2.56

SALARIES OF CITY EMPLOYEES

Sections:

- 2.56.01 Salaries
- 2.56.02 Sick leave

2.56.01 Salaries The City Council shall set salaries for all city employees and the appropriations for said salaries shall include the additional pay for holidays for all agents, servants and employees of the city, including but not limited to, uniformed employees as provided by the laws of the State of Arkansas.

2.56.02 Sick leave

- A. From and after the effective date of this ordinance, all law enforcement officers, regardless of their titles or rank, shall accumulate sick leave at the rate of twenty (20) working days per year beginning one (1) year after the date of employment.
- B. If unused, sick leave shall accumulate to a maximum of sixty (60) days.
- C. The total sick leave accumulated by the individual officer shall be credited to said officer and new days accumulated under the provisions of this section until the maximum prescribed in section (B) of this ordinance is reached.
- D. Time off may be charged against accumulated sick leave only for such days that an officer is scheduled to work. No such sick leave as provided in this section shall be charged against any officer during any period of sickness, illness or injury for any days which the officer is not scheduled to work.
- E. If, at the end of his/her term of service, upon retirement or death, whichever occurs first, any police officer has unused accumulated sick leave, he/she shall be paid for this sick leave at the regular rate of pay in effect at the time of retirement or death. Payment for unused sick leave in the case of a police officer, upon retirement or death, shall not exceed sixty (60) days.
- F. If any police officer leaves the employment of the Police Department, after completion of seven (7) continuous full years of service, he/she shall be paid ten percent (10%) of his/her accumulated sick leave at the regular rate of pay in effect at the time of separation. After ten (10) continuous full years of service, he/she shall be paid twenty-five percent (25%) of his/her accumulated sick leave at the time of separation and after fifteen (15) continuous full years of service, he/she shall be paid fifty percent (50%) of his/her accumulated sick leave at the time of separation. (Ord. No. 515, Secs. 1-6)

CHAPTER 2.60

AIRPORT COMMISSION

Sections:

2.60.01	Abolished
2.60.02	Powers
2.60.03	Contract for operation
2.60.04	Authorization

2.60.01 Abolished On and after the effective date of this ordinance the Airport Commission of the city of Heber Springs is abolished and dissolved. (Ord. No. 01-4, Sec. 2.0)

2.60.02 Powers All powers and authority previously granted to the Airport Commission are hereby vested in the Mayor and the City Council of Heber Springs, to be exercised by them in accordance with law, on and after the effective date of this ordinance. (Ord. No. 01-4, Sec. 3.)

2.60.03 Contract for operation There is hereby authorized a contract to be entered into by and between the city of Heber Springs and Danny Lee Worley for the lease and operation of the municipal airport. The City Council is presently the legislative authority having control of all matters affecting the municipal airport, and the form of the Airport Lease and Operating Agreement are hereby approved by the Council. (Ord. No. 05-5, Sec. 1.)

2.60.04 Authorization The Mayor and City Clerk are hereby authorized and directed to enter into and execute such agreement, along with any other necessary documents, to accomplish the Airport Lease and Operating Agreement. (Ord. No. 05-5, Sec. 2.)

CHAPTER 2.64

CEMETERY

Sections:

2.64.01	Plat
2.64.02	Record
2.64.03	Price
2.64.04	County expenses
2.64.05	Interment service
2.64.06	Cemetery Custodian
2.64.07	Heber Springs Cemetery Account
2.64.08	Revenue
2.64.09	Visitors
2.64.10	Duties of Custodian
2.64.11	Prohibited or restricted actions within grounds
2.64.12	Cleanup day
2.64.13	Cemetery and Preservation Fund
2.64.14	Annual entrance fee
2.64.15	Urns

2.64.01 Plat The existing plat of the Cemetery of Heber Springs or one that may be here afterward provided for shall be acquired by the Council, and shall or may be revised annually or at the discretion of this or any subsequent Council. The plat must show the location and number of each and every grave, the number of each and every lot and block and shall locate and define definitely each and every walk, alley and driveway in said cemetery: that all available space in the cemetery shall be made to conform to the plat as nearly as is practicable without unnecessarily removing any grave or disturbing any reservation purchased prior to this date.

2.64.02 Record A permanent record shall be kept by the Cemetery Custodian of said cemetery, in which shall be recorded the number of each and every grave as shown by the plat, the name of the owner or the name of the deceased buried therein, or both the name of owner and deceased, and opposite his or her name, the name of a living relative or representative. The unoccupied space shall also be recorded in the following manner. The number of each and every lot and block as shown by the plat, and opposite this, to the left, shall be recorded the name of the owner or representative, and to the right the date of purchase, the name of deceased, the date of demise, and other items required by law or otherwise.

2.64.03 Price The price of lots shall be set by the Heber Springs City Council, and no lots or blocks of lots shall be bought and sold for speculative purposes, and no person or persons shall have claim or title to any lot or lots without first having procured a receipt from the City Treasurer and it be countersigned by the Mayor of Heber Springs, which receipt shall be noted

on the record kept by the Cemetery Custodian of said cemetery, and this shall be sufficient evidence of ownership to said lot or lots for the purpose herein mentioned and set forth.

2.64.04 County expenses Any deceased without relatives or representatives or having relatives or representatives whose whereabouts cannot be ascertained, then and in that event only, shall the deceased be buried in a certain designated tract or part of land set apart for that purpose, and the expense of which will be born by the county as the law directs.

2.64.05 Interment service The city shall contract the interment service and shall set the fee for said service. Interment service shall include, but shall not be limited to the following:

- A. Surveying of lot for proper grave to be opened.
- B. Open grave, Sometimes referred to as digging of grave, this is done by heavy equipment and is not a hand operation any more.
- C. Assist with burial vault installation when used.
- D. When burial vault is not used, install rigid container, a grave liner made of concrete and steel reinforced. Grave liner weighs approximately two thousand (2,000) pounds and required special equipment for installation. This liner prevents grave cave-in later on and gives the casket protection. It is required in most all perpetual care cemeteries.
- E. Portable chapel, owned by the cemetery, is placed at grave site to protect family from inclement weather.
- F. Escort funeral to grave site and arrange parking of vehicles.
- G. Closing of grave, referred to as back filling grave.
- H. Remove excess soil after closing of grave, (Approximately three (3) to four (4) cubic yards).
- I. Arrange flowers on grave. After seven days, remove flowers and transport from cemetery.
- J. Add top soil on grave, tamp and seal, then fertilize and seed.
- K. Repair any damage done to lawn and adjacent lots by heavy equipment.

2.64.06 Cemetery Custodian There is hereby created a position to be known as the Cemetery Custodian, who shall be responsible for the maintenance of the cemetery, and who shall report directly to the Mayor. The Cemetery Custodian shall have the sole authority for the planting, pruning, maintenance and/or removal of any flowers, trees, limbs, shrubs, grass, or herbage of any kind. The Custodian and any other city personnel present at the cemetery shall discontinue working within the cemetery while a funeral service is being conducted. The custodian, or the Mayor at the request of the Custodian, shall notify a family member in writing with delivery by mail if a grave site requires maintenance, and then if there is no reasonable response from the family, the Custodian shall proceed to clean up the site. (Ord. No. 04-23, Sec. 2.)

2.64.07 Heber Springs Cemetery Account The Heber Springs Cemetery Internment Chapel Account shall be renamed the "Heber Springs Cemetery Account."

All funds deposited in the Heber Springs Cemetery Account shall be used exclusively for the maintenance, repair, preservation and upkeep of the Heber Springs City Cemetery. (Ord. No. 2017-06, Secs. 1-2.)

2.64.08 Revenue All revenue arising from the sale of lots or otherwise must be paid into the City Treasurer and a receipt given therefore.

2.64.09 Visitors All visitors to the grounds of the cemetery are solely responsible for their own conduct and safety while on the grounds. The city shall not be liable for floral pieces, baskets, vases or frames to which floral pieces are attached. (Ord. No. 04-23, Sec. 3.)

2.64.10 Duties of Cemetery Custodian The Custodian, or other city personnel necessary within the judgment of the Mayor, shall insure the performance of the following matters:

- A. A dumpster shall be placed at a designated location with the cemetery for the collection of trash.
- B. After the closing of a grave, any surplus dirt shall be removed and the plot shall be seeded.
- C. Any damaged monuments and unsightly areas that need special attention shall be reported to the Mayor, prior to the notification of family members.
- D. All lanes for the use of vehicles inside the cemetery grounds shall be graded as necessary to provide for reasonable passage.
- E. All cemetery property shall be mowed to keep grass and weeds at a height not to exceed three (3) inches, and trimming shall be done around all headstones and trees.
- F. Leaves shall be removed during each of the fall and winter seasons. Tree limbs shall be removed as necessary.

- G. Lot corner markers and borders will be set to a height not in excess of one (1) inch above the surface of the ground so as not to interfere with mowing and maintenance.
- H. A flag pole with a light shall be installed at a designated location and maintained as necessary.
- I. Flowers will be left until they begin to deteriorate and then the Custodian shall remove them from the grave sites. (Ord. No. 04-23, Sec. 4.)

2.64.11 Prohibited or restriction actions within grounds These matters and acts are either prohibited, or restricted as indicated, within the grounds of the cemetery:

- A. No enclosure of any kind, including, but not limited to a fence, coping, hedge or ditch, shall be permitted around any grave site or lot.
- B. No waste, debris, or trash shall be deposited or left with the grounds of the cemetery, unless the same is placed in an authorized container or dumpster. Any violation shall be dealt with in accordance with A.C.A. 8-6-401 et seq. (The Arkansas Litter Control Act).
- C. Benches, settees, urns, shells, white grave, ground covers, and like items are inconsistent with the concept of the cemetery, and shall not be permitted.
- D. Flower receptacles may not be placed on the grounds of the cemetery in such a manner as to create an obstruction during the mowing season. Flowers shall either be placed on the headstone with a "saddle" or placed in front of the headstone on the ground.
- E. No planting of any kind, other than grass, will be permitted directly upon any grave site. (Ord. No. 04-23, Sec. 5.)

2.64.12 Cleanup day In the event there shall be a total cemetery cleanup (Decoration Day), the event and date thereof shall be approved by the City Council, and the public shall be notified in a newspaper having general circulation within the County. (Ord. No. 04-23, Sec. 6.)

2.64.13 Cemetery and Preservation Fund A separate fund to be known as the Heber Springs Cemetery and Preservation Fund is hereby created, and all funds donated by private individuals or entities for the use and benefit of the cemetery shall be deposited in this fund. The fund shall be utilized only for the use, benefit, and support of the cemetery. (Ord. No. 04-23, Sec. 7.)

2.64.14 Annual entrance fee

- A. Each funeral home or entity which desires to make use of the Heber Springs Cemetery, for any reason, must pay an annual entrance fee in the amount of One Hundred and Fifty Dollars (\$150.00). Said fee shall be paid to the city of Heber Springs prior to the initial use of the cemetery on an annual basis. Said funds shall be deposited into the Heber Springs Cemetery General Funds Account.
- B. The City Council of Heber Springs, by and through this ordinance, is instructing the City Treasurer to open an account designated solely for the Heber Springs Cemetery Internment Chapel. It is the intent of this Council to keep funds deposited into this account separate from all other funds related to the Heber Springs Cemetery and to protect these funds, making them available only for use for the construction and maintenance of the Heber Springs Cemetery Internment Chapel.
- C. Burial plots at the Heber Springs Cemetery shall be available for purchase from the city of Heber Springs at the cost of Five Hundred Dollars (\$500.00). The proceeds of the sale of said burial plots shall, as soon as is practicable, be deposited into the Heber Springs Cemetery Account, designated for the Internment Chapel. That said funds shall be designated for the Internment Chapel and used for that exclusive use. (Ord. No. 2007-14, Secs. 1-3.)

2.64.15 Urns

- A. Burial plots are limited to two urns per burial plot. At no time, may any person or entity place more than two urns in any single burial plot in the Heber Springs Cemetery.
- B. Any violation would mandate the removal of the number of urns in excess of two per burial plot. The violator shall be responsible for all costs of the removal of the urns in excess per burial plot, including restoring the plot after removal. (Ord. No. 2008-5, Secs. 1-2.)

CHAPTER 2.68

EMPLOYMENT POLICIES

Sections:

- 2.68.01 Adopted by reference
- 2.68.02 Amendment to policies
- 2.68.03 Controlled Substances and Alcohol Testing
- 2.68.04 Self- Evaluation and Transition Plan for Federal Americans with
Disabilities Act

2.68.01 Adopted by reference The City Council of the city of Heber Springs, Arkansas, hereby approves and adopts by reference those employment policies and personnel policies and regulations consisting of the text which is attached hereto and is incorporated herein as if fully

set out word for word, and from the date on which the same shall take effect, the provisions thereof shall be controlling of the employment policies and personnel policies and regulations of the city of Heber Springs. (Ord. No. 92-6, Sec. 1)

2.68.02 Amendment to policies

- A. The following provisions of Section 4, Standards of Conduct, of the Heber Springs Personnel Policy Manual, as originally adopted by Ord. No. 92-6, are hereby repealed: Conduct Toward the Public, Uniforms and Personal Appearance, Unlawful Harassment, and Guidelines for Appropriate Conduct; all other provisions of Section 4 shall remain in force and effect.
- B. Attached hereto as Exhibit "A" and incorporated herein by reference as though fully set out herein word for word, is the revised "Section 4, Standards of Conduct, Conduct Toward the Public, Uniforms and Personal Appearance, Unlawful Harassment, and Guidelines for Appropriate Conduct," and that the same shall be effective from and after the effective date of this ordinance.
- C. The City Council hereby directs that the Mayor, or his duly authorized representative, shall furnish a copy of said Exhibit "A" to all affected employees of the city
- D. A complete and revised Personnel Policy Manual shall remain on file in the office of the City Clerk-Treasurer. (Ord. No. 02-7, Secs. 1-4.)

2.68.03 Controlled Substances and Alcohol Testing All personnel policies of the City Council of Heber Springs are hereby revised and amended to incorporate the 1994 DOT Final Rules. A copy of said Rules is attached hereto and by reference is incorporated herein in its entirety as if restated word for word. (Ord. No. 95-15, Sec. 1.)

- A. This ordinance specifically amends any personnel policy providing for conditions of employment for employees whose duties require them to maintain a Commercial Driver's License in order to lawfully carry out their duties.
- B. Any ordinance, resolution, rule, regulation or part of any ordinance, resolution, rule, regulation now in effect which conflicts with the Rules is hereby repealed.
- C. The Personnel Director (or other employee with equivalent responsibility) is hereby directed to establish procedures to ensure compliance with the Rules, including the assignment of a designated representative responsible for the execution of the procedures.

- D. Any laboratory, medical review officer, substance abuse professional or any other professional who receives payment for testing, evaluating, record-keeping, or other services mandated by the Rules must be qualified according to the Rules and must perform such services in conformance with 49 CFR Part 40 and Part 382.
- E. Drug and alcohol testing will be administered to those employees mandated by the Rules, in the circumstances and in the manner mandated by the Rules.
- F. The penalty for refusal to take a mandated test for drugs or alcohol is immediate discharge.
- G. The penalty for a positive drug test result, once the time limit for requesting a second test of a split sample has expired, or upon receipt of a positive drug test result from the second test, is immediate discharge.
- H. The penalty for a positive alcohol test result is immediate discharge.
- I. Employees whose initial drug test results are positive and who request a test of the second portion of the split sample will be suspended without pay until such time as the "Designated Representative" receives the results of the second (split sample) test. Such second test will be at the employee's expense.
- J. A negative result from the second (split sample) drug test will render the first test invalid and the employee will be reinstated with back pay and reimbursement for the costs of the second test.
- K. An employee suspected of unlawful use of drugs or abuse of alcohol while on duty as established by the Rules, or who is involved in an accident as defined in 49 CFR 390.4 (and receives a citation for a moving traffic violation in this section) by the Rules, shall be suspended immediately with pay until the results of the drug or alcohol test are received by the "Designated Representative."
- L. If any provision of this ordinance is held invalid by a court of law or subsequent legislative action, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect. (Ord. No. 95-15, Secs. 2-13.)

2.68.04 Self Evaluation and Transition Plan for Federal Americans with Disabilities Act
 The following document entitled "Self Evaluation and Transition Plan" is hereby incorporated by reference as if set forth herein word for word.

The "Self Evaluation and Transition Plan" is hereby adopted by the city of Heber Springs. Copies of said plan shall be and remain on file in the office of the City Clerk, and shall be made available to all affected department heads and employees. The Mayor and all Department Heads are hereby authorized and directed to take all necessary action to immediately implement this plan. (Ord. No. 98-4, Secs. 1-3.)

CHAPTER 2.72

ELECTION OF ALDERMEN

Sections:

2.72.01	Residency in ward
2.72.02	Names on ward ballots
2.72.03	Effective date
2.72.04	Terms of office
2.72.05	Effective date
2.72.06	Staggered terms
2.72.07	Designation of Aldermen
2.72.08	Filing
2.72.09	Elected by ward
2.72.10	Voting on ordinance
2.72.11	County Board of Election Commissioners

2.72.01 Residency in ward. Candidates for the office of alderman in the city of Heber Springs, Arkansas, shall reside in the ward from which they seek to be elected. (Ord. No. 90-8, Sec. 1)

2.72.02 Names on ward ballots. The name of the candidate shall appear upon the ballot only in the ward in which he/she is a candidate. (Ord. No. 90-8, Sec. 3)

2.72.03 Effective date. This ordinance shall become effective and shall apply to the election of aldermen in the city of Heber Springs, Arkansas, beginning with elections in calendar year 1992 and thereafter. (Ord. No. 90-8, Sec. 4)

2.72.04 Terms of office The voters of the city of Heber Springs shall elect two (2) aldermen from each ward to four (4) years terms of office. (Ord. No. 04-9, Sec. 1.)

2.72.05 Effective date This ordinance shall become effective and shall apply to the election of aldermen in the city of Heber Springs beginning with elections in calendar year 2006 and thereafter. (Ord. No. 04-9, Sec. 2.)

2.72.06 Staggered terms The alderman representing position number two (2) from each ward will be elected to an initial two (2) year term at such election, and thereafter will be elected to four (4) year terms, resulting in staggered terms with one alderman being elected to a four (4) year term every two (2) years. (Ord. No. 04-9, Sec. 3.)

2.72.07 Designation of Aldermen The County Board of Election Commissioners shall designate the aldermen as Alderman No. One (1) and Alderman No. Two (2). (Ord. No. 04-9, Sec. 4.)

2.72.08 Filing A candidate for the office of alderman shall designate the number of the Alderman's office which the candidate is seeking at the time he or she files as a candidate for the office. When this designation is made, the candidate shall not be permitted thereafter to change the designation. (Ord. No. 04-9, Sec. 5.)

2.72.09 Elected by ward Each alderman shall be elected by ward, and shall be voted upon only by the qualified electors of the ward from which the person is a candidate. (Ord. No. 04-9, Sec. 6.)

2.72.10 Voting on ordinance In accordance with A.C.A. 14-43-312, the City Council does hereby refer this proposed ordinance to the electors of the city to the end that the same may be approved or rejected by the qualified electors of the city at the general election of calendar year 2004. (Ord. No. 04-9, Sec. 7.)

2.72.11 County Board of Election Commissioners The Clerk/Treasurer of the city is hereby directed to deliver a properly certified copy of this ordinance to the County Board of Election Commissioners. (Ord. No. 04-9, Sec. 8.)

CHAPTER 2.76

ADVERTISING AND PROMOTION COMMISSION

Sections:

- 2.76.01 Created
- 2.76.02 Application of ordinance and construction with other laws
- 2.76.03 Definitions
- 2.76.04 Administration and regulations
- 2.76.05 Permits
- 2.76.06 Application for permit
- 2.76.07 Permits not assignable, display required and expiration
- 2.76.08 Discontinuance of business – unpaid taxes

- 2.76.09 Revocation or suspension – renewal
- 2.76.10 Preparation or returns – payment of A&P tax
- 2.76.11 Additional penalties and tax
- 2.76.12 Examination and investigations
- 2.76.13 Time limitations for assessments, collection, refunds and prosecution
- 2.76.14 Notice requirements
- 2.76.15 Assessment and collection of taxes generally
- 2.76.16 Proposed assessments
- 2.76.17 Taxpayer relief
- 2.76.18 Hearing on proposed assessments
- 2.76.19 Judicial relief
- 2.76.20 Issuance of certificates or indebtedness and execution
- 2.76.21 Injunction proceedings
- 2.76.22 Settlement of compromise of liability controversies
- 2.76.23 Release of property from lien
- 2.76.24 Criminal penalties
- 2.76.25 Cooperation with Chamber of Commerce

2.76.01 Created There is hereby created the city of Heber Springs Advertising and Promotion Commission, which shall be composed of seven (7) member as follows:

- A. Four (4) members shall be owners or managers of businesses in the tourism industry, and the owners or managers shall reside within Cleburne County, Arkansas, and who shall serve for staggered terms of four (4) years.
(Ord. No. 2012-10, Sec. 1.)
- B. Two (2) members of the commission shall be members of the governing body of the city and selected by the governing body and shall serve at the will of the governing body.
- C. One (1) member shall be from the public at large, who shall reside within the city, and shall serve for a term of four (4) years.
 - 1. One (1) of the members will serve for a term of one (1) year;
 - 2. One (1) of the members will serve for a term of two (2) years;
 - 3. One (1) of the members will serve for a term of three (3) years;
 - 4. One (1) of the members will serve for a term of four (4) years.

All successors to these members shall be appointed for terms of four (4) years. (Ord. No. 99-17, Sec. 3.)

2.76.02 Application of ordinance and construction with other laws The provisions of Section 1-23 shall be cumulative to the Arkansas Gross Receipts Act of 1941, A.C.A. 26-52-101 et seq. and the Arkansas Tax Procedure Act 26-18-101 et seq., the provisions of which, so far as is practicable, shall be deemed incorporated herein as applicable with respect to the enforcement and collection of the A&P tax. (Ord. No. 03-7, Sec. 1.)

2.76.03 Definitions The following words and phrases, except where the context clearly indicates the application of a different meaning, when used in this ordinance shall have the following meanings:

A&P tax means the gross receipts tax levied by Ord. No. 93-7, as amended from time to time.

Assessment means a tax is assessed when it is recorded as the liability of a taxpayer on the commission's records. The assessment becomes a first assessment following the decision of the commission or a hearing officer, if the assessment is protested.

Business entity means a corporation, association, partnership, joint venture, limited liability company, limited liability partnership, trust or other legal business entity.

Commission means the City Advertising and Promotion Commission of Heber Springs, Arkansas, and any agent or representative designed by the Commission to perform any function hereunder.

City means the city of Heber Springs, Arkansas.

Delinquency date means the A&P tax is delinquent and subject to penalty on the first day of the month following the month it was due.

Due date means the A&P tax is due no later than the twentieth calendar day of the month following the month the tax is imposed on gross receipts.

Person means any natural person, firm, corporation or other business entity.

Taxpayer means any person liable to remit the A&P tax.
(Ord. No. 03-7, Sec. 2.)

2.76.04 Administration and regulations The administration is vested in the Commission and the Commission shall promulgate rules and regulation and prescribe all forms as are necessary or required for the enforcement and collection of the A&P tax. (Ord. No. 03-7, Sec. 3.)

2.76.05 Permits

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- A. It shall be unlawful for any person subject to the A&P tax to transact business within the city prior to the issuance and receipt of an A&P permit from the Commission.
- B. A separate A&P tax permit must be obtained from the Commission for each location where at the person conducts a business which is subject to the A&P tax.
- C. An A&P tax permit shall have no stated term.
(Ord. No. 03-7, Sec. 4.)

2.76.06 Application for permit Any person subject to the A&P tax transacting business in the city shall file with the Commission an application for an A&P tax permit to conduct that business, the form and contents of which application shall be as prescribed by the Commission from time to time. (Ord. No. 03-7, Sec. 5.)

2.76.07 Permits not assignable, display required and expiration

- A. The A&P tax permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the location thereon designated.
- B. The A&P tax permit shall at all times be conspicuously displayed at the location thereon designated.
- C. The A&P tax permit shall expire at the time of cessation of the business of the person at the location designated thereon. (Ord. No. 03-7, Sec. 6.)

2.76.08 Discontinuance of business – unpaid taxes

- A. Any person operating under and A&P tax permit, upon discontinuance of the business at the location designated thereon, shall return the A&P tax permit to the Commission for cancellation together with remittance of any unpaid and accrued A&P taxes.
- B. Failure to surrender the A&P tax permit and pay any and all accrued A&P taxes shall be sufficient cause for the Commission, through its designated representative, to refuse the issuance of any A&P tax permit in the future to the person.
- C. In the case of the sale of any business which is subject to the A&P tax, the A&P tax shall be deemed to be due and payable at the time of the sale of fixtures and equipment incident to business and shall constitute a lien against the said fixtures

and equipment in the hands of the purchaser of the business until all A&P taxes have been paid. (Ord. No. 03-7, Sec. 7.)

2.76.09 Revocation or suspension – renewal

- A. Whenever a person to whom an A&P tax permit has been issued fails to comply with any provision of Section 1-7, including any rule or regulation prescribed by the Commission from time to time, the Commission, through its designated representative, shall give notice to the person of an intention to revoke the A&P tax permit.
- B.
 - 1. The person may, within ten (10) days after receipt of the notice of intent to revoke the A&P tax permit, apply to the Commission for a hearing.
 - 2. The hearing shall be conducted at a time and place to be designated by the Commission before such person as is designated by the Commission to conduct such hearing, and the person requesting the hearing shall be entitled to introduce testimony and be represented by counsel, and the designated representative of the Commission shall determine at the hearing whether the person's A&P tax permit should be revoked.
 - 3. Failure of the person to appear shall be grounds for the Commission, acting through its designated representative, to revoke the taxpayer's A&P tax permit.
- C. The person shall be entitled, within thirty (30) days from the date of the revocation of the A&P tax permit, to appeal to the Circuit Court of Cleburne County, Arkansas, where the action shall be tried de novo.
- D. An appeal shall lie from the Circuit Court to the Supreme Court of Arkansas as in other cases provided by law.
- E. Any revoked or suspended permit may be renewed upon the filing of proper returns and the payment of all A&P taxes due or removal of any other cause of revocation or suspension. (Ord. No. 03-7, Sec. 8.)

2.76.10 Preparation of returns – payment of A&P tax

- A. The A&P tax shall be due and payable as of the first day of each calendar month by the person liable for the payment of the A&P tax (taxpayer) and shall be delinquent if not paid on or before the first day of the next calendar month.

B.

1. It shall be the duty of the taxpayer on or before the twentieth day of each calendar month to deliver to the Commission, upon forms prescribed and furnished by the Commission, returns under oath showing the total combined gross receipts which are subject to the A&P tax for the preceding calendar month and the amount of tax due. The tax due shall be remitted with the return.
2. The returns shall contain such further information as the Commission may require and, once the taxpayer has become liable for the payment of the A&P tax, the taxpayer must continue to file a return, even though no tax may be due, until such time as the taxpayer surrenders the A&P tax permit.

- C. If not paid on or before the twentieth day of each calendar month, the full amount of the A&P tax shall be due from that date; provided, however, no penalty for delinquency shall be assessed if payment thereof is made on or before the first day of the calendar month next following. (Ord. No. 03-7, Sec. 9.)

2.76.11 Additional penalties and tax If a taxpayer shall fail to comply with certain provisions of Section 1-23, then the following penalties and additions to tax shall be applicable.

- A. In the case of a taxpayer's failure to file the A&P tax return and pay the tax due on or before the date prescribed, determined with regard to any extension of time for filing thereof, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be added to the amount required to be shown as tax on the A&P tax return five (5%) percent of the amount of the A&P tax if the failure is not more than one (1) month, with an additional five (5%) percent for each additional month or fraction thereof during which the failure continues, not to exceed thirty-five (35%) percent in the aggregate;
- B. In addition to any penalty assessed hereunder, simple interest on any unpaid A&P tax shall be assessed at the rate of ten (10%) percent per annum from the delinquency date. (Ord. No. 03-7, Sec. 10.)

2.76.12 Examination and investigations

- A. In the administration of Sections 1-23, the Commission or its designated representatives, for the purpose of determining the accuracy of a return or fixing any liability hereunder, may make an examination or investigation of the place of business, the tangible personal property, equipment, and facilities, and the books, records, papers, vouchers, accounts, and documents of any taxpayer or other person. Every taxpayer or other person and his agents and employees shall

exhibit to the Commission its designated representative these places of business and items and facilitate any examination of investigation.

- B. No taxpayer shall be subjected to unnecessary examination or investigations, and only one (1) inspection of a taxpayer's books of account may be made for each taxable year unless the taxpayer requests otherwise or unless the Commission or the chairman, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.
- C.
 - 1. When conducting an investigation or an audit of any taxpayer, the Commission or its designated representatives may, in its discretion, examine the records and files of any person, except where privileged by law, any other business, institution, financial institution, the records of any state agency, agency of the United States government, or agency of any other state where permitted by agreement or reciprocity.
 - 2. The Commission or its designated representative may compel production of these records by summons. A summons may be served directly by the Commission or its designated representatives.
- D. In the administration of Sections 1-23, the Commission, the chairman or his designated representatives may:
 - 1. Administer oaths, conduct hearings, and compel by summons the attendance of witnesses, testimony, and the production of any books, records, papers, or other data of any person or taxpayer; or
 - 2.
 - a. Examine under oath any person regarding the business of any taxpayer concerning any matter incident to the administration of Sections 1-23.
 - b. The fees of witnesses required by the Commission, the chairman or his designated representatives to attend any hearing shall be the same as those allowed to the witnesses appearing before the Circuit Courts of this state. The fees shall be paid in the manner provided for the payment of other expenses incident to the administration hereof.

E.

1. The investigation may extend to any person that the Commission or its designated representative determines has access to information which may be relevant to the examination or investigation.
2. When any summons requiring the production of records as described in subsection C of this section is served on a third-party record keeper, written notice of the summons shall be mailed to the taxpayer that his records are being summoned, at least fourteen (14) days prior to the date fixed in the summons as the day for the examination of the records.
3. Notice to the taxpayer required by this section is sufficient if it is mailed by certified mail to the last address on record with the Commission.

F. When the Commission or its designated representatives have the power to issue a summons for its own investigation or auditing purposes, then the Commission shall honor any reasonable request by any taxpayer to issue a summons on the taxpayer's behalf.

G.

1. The Commission or the taxpayer may apply to a court of competent jurisdiction in Cleburne County, Arkansas, for an order compelling the production of the summoned records.
2. Failure to comply with the order of the court for the production of records may be punished by the court as for contempt.

H.

1. The cost of producing records of a third party required by a summons shall be borne by the taxpayer if he requests the summons to be issued.
2. If the Commission or its designated representatives initiate the summons for third-party records, the Commission shall bear the reasonable cost of producing the records. The Commission or its designated representatives may later assess the cost against any delinquent or deficient taxpayer as determined by the records. (Ord. No. 03-7, Sec. 11.)

2.76.13 Time limitations for assessments, collection, refunds and prosecution

A. Except as otherwise provided in sections 1-23, no assessment of the A&P tax shall be made after the expiration of three (3) years from the date the return was required to be filed or the date the return was filed, whichever period expires later. The Commission shall not begin court proceedings after the expiration of the

three-year period unless there has been a previous assessment for the collection of the tax.

- B. Upon written agreement of the Commission and the taxpayer, the time within which the Commission may make a final assessment, as provided herein, may be extended to a date mutually agreed upon in the written agreement.
- C. Where, before the expiration of the time prescribed for the assessment of the tax or of extensions thereof, both the Commission and the taxpayer have consented in writing to an assessment after that time, then the A&P tax may be assessed at any time prior to the expiration of time agreed upon
- D. In the case of a fraudulent return or failure to file a report or return required hereunder, the Commission may compute, determine and assess the amount of A&P tax due from any information in its possession or may begin an action in court for the collection of the tax without assessment at any time.
- E. Whenever a taxpayer requests an extension of time for filing any return required hereunder, the limitation of time for assessing any tax shall be extended for a like period.
- F. Where the assessment of the A&P tax has been made within the period of limitation properly applicable thereto, the A&P tax may be collected by levy or proceeding in court, but only if the levy is made or the proceeding is begun within ten (10) years after the date of the assessment of the tax.
- G. No person shall be prosecuted, tried, or punished for any of the various criminal offenses arising under the provisions of Sections 1-23, unless the indictment of the taxpayer is instituted within six (6) years after the Commission of the offense. (Ord. No. 03-7, Sec. 12.)

2.76.14 Notice requirements

- A.
 - 1. The Commission shall give a taxpayer notice of any assessment, demand, decision or hearing before the Commission or its designated representative which directly involves that taxpayer.
 - 2. All notices required to be given by the Commission to a taxpayer shall be either served by personal service or sent by mail to the taxpayer's last address on record with the Commission. If this mail is returned unclaimed or refused, then proper notice shall have been served and given, and the

Commission may take any action permitted be Sections 1-23, or otherwise by law.

3. All notices of final assessment hereunder shall be sent by certified mail, return receipt requested.
- B. The taxpayer, when giving notice to the Commission, shall give notice either by mail or by personal service on the Commission. The notice the taxpayer gives shall be effective when postmarked or, in case of personal service, when so served.
- C. The Commission and any taxpayer may, by written agreement, provide for any other reasonable means of giving notice.
- D. All notices shall be in writing.
(Ord. No. 03-7, Sec. 13.)

2.76.15 Assessment and collection of taxes generally

- A.
 1. The Commission or its designated representatives are authorized and required to make the inquiries, determinations and assessments of the A&P tax, including interest, additions to taxes, and assessable penalties, imposed hereby.
 2. The assessment shall be made by recording the liability of the taxpayer in the offices of the Commission in accordance with rules or regulations prescribed by the Commission.
 3. Upon request of the taxpayer, the Commission shall furnish the taxpayer a copy of the record of the assessment.
- B.
 1. The Commission shall collect all A&P taxes imposed by law.
 2. As soon as practicable after the making of assessment of the A&P tax, the Commission shall give notice to each person liable for the unpaid tax, stating the amount and demanding payment within ten (10) days.
 3. Upon receipt of notice and demand from the Commission, the person liable for the tax shall pay the stated amount including any interest, additions to tax, and assessable penalties at the place and time stated in the notice and demand. (Ord. No. 03-7, Sec. 14.)

2.76.16 Proposed assessments

A.

1. If any taxpayer fails to file any return as required hereunder, the Commission, from any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period. If a return has been filed, the Commission or its designated representatives shall examine the return and make any audit or investigation that is considered necessary.
2. When no return has been filed and the Commission determines that there is an A&P tax due for the taxable period or when a return has been filed and the Commission determines that the A&P tax disclosed by the return is less than the tax disclosed by its examination, the Commission shall propose the assessment of additional tax plus penalties, as the case may be, and shall give notice of the proposed assessment to the taxpayer. The notice shall explain the basis for the proposed assessment and shall state that a final assessment, as provided for herein, will be made if the taxpayer does not protest such proposed assessment as provided hereby. The taxpayer does not have to protest the proposed assessment to later be entitled to exercise the right to seek judicial review of the assessment.
3. Any demand for additional payment of the A&P tax which is made as the result of a verification of a mathematical error on the return shall not be deemed to be a proposed assessment under the provisions of this section and shall not be subject to the hearing or appeal provisions of this section. (Ord. No. 03-7, Sec. 15.)

2.76.16 Taxpayer relief

- A. Any taxpayer who wishes to seek administrative relief from any proposed assessment of taxes or proposed notice of disallowance of a claim for refund by the Commission shall follow the procedure provided by this section.
- B.
 1. A taxpayer may at his option either request the Commission to consider his request for relief solely upon written documents furnished by the taxpayer or upon the written documents and any evidence produced by the taxpayer at a hearing.
 2. A taxpayer who requests the Commission to render its decision based on written documents is not entitled by law to any other administrative hearing prior to the Commission's rendering of its decision and, if

necessary, the issuing of a final assessment and demand for payment or issuing of a certificate of indebtedness.

- C. Within thirty (30) days after service of notice of the proposed assessment, the taxpayer may file with the Commission a written protest under oath, signed by himself or his authorized agent, setting forth the taxpayer's reasons for opposing the proposed assessment.
- D. The Commission may, in its discretion, extend the time for filing a protest for any period of time not to exceed an additional ninety-day period. (Ord. No. 03-7, Sec. 16.)

2.76.18 Hearing on proposed assessments

- A.
 - 1. The Commission Chairman or his designee shall serve as hearing officer to review all written protests submitted by taxpayers, hold all hearings, and make written findings as to the applicability of the proposed assessment.
 - 2. Decisions of the hearing officer shall be final unless revised by the Commission.
 - 3. The hearing on written and oral protests and determinations made by the hearing officer shall not be subject to the provisions of the Arkansas Administrative Procedure Act, 25-15-201 et seq.
- B. The actual hearing on the written protest shall be held in the Commission's offices.
- C.
 - 1. The hearing officer shall set the time and place for hearing on the written protest and shall give the taxpayer reasonable notice thereof.
 - 2. At the hearing, the taxpayer may be represented by an authorized representative and may present evidence in support of his position.
 - 3. After the hearing, the hearing officer shall render his decision in writing and shall serve copies upon both the taxpayer and the Commission.

4.
 - a. If the proposed assessment is sustained, in whole or part, the taxpayer may request in writing, within twenty (20) days of the mailing of the decision, that the Commission revise the decision of the hearing officer.
 - b. If the Commission refuses to make a revision or if the taxpayer does not make a request for revision, then a final assessment shall be made upon the final determination of the hearing officer or the Commission.
 - c. A taxpayer may seek relief from the final decision of the hearing officer or the Commission on a final assessment of a tax deficiency by following the procedure set forth in this section.
 - d.
 - (1) In addition to the hearing procedures set out in subsection a-c, of this subsection, the Commission or the hearing officer may hold administrative hearings by telephone, video conference, or other electronic means if the Commission or the hearing officer determines that conducting the hearing in such a manner:
 - (a) Is in the best interest of the taxpayer and the Commission;
 - (b) Is agreed to by both parties;
 - (c) Is not fiscally unsound or administratively burdensome; and
 - (d) Adequately protects the confidentiality of the taxpayer's information.
 - (2) The Commission is authorized to contract with third parties for all services necessary to conduct hearings by telephone, video, or other electronic means.
 - (3) Any person who enters into a contract with the Commission to provide services necessary to conduct hearings by telephone, video, or other electronic means shall be subject to the laws providing for the confidentiality of taxpayer records. (Ord. No. 03-7, Sec. 17.)

- A. Within thirty (30) days after the issuance and service on the taxpayer of the notice and demand for payment of a deficiency in tax established by either an audit determination that is not protested by the taxpayer, or a final determination of the hearing officer or the Commission, a taxpayer may seek judicial relief from the final determination by either:
1. Within thirty (30) days of the date of the final assessment, paying the entire amount of the A&P tax due, including any interest or penalties, for any taxable period or periods covered by the final assessment and filing suit to recover that amount within one (1) year of the date of payment. The Commission may proceed with collection activities, including the filing of a certificate of indebtedness as authorized hereunder, within thirty (30) days of the issuance of the final assessment for any assessed but unpaid A&P taxes, penalties, or interest owed by the taxpayer for other taxable periods covered by the final assessment, while the suit for refund is being pursued by the taxpayer for other taxable periods covered by the final assessment; or
 2.
 - a. Within thirty (30) days of the issuance and service on the taxpayer of the notice and demand for payment, filing with the Commission a bond in double the amount of the tax deficiency due and by filing suit within thirty (30) days thereafter to stay the effect of the Commission's determination.
 - b. The bond shall be subject to the condition that the taxpayer shall file suit within thirty (30) days after filing the bond, shall faithfully and diligently prosecute the suit to a final determination, and shall pay and deficiency found by the court to be due and any court cost assessed against him.
 - c. A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by subparagraph (a) of this subsection, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs.
- B. Jurisdiction for a suit to contest a determination of the Commission under this section shall be in a circuit court in Cleburne County, where the matter shall be tried de novo.

- C. The methods provided in this section shall be the sole alternative methods for seeking relief from a written decision of the Commission or the hearing officer establishing a deficiency in the A&P tax. No injunction shall issue to stay proceedings for assessment or collection of any A&P taxes.
- D. In any court proceeding under this section, the prevailing party may be awarded a judgment for court costs. (Ord. No. 03-7, Sec. 18.)

2.76.20 Issuance of certificates of indebtedness and execution

- A.
 - 1. (Indebtedness.)
 - a. If a taxpayer does not timely and properly pursue his remedies seeking relief from a decision of the Commission or hearing officer and a final assessment is made against the taxpayer, or if the taxpayer fails to pay the deficiency assessed upon notice and demand, then the Commission through its authorized representatives shall, as soon as practicable thereafter, issue to the Circuit Clerk of any county of the state in which the taxpayer's business is located a certificate of indebtedness certifying that the person named therein is indebted to the Commission for the amount of the tax established by the Commission as due.
 - b. If a taxpayer has a delinquent A&P tax liability to the Commission of less than One Thousand Dollars (\$1,000.00), the Commission or its hearing officer may enter into an agreement with the taxpayer to allow the taxpayer to pay the delinquency in installments. The Commission or its hearing officer may choose not to issue a certificate of indebtedness during the period of the installment agreement if it determines that it is in the best interest of the Commission.
 - 2. The Circuit Clerk shall enter immediately upon the Circuit Court judgment docket:
 - a. The name of the delinquent taxpayer;
 - b. The amount certified as being due;
 - c. The name of the tax; and
 - d. The date of entry upon the judgment docket.

3.
 - a. The entry of the certificate of indebtedness shall have the same force and effect as the entry of a judgment rendered by the Circuit Court. This entry shall constitute the Commission's lien upon the title of any real and personal property of the taxpayer in the county where the certificate of indebtedness is recorded.
 - b. This lien is in addition to any other lien existing in favor of the Commission to secure payment of taxes, applicable interest, penalties, and costs. The lien is superior to other liens of any type or character attaching to the property after the date of entry of the certificate of indebtedness on the judgment docket. This lien is superior to all claims of unsecured creditors.
 - c. This certificate of indebtedness authorized by this subsection shall continue in force for ten (10) years after the date of recording and shall automatically expire after the ten-year period has run. Actions on the lien on the certificate of indebtedness shall be commenced within ten (10) years after the date of recording of the certificate, and not afterward.

B.

1. After entry of the certificate, the Circuit Clerk shall issue a writ of execution directed to the Commission, authorizing the Commission to levy upon and against all real and personal property of the taxpayer.
2. The Commission shall have all remedies and may take all proceedings for the collection of the tax which may be taken for the recovery of a judgment at law.
3. The writ shall be issued, served, and executed in the same manner as provided for in the issuance and service of executions rendered by the Circuit Courts of this state, except the Commission shall act in the place of the county Sheriffs.

C.

1. Nothing in this chapter shall preclude the Commission from resorting to any other means provided by law for collecting delinquent taxes.
2. The issuance of a certificate of indebtedness, entry by the Clerk, and levy of execution as provided in this section shall not constitute an election of remedies with respect to the collection of the tax.

3. The taxes, fees, interest, and penalties imposed or levied hereby may be collected in the same way as a personal debt of the taxpayer.
4. The Commission may sue to the same effect and extent as for the enforcement of a right of action of debt.
5. All provisional remedies available in these actions are available to the Commission in the enforcement of the payment of the A&P tax.

D.

1. In addition to the remedies provided in subsection (B) and (C) of this section, the Commission may direct the Circuit Clerk to issue a writ of execution directed to the Sheriff of any county authorizing the Sheriff to levy upon and against all real and personal property of the taxpayer. The writ shall be issued, served, and executed in the same manner as provided for in the issuance and service of executions rendered by the circuit courts of this state.
2. The Circuit Clerks and Sheriffs shall be entitled to receive the same fees provided by law in these matters. These fees shall be collected from the taxpayer by either the Commission or the Sheriff in addition to the tax, penalties, and interest included in the certificate of indebtedness. If the Sheriff is unable, after diligent effort, to collect the tax, interest, penalties, and costs, the Commission may pay such fees as are properly shown to be due to the Clerk and Sheriff.

- E. The Commission may contract with persons inside or outside the state to help the Commission collect delinquencies of resident or non-resident taxpayers. (Ord. No. 03-7, Sec. 19.)

2.76.21 Injunction proceedings When a return required hereunder has not been filed or does not furnish all the information required by the Commission or when the A&P taxes imposed by law have not been paid or when any required license or permit has not been secured, the Commission may institute any necessary action or proceeding in a court of competent jurisdiction in Cleburne County to enjoin the person or taxpayer from continuing operations until the report or return has been filed, required licenses or permits secured, or taxes paid as required. The injunction shall be issued without a bond being required from the Commission. (Ord. No. 03-7, Sec. 20.)

2.76.22 Settlement or compromise or liability controversies

- A. The Commission may enter into an agreement to compound, settle, or compromise any controversy relating to the A&P tax when:
 - 1. The controversy is over the amount of tax due; or
 - 2. The inability to pay results from the insolvency of the taxpayer.
- B. The Commission may waive or remit the interest or penalty, or any portion thereof, ordinarily accruing because of a taxpayer's failure to pay the A&P tax within the statutory period allowed for its payment:
 - 1. If the taxpayer's failure to pay the tax is satisfactorily explained to the Commission; or
 - 2. If the failure results from a mistake by the taxpayer of either the law or the facts subjecting him to such tax; or
 - 3. If the inability to pay the interest or penalty results from the insolvency or bankruptcy of the taxpayer.
- C. In settling or compromising any controversy relating to the liability of a person for the A&P tax for any taxable period, the Commission is authorized to enter into a written closing agreement concerning the liability. When the closing agreement is signed by the Commission, it shall be final and conclusive, and except upon a showing of fraud or misrepresentation of a material fact, no additional assessment or collection shall be made by the Commission, and the taxpayer shall not institute any judicial proceeding to recover such liabilities as agreed to in the closing agreement.
- D. The Commission shall promulgate rules and regulations establishing guidelines for determining whether a proposed offer in compromise is adequate and is acceptable to resolve a tax dispute. (Ord. No. 03-7, Sec. 21.)

2.76.23 Release of property from lien

- A. Upon written application by any person, the Commission may release any property from the lien imposed by any assessment, order, judgment, or certificate of indebtedness obtained by or from any levy made by it if:
 - 1. Either full payment is made to the Commission of the sum it considers adequate consideration for the release; or

2. Adequate security deposit is made with the Commission to secure the payment of the debt evidenced by the lien.
- B. When the Commission determines that its assessment, certificate of indebtedness, or judgment is clouding the title of property because of an error in the description of properties or similarity in names, the Commission may issue a release without the payment of any consideration.
 - C. The Commission's release shall be given under its seal and filed in the office of the Circuit Clerk in the county in which the lien is filed, or it shall be recorded in any office in which conveyances of real estate may be recorded. (Ord. No. 2003-7, Sec. 22.)

2.76.24 Criminal penalties Sanctions for any taxpayer who willfully attempts to evade or defeat the payment of the A&P tax, or who assists a taxpayer to evade or defeat the payment, or otherwise fails to file a report, fails to pay the tax, or makes a false or fraudulent report, return, statement, claim, application or other instrument required by the Commission in connection with the A&P tax, or knowingly makes a false answer to any question from the Commission or its designated representative concerning any A&P tax, neglects to answer a subpoena to appear and answer questions about records for the A&P tax, or fails to obtain an A&P tax permit as require, or who acts, or fails to act, in conformance with the provisions of the Arkansas Tax Procedure Act, as that Act applies to the A&P tax, shall be subject to the penalties set forth in A.C.A. 26-18-101 to 26-18-105; 26-10-201 to 26-10-212 (Michie Repl. 1997 and Supp. 1999), as they exist on the date of the passage of section 17-97-17-98.23, or as they may be amended by the General Assembly and are in effect on the date of any such violation. (Ord. No.2003-7, Sec. 23.)

2.76.25 Cooperation with Chamber of Commerce

- A. The city of Heber Springs A&P Commission and the Heber Springs Area Chamber of commerce are hereby authorized to enter into a contract for the provision of services and payment thereof.
- B. The Mayor, City Clerk, and Chairman of the A&P Commission are hereby authorized and directed to enter into and execute said agreement, along with any other necessary documents, to accomplish the provision of such services. (Ord. No. 2007-2, Secs. 1-2.)

CHAPTER 2.80**POLICY FOR A DRUG-FREE WORKPLACE****Sections:**

- 2.80.01 Purpose of policy
- 2.80.02 Policy statement
- 2.80.03 Safety and security-sensitive positions defined
- 2.80.04 Drug-free awareness program/education and training
- 2.80.05 Prohibited substances/legal drugs/unauthorized items/searches
- 2.80.06 Use of alcohol and drugs/prohibited conduct
- 2.80.07 When drug and alcohol testing may be required of all employees
- 2.80.08 When drug and alcohol testing may be required of employees holding safety and security-sensitive positions
- 2.80.09 Disciplinary action
- 2.80.10 Employment status pending receipt of test results
- 2.80.11 Voluntary drug and alcohol rehabilitation

2.80.01 Purpose of policy The city has a vital interest in providing for the safety and well-being of all employees and the public, and maintaining efficiency and productivity in all of its operation. In fulfillment of its responsibilities, the city is committed to the maintenance of a drug and alcohol-free workplace.

The city and certain employees who drive commercial motor vehicles are subject to the requirements of federal statutes and implementing regulations issued by the Federal Highway Administration of the U.S. Department of Transportation. However, certain city employees who perform safety and security-sensitive functions are not covered by the foregoing provisions. In

addition, the city has an interest in maintaining the efficiency, productivity and well-being of employees who do not perform safety or security-sensitive functions. In order to further provide a safe environment for city employees and the public, the city has adopted the following Drug-Free Workplace Policy for those employees who are not covered by federal law.

This policy does not govern or apply to employees who are subject to testing as commercial motor vehicle operators under the foregoing federal law and regulations. They are governed by a separate policy enacted pursuant to that legislation. (Ord. No. 99-23, Sec. 1.)

2.80.02 Policy statement

- A. All employees must be free from the effect of illegal drugs and alcohol during scheduled working hours as a condition of employment. Drinking alcoholic beverages or using drugs while on duty, on city property, in city vehicles, during breaks or at lunch, or working or reporting for work when impaired by or under the influence of alcohol, or when drugs and/or drug metabolites are present in the employee's system, is strictly prohibited and grounds for disciplinary action up to and including immediate discharge. In addition, employees are subject to disciplinary action up to and including immediate discharge for the unlawful manufacture, distribution, dispensation, possession, concealment or sale of alcohol or drugs while on duty, on city property, in city vehicles, during breaks or at lunch.
- B. The city reserves the right to require employees to submit to urine drug testing and Breathalyzer alcohol testing to determine usage of drugs and/or alcohol as provided below. Employees must submit to all required tests. Any employee who refuses to submit to any required test without a valid medical explanation will be subject to immediate discharge. Refusal to execute and required consent forms, refusal to cooperate regarding the collection of samples, or submission or attempted submission of an adulterated or substituted urine sample shall be deemed refusal to submit to a required test.
- C. The city also reserves the right to require return to duty and follow-up testing as a result of a condition of reinstatement or continued employment in conjunction with or following completion of an approved drug and/or alcohol treatment, counseling or rehabilitation program. (Ord. No. 99-23, Sec. 2.)

2.80.03 Safety and security-sensitive positions defined

- A. A safety-sensitive position is one in which a momentary lapse of attention may result in grave and immediate danger to the public. The following positions are considered safety sensitive:

1. Law enforcement officers who carry firearms and jailers.
2. Motor vehicle operators who carry passengers, including, but not limited to, ambulance drivers, bus or jitney drivers, and drivers who transport other city employees.
3. Fire department employees who directly participate in fire-fighting activities.
4. Medical personnel with direct patient care responsibilities including physicians, nurses, surgical scrub technicians, emergency medical technicians and trainees, medical and nurses assistants.
5. Mechanics, welders and sheet metal workers who work on vehicles designed to carry passengers such as buses, ambulances, police cruisers, vans and the like.
6. Other employees whose duties meet the definition of safety or security sensitive after consultation with and approval by the Arkansas Municipal League.

B. A security-sensitive position includes:

1. Any police officer, jailer, police dispatcher and police department employee, including clerical workers, having access to information concerning ongoing criminal investigations and criminal cases, which information could, if revealed, compromise, hinder or prejudice the investigation or prosecution of the case.
2. The city also considers law enforcement officers as holding security-sensitive positions by reason of their duty to enforce the laws pertaining to the use of illegal substances. Officers who themselves use such substances may be unsympathetic to the enforcement of the law and subject to blackmail and bribery. (Ord. No. 99-23, Sec. 3.)

2.80.04 Drug-free awareness program/education and training the city will establish a drug-free awareness program to assist employees to understand and avoid the perils of drug and alcohol abuse. The city will use this program in an ongoing educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace.

The city's Drug-Free Awareness Program will inform employees about:

- A. The dangers of drug and alcohol abuse in the workplace
- B. The city's policy of maintaining a drug and alcohol-free workplace
- C. The availability of drug and alcohol treatment, counselling and rehabilitation programs
- D. The penalties that may be imposed upon employees for drug and alcohol abuse violations.

As part of the Drug-Free Awareness Program, the city shall provide educational materials that explain the city's policies and procedures. Employees shall be provided with information concerning the effects of alcohol and drug use on an individual's health, work and personal life; signs and symptoms of an alcohol or drug problem; and available methods of intervening when an alcohol or drug problem is suspected, including confrontation and/or referral to management.

Supervisors who may be asked to determine whether reasonable suspicion exists to require an employee to undergo drug and/or alcohol testing shall receive at least 60 minutes of training on alcohol misuse and 60 minutes of training on drug use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and drug use. (Ord. No. 99-23, Sec. 4.)

2.80.05 Prohibited substances/legal drugs/unauthorized items/searches

- A. **Prohibited Substances.** Alcohol beverages and drugs are considered to be prohibited substances in the workplace. For purposes of this policy, the term "drugs" includes controlled substances (as identified in Schedules I through V of Section 202 of the Controlled Substances Act, 21 U.S.C. Section 812, and the regulations promulgated thereunder, and defined in the Uniform Controlled Substances Act, A.C.A. Section 5-64-201-216), including synthetic narcotics, designer drugs, and prescription drugs, excepting only: prescription drugs approved by and used in accordance with the directions of the employee's physician.
- B. **Legal Drugs.** The appropriate use of prescription drugs and over-the-counter medications is not prohibited. Any employee using a prescription drug should consult with his/her physician and pharmacist regarding the effects of the drug. Employees should read all labels carefully.
- C. **Unauthorized Items.** Employees may not have any unauthorized items in their possession or in any area used by them or under their control. Unauthorized items include, but are not limited to, alcoholic beverage containers and drug paraphernalia. (Ord. No. 99-23, Sec. 5.)

2.80.06 Use of alcohol and drugs/prohibited conduct all employees covered under this policy are subject to the following prohibitions regarding the use of alcohol and drugs (controlled substances):

- A. Employees shall not report for duty or remain on duty while impaired by the consumption of alcohol. An employee will be deemed to be impaired by alcohol if that employee has a blood alcohol concentration of 0.04 or greater.
- B. Employees shall not use alcohol while on duty.

- C. Employees required to undergo post-accident testing shall not use alcohol for 8 hours following the accident, or until they undergo a post-accident alcohol test.
- D. Employees shall submit to all authorized drug or alcohol tests.
- E. Employees shall not report for duty or remain on duty when they use any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the effect of the substance on the employee does not pose a significant risk of substantial harm to the employee or others in light of his/her normal job duties.

In addition, subject to disciplinary rules set forth below, employees who are found to have an alcohol concentration of 0.02 or greater, but less than 0.04, in any authorized alcohol test shall be removed from duty, and may not return to duty until the start of the employee's next regularly scheduled shift, but not less than 24 hours following administration of the test.

The foregoing rules shall apply to all employees and shall apply during periods when they are on breaks or at lunch, or not performing safety-sensitive functions. (Ord. No. 99-23, Sec. 6.)

2.80.07 When drug and alcohol testing may be required of all employees Employees (and applicants) covered by this policy shall be required to submit to urine testing for use of prohibited drugs and/or Breathalyzer testing in the following circumstances:

- A. When the city has reasonable suspicion that an employee has violated any of the above prohibitions regarding use of alcohol or drugs.

For purposes of this rule, reasonable suspicion shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The required observations must be made by a supervisor or city official or employee who is trained in detecting the signs and symptoms of misuse of alcohol and drug use.

- B. Return to duty testing is required after an employee has engaged in any of the above prohibitions concerning use of alcohol or drugs, unless the violation results in termination.
- C. As part of a pre-employment physical examination after a conditional job offer has been made, a fitness for duty physical examination, or any other required periodic physical examination. Non-safety and non-security sensitive positions will not be required to undergo a pre-employment drug or alcohol test unless the applicant is otherwise required to undergo a pre-employment physical examination after a conditional job offer has been extended to the employee.

- A. When safety-sensitive employee is involved in an accident involving a motor-vehicle on a public road, and the employee's position is safety-sensitive because it involves driving a motor vehicle.
- B. Random testing for drugs (but not alcohol) will be conducted. In order to treat all employees as equally as possible, and to maintain consistency in the administration of its efforts to maintain a drug-free workplace, random testing under this policy will be governed by 49 U.S.C., Section 31306 and implementing regulations to the extent that it is lawful and feasible to do so. Further guidance must be found in "The Omnibus Transportation Employee Testing Act of 1991 - Steps to Compliance for Arkansas Municipalities," published by the Arkansas Municipal League. (Ord. NO. 99-23, Sec. 8.)

2.80.09 Disciplinary action

- A. Employees may be subject to disciplinary action, up to and including discharge, for any of the following infractions:
 1. Refusal to submit to an authorized drug or alcohol test. Refusal to submit to testing means that the employee fails to provide an adequate urine or breath sample for testing without a valid medical explanation after he/she has received notice of the requirement to be tested, or engages in conduct that clearly obstructs the testing process. Refusal to submit to testing includes, but is not limited to, refusal to execute any required consent forms, refusal to cooperate regarding the collection of samples, and/or submission or attempted submission of an adulterated or substituted urine sample.
 2. Drinking alcoholic beverages or using drugs while on duty, on city property, in city vehicles, during breaks or at lunch.
 3. Unlawful manufacture, distribution, dispensation, possession, concealment or sale of any prohibited substance, including an alcoholic beverage, while on duty, on city property, in city vehicles, during breaks or at lunch.
 4. Any criminal drug statue conviction and/or failure to notify the city of such conviction within five (5) days.
 5. Refusal to cooperate in a search.
 6. Having an alcohol concentration of .04% or greater in any authorized test.
 7. Testing positive for drugs and/or their metabolites in any authorized drug test.

Although the foregoing infractions will ordinarily result in discharge regardless of the employee's position, the city reserves the right to consider extenuating circumstances and impose lesser discipline when such action is deemed appropriate.

- B. In order to be re-employed following completion of a suspension for a positive drug or alcohol test, the employee must undergo and pass a return to duty drug and/or alcohol test, and be evaluated and released by an SAP.

The city will schedule the return to duty drug and/or alcohol test and the evaluation by an SAP to avoid any lost work time beyond the period of the suspension. The employee will remain on disciplinary suspension, without pay, until the city has received written notice that the employee has passed the return to duty drug test (and/or notice from the collection site that the employee has an alcohol concentration of less than 0.02 in the return to duty alcohol test) and written notice from an SAP that the employee has been released to return to duty. However, the employee may use accumulated leave time between the end of the original suspension and being released to return to work.

If the employee tests positive for any drug or has an alcohol concentration of 0.02 or greater in any subsequent test, he/she shall be subject to discharge.

- B. Rehabilitation and Additional Testing. In cases where an employee receives disciplinary action other than discharge for a drug and/or alcohol related infraction, the following procedures shall also apply:

1. The city may require the employee to participate in an approved treatment, counseling or rehabilitation program for drug and/or alcohol abuse at the time discipline is imposed, based on the recommendations of an SAP.
2. If the employee is required to enroll in such a program, his/her reinstatement or continued employment shall be contingent upon successful completion of the program and remaining drug and alcohol free for its duration.

The employee must submit to any drug and/or alcohol testing administered as part of the program, and provide the city with the results of such tests. The employee must also provide the city with progress reports from his/her therapist, or the agency running the program, on at least a monthly basis. (Failure to provide such reports or the results of such tests may result in discipline up to and including termination.)

3. An employee who has been identified as needing assistance in resolving problems associated with use of drugs and/or misuse of alcohol may be administered unannounced follow-up drug and/or alcohol tests for a period of up to 24 months. (Ord. No. 99-23, Sec. 9.)

2.80.10 Employment status pending receipt of test results In addition to appropriate disciplinary measures, including suspension, which may be taken in response to the incident or course of conduct which give rise to the test, the city reserves the right to decide whether the incident or course of conduct prompting the test is of such a nature that the employee should not be put back to work until the test results are received. If such a decision is made, the employee will be suspended without pay. Where the test result is negative, the employee will be reinstated with back pay, provided the employee has not been given an appropriate disciplinary suspension for violation of another work rule which also covers the time missed waiting for the test results. (Ord. No. 99-23, Sec. 10.)

2.80.11 Voluntary drug and alcohol rehabilitation If an employee who is not otherwise subject to disciplinary action for use of drugs and/or alcohol voluntarily admits that he/she has a drug and/or alcohol abuse problem, the Mayor or City Manager (or his/her designee), will meet with the employee to discuss the various treatment, counseling and rehabilitation options that are available. For purposes of this section, an employee's admission to having a drug and/or alcohol abuse problem will not be defined as "voluntary" if it is made after the employee learns that he or she has been selected for a random drug test.

These options may include allowing the employee to continue working while receiving outpatient treatment, counseling or rehabilitation in an approved drug and/or alcohol abuse program, or placing the employee on a medical leave of absence while he/she is receiving treatment, counseling or rehabilitation in an approved inpatient or outpatient drug and/or alcohol abuse program.

When an employee voluntarily admits that he/she has a drug and/or alcohol abuse problem, the city shall have the right to require the employee to be evaluated by an SAP and/or submit to drug and/or alcohol testing prior to deciding what action is appropriate. No disciplinary action will be taken by the city against an employee who voluntarily admits that he/she has a drug and/or alcohol abuse problem in the situation described above. However, the city shall have the following rights in such a situation:

- A. The employee may be required to enroll in and successfully complete an approved inpatient or outpatient drug and/or alcohol abuse program, and remain drug and alcohol free for its duration as a condition of reinstatement or continued employment. However, the city will not be responsible for financial obligations associated with treatment.

- B. If the employee is required to enroll in such a program, he/she must submit to any drug and/or alcohol tests administered as part of the program, and provide the city with the results of such tests. The employee must also provide the city with progress reports from his/her therapist, or the agency running the program, on at least a monthly basis. (Failure to provide such reports or the results of such tests will result in discipline up to and including termination.)
- C. The employee shall be required to agree to be subject to unannounced follow-up drug and/or alcohol tests, at the city's discretion, for a period of up to 24 months. (Ord. No. 99-23, Sec. 11.)

