

## CHAPTER 31: CITY OFFICIALS

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### **GENERAL PROVISIONS**

#### **§ 31.01 OATH; BOND.**

(A) *Oath.* Each officer of the city shall, before entering upon the discharge of duties of his office, take the following oath: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of this Commonwealth, and the Constitution of the United States, and be faithful and true to the Commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of \_\_\_\_\_, according to law; and I do further solemnly swear (or affirm) that, since the adoption of the present Constitution, I being a citizen of this United States, have not fought a duel with deadly weapons within this State, nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as a second in carrying a challenge, nor aided or assisted any person thus offending, so help me God", as established by section 228 of the Kentucky Constitution.

(B) *Bond.* Official bonds shall, if required, meet the standards of KRS 62.060.

**§ 31.02 COMPENSATION.**

(A) City Council shall establish the compensation of every elected city officer not later than the first Monday in May in the year in which the officer is elected. An elected officer's compensation shall not be changed after his election or during his term of office.

(1) In order to equate the compensation of Mayors and Councilmembers with the purchasing power of the dollar, the State Finance and Administration Cabinet computes by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with section 246 of the Constitution of Kentucky, which provides that the Mayor in cities of the first class shall be paid at a rate no greater than \$12,000 per annum and Mayors in cities other than the first class and Councilmembers shall be paid at a rate no greater than \$7,200 per annum.

(2) The City Council shall set the compensation of these officers in accordance with KRS 83A.070 at a rate no greater than that stipulated by the State Finance and Administration Cabinet.

(B) The City Council shall fix the compensation of each appointed city officer by ordinance and may change it by ordinance.

(C) The City Council shall establish the compensation of city employees in accordance with the personnel and pay classification plan ordinance of the city.

(D) All fees and commissions authorized by law shall be paid into the city treasury for the benefit of the city and shall not be retained by any officer or employee.

*Statutory reference:*

*Compensation, see KRS 83A.070 and 83A.075*

**§ 31.03 REMOVAL FROM OFFICE.**

(A) *Elected officers.* Any elected officer, in case of misconduct, inability, or willful neglect in the performance of the duties of his office, may be removed from office by a unanimous vote of the members of the City Council exclusive of any member to be removed, who shall not vote in the deliberation of his removal. No elected officer shall be removed without having been given the right to a full public hearing. The officer, if removed, has the right to appeal to the circuit court of the county and the appeal shall be on the record. No officer so removed is eligible to fill the office vacated before the expiration of the term to which originally elected.

(B) *Non-elected officers.* Non-elected city officers may be removed by the Mayor at will, unless otherwise provided by state law or ordinance.

*Statutory reference:*

*Removal of elected officers, see KRS 83A.040(9)*

*Removal of non-elected officers, see KRS 83A.080(3)*

***ELECTED OFFICIALS*****§ 31.20 ELECTION PROCEDURE.**

(A) Election of city officers is governed by general election laws as provided in KRS Chapters 116 through 121 unless City Council otherwise prescribes by ordinance that election of city officers shall be under nonpartisan city election laws as provided in KRS Chapter 83A. Such ordinance shall become effective not later than 23 days prior to the date prescribed by the election law generally for filing notification and declaration forms with the County Clerk in a year in which a regular election is to be held in which any city office is to be filled. Immediately subsequent to publication of any ordinance prescribing that election of city officers be under nonpartisan city election laws, a copy of the ordinance shall be filed with the County Clerk of the county in which the city is located.

(B) The city may change the manner of election of city officers within the provisions of division (A) of this section by ordinance, except that no change shall be made earlier than five years from the last change.

(C) The city shall pay the costs of city elections only if city elections are held at a time other than prescribed by law for elections generally.

(D) Each appointed and elected city office existing on July 15, 1980, shall continue until abolished by ordinance, except that the offices of Mayor and City Council members may not be abolished.

(E) No abolition of any elected office shall take effect until expiration of the term of the current holder of the office.

(F) No ordinance abolishing any elected office shall be enacted later than 240 days preceding the regular election for that office, except in the event of a vacancy in the office.

(G) The city may not create any elected office. Existing elected offices may be continued under provision of divisions (D), (E), and (F) above, but no existing elected office may be changed.

***Statutory reference:***

*Election of city officers, see KRS 83A.050*

*Creation, abolishment of city offices, see KRS 83A.080(3), (4)*

**§ 31.21 MAYOR.**

(A) *Election; term of office.* The Mayor of this city shall be elected by the voters of the city at a regular election. A candidate for mayor shall be a resident of the city for not less than one year prior to his or her election. His term of office begins on the first day of January following his election and shall be for four years and until his successor qualifies. If a person is elected or appointed as Mayor in response to a vacancy and serves less than four calendar years, then that period of service shall not be considered for purposes of re-election a term of office.

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(B) *Qualifications.* The Mayor shall be at least 21 years of age, shall be a qualified voter in the city, and shall reside in the city throughout his term of office.

(C) *Vacancy.* If a vacancy occurs in the office of Mayor, Council shall fill the vacancy within 30 days. If for any reason, any vacancy in the office of Mayor is not filled within 30 days after it occurs, the Governor shall promptly fill the vacancy by appointment of a qualified person who shall serve for the same period as if otherwise appointed.

(KRS 83A.040(1),(2),(6))

(1) When voting to fill a vacancy in the office of Mayor, a member of the City Council shall not vote for himself. (KRS 83A.040(2)(c))

(2) When voting to fill a vacancy created by the resignation of the Mayor, the resigning Mayor shall not vote on his successor. (KRS 83A.040(3))

(3) No vacancy by reason of a voluntary resignation in the office of Mayor shall occur unless a written resignation which specifies the resignation date is tendered to the City Council. The resignation shall be effective at the next regular or special meeting of the city legislative body occurring after the date specified in the written letter of resignation. (KRS 83A.040(7))

(4) If a vacancy occurs in the office of Mayor which is required by law to be filled temporarily by appointment, the City Council shall immediately notify in writing both the County Clerk and the Secretary of State of the vacancy. (KRS 83A.040(8))

(5) The City Council shall elect from among its members an individual to preside over meetings of the City Council during any vacancy in the office of the Mayor in accordance with the provisions of KRS 83A.130. (KRS 83A.040(2)(d))

### (D) *Powers and duties.*

(1) The Mayor is the Chief Executive and Administrative Officer of the city. The Mayor's principal function is to oversee the management of the city's daily affairs, in accordance with KRS 83A.130, in addition to the duties herein listed. The position of Mayor is the official spokesperson for the government, as well as the community. The Mayor is the presiding officer at City Council meetings, as well as any other departmental committee meetings for the City of Benton. The Mayor identifies and discusses issues impacting the city, receives and considers public input, and makes appropriate decisions in a manner which encourages full and open discussion, and exercises all the powers the state statutes and city ordinances empower to the city, Mayor and Council Members to lawfully govern the community. The Mayor shall be available on a consistent and regular basis during regular business hours of the work week, and the Mayor shall hold office hours at City Hall during the work week in order for the Mayor to be available and accessible to address problems that arise and citizens that have issues to be addressed.

(2) The Mayor shall serve as Chief Executive and Administrative Officer of the city and all of its departments. As such, the Mayor shall:

- (a) Provide leadership in city affairs;
- (b) Serve as the city's representative before the Kentucky legislature;
- (c) Perform ceremonial duties on behalf of the community, presenting proclamations, keys to the city, certificates of appreciation, etc.;
- (d) Greet important visitors, give formal and informal talks, and take part in public events;
- (e) Be able to explain city issues and programs;
- (f) Ascertain that the city fulfills its duties under the law and lawfully exercise its powers;
- (g) Foster positive relationships between the various elements of local government by setting a good example. This includes Council members, administration, other governmental entities and the public when at all possible;
- (h) Be responsible for visionary leadership and planning for the future of the city; and
- (i) Exhibit the ability to speak in an informed manner with the media, understanding legal limitations in personnel issues, and ability to articulate press releases with good speaking and writing capabilities.

(3) The Mayor shall serve as Presiding Officer at City Council meetings. As such, the Mayor shall:

- (a) Report to the Council and the public on the condition and needs of the city, as deemed desirable, or as required by ordinance, but at least annually. (KRS 83A.130(3))
- (b) Recognize speakers from the community or Council for motions and/or debate.
- (c) Run meetings and abide by the open meetings law.
- (d) Have the authority to call special meetings within the parameter provided by law.
- (e) Have the authority to vote only when there is a tie vote from the Council members. (KRS 83A.130(5))

(4) The Mayor shall execute official documents. More specifically, the Mayor:

- (a) Must sign ordinances, contracts, agreements and other documents authorized by the Council. The Mayor may also be a signature on payroll and accounts payable checks.
- (b) Shall make and sign all bonds, notes, contracts and written obligations of the city, or designates an agent to do so by executive order. (KRS 83A.130(8))

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(5) Any delegation of the Mayor's power, duties, or responsibilities to subordinate officers and employees and any expression of his official authority to fulfill executive functions shall be made by executive order. Executive orders shall be sequentially numbered by years and kept in a permanent file. (KRS 83A.130(7))

(6) The Mayor shall regularly and thoroughly prepare for each City Council meeting and sets and interpret rules governing those meetings. These duties shall include, but not be limited to, the following:

(a) Schedule and attend all monthly departmental meetings, following through with any ordinance amendments, new ideas, etc.;

(b) Prepare agenda material and provides all necessary information for the agenda to the City Council in a timely manner;

(c) Become familiar with the city's comprehensive plan, City Officials Legal Handbook (KLC produced), form of government city budget, city's code of ordinances, other policies and procedures and any other city document that impacts city policy;

(d) Conduct site visits to each department as appropriate;

(e) Participate in discussion of issues and actively listens to ensure a complete appreciation of each position;

(f) Review ordinances prepared by City Attorney;

(g) Preserve order at meetings;

(h) Establish and enforce rules of procedures;

(i) Encourage the attendance of members at meetings and addresses non-attendance;

(j) Identify actual and potential conflicts of interest and abstain from related votes;

(k) Support good working relationships between Council members; and

(l) Enforce the Mayor-Council plan, city ordinances and orders and all applicable statutes. (KRS 83A.130(3))

(7) The Mayor shall respond to citizen requests for information and/or assistance with problem resolution as needed.

(8) The Mayor shall discuss issues impacting the city with state legislators, county representatives and other local governments.

(a) The Mayor shall be the spokesperson for the community on economic issues or when the community is put under stress.

(9) The Mayor shall provide for the orderly continuation of the functions of city government at any time he is unable to attend to the duties of his office by delegating responsibility for any function to be performed, in accordance with division (D)(5) above. However, the Mayor may not delegate the responsibility of presiding at meetings of the Council, and the authority to approve ordinances or promulgate administrative procedures may only be delegated to an elected officer. With approval of the Council, the Mayor may rescind any action taken in his absence under this section within 30 days of such action. If for any reason the disability of the Mayor to attend to his duties persists for 60 consecutive days, the office of Mayor may be declared vacant by a majority vote of the Council and the provisions of § 31.21(C) shall apply. (KRS 83A.130(10))

(10) The Mayor shall appoint all non-elected officers as defined in KRS 83A.080, subject to Council approval. (KRS 83A.080(3))

(11) The Mayor shall establish and modify goals and objectives for the city, which shall include:

- (a) Setting administrative policies;
- (b) Establishing public policy for the city;
- (c) Directing the enforcement of city ordinances;
- (d) Meeting regularly with department heads to maintain knowledge of activities within each department; and
- (e) Exercising all the powers of the cities that the law does not delegate to others.

(12) The Mayor shall prepare, present and administer the annual budget. (KRS 91A.030(5))

(13) The Mayor shall oversee all personnel issues. As such, the Mayor shall:

(a) Discipline and dismiss all city employees and non-elected officers at-will, unless tenure or terms of employment are protected by statute, ordinance or contract. (KRS 83A.130(9)); KRS 83A.080(3))

(b) Require each department to make reports as required by ordinance or as the Mayor deems necessary. (KRS 83A.130(3))

(c) Promote good conduct and manage poor conduct.

(d) Process uniformed officer complaints from citizens in accordance with KRS requirements. Makes sure all internal complaints on uniformed personnel receive process due them as well.

(14) The Mayor shall be available to travel, when necessary, to represent the city at state meetings, state organizations, etc.

(Am. Ord. 18-03-01, passed 3-19-18)

### § 31.22 COUNCILMEMBERS.

For provisions concerning City Council. see Chapter 32.

### § 31.23 NON-PARTISAN ELECTIONS.

(A) The election of city officials shall from and after the date of this section (Ord. 14-10-01, passed 10-20-14) be governed by the provisions of KRS 83A.050, KRS 83A.170, and KRS 83.175 and the provisions of KRS 83A.045, and as either of same may be amended from time to time.

(B) Nominations and the election of candidates for city offices in the city from and after the date of this section (Ord. 14-10-01, passed 10-20-14) shall be non-partisan and conducted as follows:

(1) All candidates shall file their nomination papers with the County Court Clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot, and not later than 4:00 p.m. local time on the first Tuesday after the first Monday in June before the day fixed by KRS Chapter 118 for holding a regular election for the office.

(2) Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot.

(3) The number of candidates equal to the number of city offices to be filled who receive the highest number of votes cast in the regular election for each city office will be elected.

(4) All candidates for a city office shall be subject to all other applicable election laws and KRS Chapter 116 through KRS Chapter 121.

(5) Should a vacancy occur in a candidacy for city office in the year in which a primary election was not held and the time has expired for filing nomination papers, or if there are fewer candidates than there are offices to be filled, the vacancy shall be filled by write-in voting.

(Ord. 14-10-01, passed 10-20-14; Am. Ord. 20-12-01, passed 12-21-20)



***NON-ELECTED CITY OFFICIALS***

**§ 31.35 ESTABLISHMENT OF NON-ELECTED CITY OFFICES.**

(A) All non-elected city offices shall be created by ordinance which shall specify:

- (1) Title of office;
- (2) Powers and duties of office;
- (3) Oath of office;
- (4) Bond, if required; and

(5) Compensation, which may be specifically established or set by reference to another ordinance in which the compensation is specifically established.

(B) With the exception of the Police Chief and all city police officers, all non-elected city officers shall be appointed by the Mayor with approval of City Council. The Police Chief and all city police officers shall be appointed by the Mayor at will and such appointments need not be approved by City Council.

(C) All non-elected officers may be removed by the Mayor at will unless otherwise provided by statute or ordinance.

(D) The following are non-elected city offices:

- (1) The City Clerk;
- (2) The City Attorney.

***Statutory reference:***

*Non-elected city offices, see KRS 83A.080(1), (2), (3)*

**§ 31.36 CITY CLERK.**

(A) The city hereby establishes the office of the City Clerk.

(B) The duties and responsibilities of the Clerk shall include, but are not limited to the following:

- (1) Maintenance and safekeeping of the permanent records of the city;

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(2) Performance of the duties required of the “official custodian” or “custodian” pursuant to KRS 61.870 through 61.882;

(3) Possession of the seal of the city if used;

(4) No later than January 31 of each year, mail or electronically submit to the Department for Local Government a list containing current city information including but not limited to the following:

(a) The correct name, telephone number, and electronic mail address of the Mayor, legislative body members, and the correct name, telephone number, and electronic mail address for the city’s appointed officials or employees who are serving in the following roles or substantially similar roles as of January 1 of each year:

1. City Clerk;
2. City Treasurer or chief financial officer;
3. City Manager or administrator;
4. City Attorney;
5. Human Resources Director;
6. Police Chief;
7. Fire Chief;
8. Public Works Director;
9. Risk Manager;
10. Information Technology Manager;
11. Public Relations or Communications Officer; and
12. Planning and Zoning Administrator.

(b) The correct name of the city, mailing address for city hall, and telephone number of the city hall; and

(c) The name and telephone number of either an elected or appointed official to serve as a contact person that may be reached during normal business hours of 8:00 a.m. to 4:30 p.m.;

(5) Performance of all other duties and responsibilities required of the City Clerk by statute or ordinance.  
(KRS 83A.085)

(C) Compensation shall be in the amount as established by the City Council from time to time as set forth in § 31.02.

(D) No person shall be appointed or act as the City Clerk unless such person has taken the oath required by section 228 of the Constitution of the Commonwealth of Kentucky and has provided bond, if required, with corporate surety authorized to transact business in Kentucky and conditioned upon the performance of the duties specified herein.

### § 31.37 CITY ATTORNEY.

(A) *Establishment.* There is hereby established the office of City Attorney.

(B) *Appointment and qualifications.* The Mayor, with the approval of City Council, shall appoint a City Attorney who shall be the general law officer and legal counsel of the city. The Mayor may remove the City Attorney at will. He shall be an attorney licensed to practice in the Commonwealth of Kentucky. He shall be chosen solely on the basis of his legal qualifications, with special emphasis on actual experience in or knowledge of Kentucky municipal and administrative law. The City Attorney may also engage in the private practice of law and may hold other public or private employment.

(C) *Duties and powers.* The City Attorney shall have and exercise all powers and duties assigned to him by statute, this chapter, and such other municipal responsibilities delegated from time to time. He shall attend all meetings of the City Council except budget meetings at which his presence is not specifically requested, shall advise the Mayor, the City Council and all other city officers and employees in all legal matters pertaining to their municipal duties or affecting the interests of the city, shall appear for and defend the city in all legal actions and administrative proceedings in which the city is a party or is interested, shall institute legal action for and in behalf of the city wherever necessary for protection or enforcement of rights or interests of the city, shall prepare and examine ordinances, resolutions, orders, and legal instruments as the Council may direct, and generally shall attend to all legal business of the city. The City Attorney may, but shall not be obligated to, represent the Board of Adjustment.

(D) *Compensation for extraordinary services.* In addition to the salary fixed for City Attorney by annual ordinance of City Council, the City Attorney shall receive additional compensation as an independent contractor for all extraordinary services, including appearances in legal actions and administrative proceedings and hearings involving the city, municipal bond issues, real estate acquisitions and dispositions, and other matters beyond the scope of usual legal counsel to the city or requiring an unusual amount of time. For such extraordinary services, the City Attorney shall be paid reasonable fees commensurate with the amount and value of time devoted thereto, based upon charges made by other attorneys for comparable legal services.

(E) *Oath and bond.* No person shall be appointed or act as City Attorney unless such person has taken the oath required by Section 228 of the Constitution of the Commonwealth of Kentucky and has provided a bond in the sum as established by City Council, with corporate surety authorized to transact business in Kentucky and conditioned upon the performance of the duties specified herein.

***Cross-reference:***

*Chief of Police; Police Officers, see § 37.16*