



## **CITY GOVERNMENT 101: WHO DOES WHAT AT CITY HALL?**

### **AGENDA**

**April 4, 2018**

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8:30 a.m. – 9:00 a.m.	<b>Registration</b>	
9:00 a.m. – 9:15 a.m.	<b>Welcome and Opening Remarks</b>	Don Zimmerman, Executive Director Arkansas Municipal League
9:15 a.m. – 9:45 a.m.	<b>Laws That Make Us Unique</b>	Don Zimmerman, Executive Director Arkansas Municipal League
9:45 a.m. – 12:00 p.m.	<b>City Gov't 101: Roles, Rules, Commissions and Committees</b>	Mark Hayes, General Counsel Arkansas Municipal League
Noon – 12:45 p.m.	<b>Lunch</b>	
12:45 p.m. – 2:15 p.m.	<b>Freedom of Information Act: A Primer on Arkansas Law Including Record Retention</b>	Katie Bodenhamer Legal and Benefits Counsel Mark Hayes, General Counsel Arkansas Municipal League
2:15 p.m. – 3:00 p.m.	<b>How to Pass an Ordinance: A Step-By-Step Process (Audience Participation)</b>	Mark Hayes, General Counsel Arkansas Municipal League
3:00 p.m. – 3:15 p.m.	<b>Available League Training Sessions</b>	David Baxter Health, Safety and Operations Manager Arkansas Municipal League
3:15 p.m.	<b>Q&amp;A Session</b>	

## **Process for a Municipal Boundary Change 101- Short Form For City Clerks/Recorders**

**Step 1:** The initiating entity must first contact the Arkansas Geographical Information Systems (GIS) Office to obtain a digital (electronic) map of the area. (See the GIS Office contact instructions on the back)

- *Act 914 of 2015, added the requirement that before undertaking an incorporation dis-incorporation, annexation, consolidation or detachment, the originating entity must contact the Arkansas Geographic Information Systems (GIS) Office regarding the preparation of the legal description and digital mapping of the affected land area-see A.C.A § 14-38-116 and § 14-40-101.*

**Step 2:** The entity proposing the municipal boundary change follows the approval process defined in Arkansas Code. The method and type of change determines the Arkansas Code Section that applies. Certified copies of all Court documents, Ordinance(s)/Resolution(s), Election results, and supporting documents created in the course of the approval process are filed with the City Clerk/Recorder. Questions and concerns on the approval process for municipal boundary changes should be directed to your City Attorney.

**Step 3:** The City Clerk/Recorder submits a completed Municipal Boundary Checklist along with file-marked copies of the following documents to the County Clerk

- Ordinance/Resolution
- GIS Map and certification letter
- Proof of publication of all legal notices
- Petition Part (if boundary change initiated by Petition)
- Certified Election Results (if local election held to approve the municipal boundary change)

*A blank copy of the checklist is attached and a fillable PDF version is available on the Secretary of State website under Home > Elections > More Election Information > Filing of Municipal Boundary Changes with the Secretary of State or by using the direct link:*

<https://www.sos.arkansas.gov/uploads/elections/MunicipalChangeChecklist.pdf>

**Step 4:** The County Clerk's Office submits file marked copies of the Checklist and municipal boundary documents from the City Clerk along with a copy of any associated Court Order filed by the County Court to the Office of the Secretary of State (SOS).

**Step 5:** A review of the filing documents is conducted by SOS to ensure all relevant information is provided. Upon receipt of the required documentation, SOS files the boundary change documents and returns an SOS file marked copy to the County Clerk and the municipal contact specified on the checklist. :

To ensure inclusion in the 2020 Census, municipal boundary changes must have an Effective Date of no Later than December 31, 2018 and be filed with Secretary of State by May 1, 2019.

### **In the event of a Circuit Court Challenge involving the boundary change -**

**Step 6:** The municipality should notify SOS and the applicable County Clerk in writing as soon as possible after the court challenge is filed. Please provide the Ordinance/Resolution number and/or court order being challenged, the Circuit Court case number, and the date the challenge was filed.

**Step 7:** Following resolution of the litigation, the municipality must send a copy of the final Circuit Court Order along with a completed checklist to the County Clerk and the Office of the Secretary of State.

Please contact the Office of the Secretary of State at 1-888-233-0325 or 1-501-682-5070 if you have questions or concerns about the filing process.



# ARKANSAS GIS OFFICE

April 3, 2018

ATTN: County Clerk Office's

RE: Requirements for Coordinating City Annexations with the Arkansas Geographic Information Systems (GIS) Office

Arkansas Code § 14-40-101 (Act 914 of the 90th General Assembly) states:

*"Before an entity undertakes an annexation, consolidation, or detachment proceeding under this chapter, the entity shall coordinate with the Arkansas Geographic Information Systems Office for preparation of legal descriptions and digital mapping for the relevant annexation, consolidation, and detachment areas."*

Per this requirement, any entity planning to file a city annexation must first coordinate with the GIS Office in the following ways:

- 1) Provide the GIS Office with a **legal description** of the property in which they are pursuing to annex.
- 2) If available, provide the GIS Office with a **plat or map** of the property in which they are pursuing to annex.

These coordination efforts should be directed to Jennifer Wheeler at the GIS Office (jennifer.wheeler@arkansas.gov, 501-682-2929). After the GIS Office has received the information listed above, a map of the annexed area will be prepared. Within approximately four business days, the coordinating city will receive back the following:

- 1) A letter denoting the entity has met the coordination requirement.
- 2) A map depicting the annexed area.

Although, not required by law, it is recommended the letter and map accompany the adopted ordinance and become part of the documentation of record for filing with the Secretary of State, Elections Division.

Sincerely,

Shelby D Johnson, Director  
/sdj



# Arkansas Secretary of State

**Mark Martin** Arkansas Secretary of State, 500 Woodlane Ave, Little Rock, AR 72201-1094

## Municipal Boundary Change Checklist

County: \_\_\_\_\_ City/Town: \_\_\_\_\_

City Ordinance/Resolution No: \_\_\_\_\_ Date approved: \_\_\_\_\_

County Court Case No: \_\_\_\_\_ Date Order Filed: \_\_\_\_\_

Type: \_\_\_\_\_

(Choose from the list of Arkansas Code Sections located on the back)

Date Change Effective: \_\_\_\_\_ Set by: Municipal Ordinance Emergency Clause Court Default  
(Required by Act 655 of 2017)

For Circuit Court Challenge: Date Order Filed: \_\_\_\_\_ Upheld Overturned Other (attach explanation)

### Initiating party:

All Landowners Majority Landowners Municipal Governing Body State Other \_\_\_\_\_

### Supporting Documentation attached (check all that apply):

- File marked copy of City Ordinance/Resolution (required)
- File marked copy of County Court Order (required except for island annexation and annexation approved by election)
- Copy of Arkansas GIS approved printed map and certification letter (required)
- Proof of Publication for all Legal Notices (include Hearing, Election, and City Ordinance/Resolution notices)
- File marked copy of Petition Part or File marked copy of the certified special election results (if applicable)
- File marked copy of Complaint and final Circuit Court Order (Court Challenge only)

### Municipal Contact:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ St: \_\_\_\_\_ Zip code: \_\_\_\_\_

Complete one form per ordinance/resolution, attach it as a cover page to the supporting document set and submit to the County Clerk's Office within 45 days of the Effective Date as required by Act 655 of 2017

### County Official:

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

Pursuant to Act 655 of 2017, County Officials must submit a file-marked copy of municipal boundary change documents within 30 days of receipt to: Arkansas Secretary of State, Attn: Municipal Boundary Filing, 500 Woodlane Ave Suite 256, Little Rock, AR 72201-1094

Office of the Arkansas Secretary of State use only

Received by: \_\_\_\_\_

### **Municipal Annexation, Detachment, and Incorporation Reference**

- Annexation of Territories Contiguous to County Seat A.C.A §14-40-201
- Annexation of Territories in another Judicial District (multiple county seats) A.C.A. §14-40-202
  - Annexation of City Park or Airport (automatic) A.C.A §14-40-204
- Annexation of building on boundary of two municipalities (written notice) A.C.A. §14-40-207
  - Annexation by Election (contiguous land) A.C.A. §14-40-302
  - Annexation of land in adjoining County A.C.A §14-40-401
- Annexation of surrounded unincorporated area (island/doughnut holes) by ordinance A.C.A. §14-40-501
  - Annexation by Petition of majority of Landowners A.C.A. §14-40-602
  - Annexation by Petition of all Landowners A.C.A §14-40-609
  - Consolidation of two municipalities by Election A.C.A §14-40-1201
- Annexation with Detachment from another municipality at landowner request A.C.A §14-40-2001
  - Annexation with Detachment from adjoining city at city request A.C.A §14-40-2101
    - Detachment of Land annexed by petition under §14-40-601 A.C.A §14-40-608
    - Detachment of municipal lands back to County by election A.C.A. §14-40-1801
    - Detachment of unsuitable land by municipal resolution A.C.A §14-40-1901
    - Incorporation by direct petition of landowners A.C.A §14-38-101
    - Incorporation by petition for special election A.C.A §14-38-115
  - Surrender of Charter (Disincorporation) by second class city A.C.A §14-39-101



# CITY GOVERNMENT 101: EVERYONE HAS A ROLE ROLES, RULES, RELAX

April 4, 2018

Mark R. Hayes  
General Counsel  
Arkansas Municipal League  
[mhayes@arml.org](mailto:mhayes@arml.org) 501.978.6102

# You Are...

- ...a provider of good government.
- ...a provider of police and fire protection.
- ...a provider of parks and recreation.
- ...a provider of water and sewer systems.
- ...a provider of streets.
- ...a provider of...community.

# You Are...

- ...on the verge of being out of office before you blink if you don't take the oath!
- ACA 14-42-106
  - Must be done within ten days of January 1<sup>st</sup>!
  - Mayor may administer to alderman/council members.
  - Others can too: Secretary of State, justice, judge, county judge, county clerk, circuit clerk or JP.



# The Three R's

- Roles
- Rules
- Relax

# Roles

- Where do you fit?
- Why is your role significant?
- Rely on the other parts of the “machine.”

# Rules

- Keep order.
- Simplify meetings and issues.
- Focus the debate.
- Basic law, including your ordinances!

# Types of Municipal Government

- Three types
  - Mayor/Council
  - City Manager
  - City Administrator

# Mayor Council...

- There is a:
  - Mayor
  - And a
  - Council
- Redundant, but it's the critical distinction
- Also there is either a
  - Clerk
  - Recorder
  - Clerk/Treasurer OR
  - Recorder/Treasurer

# Quick Reference

- League Publications:
  - Guide for Municipal Officials/Mayoral Cities
  - Guide for Municipal Officials/Manager Cities
  - Municipal Law in Arkansas – Questions and Answers
  - City and Town

# City Manager and Administrator Cities

- City Manager Cities:
  - Arkadelphia
  - Hope
  - Hot Springs
  - Little Rock
  - Texarkana
- City Administrator Cities
  - Barling
  - Ft. Smith
  - Siloam Springs
- 8 out of 500 Cities and Towns

# City Manager Form of Government (Highlights)

- Only permitted in cities of the first or second class with populations over 2,500.
  - *See A.C.A. § 14-47-101 et seq.*



# City Manager Form of Government (Highlights)

- Features
  - *See* A.C.A. § 14-47-109
  - Board of Directors; not Council-Members
    - Generally, 7 Board Members unless reorganized under the “enabling act.”
    - Directors choose a mayor from amongst themselves (no veto unless bestowed by vote of the people).

# City Manager Form of Government (Highlights)

- Features
  - *See A.C.A. § 14-47-109*
  - The Board then hires a City Manager
  - The City Manager preps the budget, day to day operations, hiring/firing (unless contrary to state law), etc.

# City Administrator Form of Government (Highlights)

- Any city of 2,500 or more.
  - *See A.C.A. § 14-48-101 et seq.*
- Board of Directors
  - *See A.C.A. § 14-48-110*
  - 7 generally-elected Directors
    - Directors can override the Mayor's veto with 5 votes
  - 1 generally-elected Mayor from all wards
    - Mayor is ceremonial head of city, presides over meetings, signs contracts and the like, and can veto except for personnel decisions

# City Administrator Form of Government (Highlights)

- Board of Directors
  - *See* A.C.A. § 14-48-110
  - The Directors hire a City Administrator
  - Administrator supervises city employees, departments, agencies and offices

# General Rules...Know Your Role

- Three branches of government:
  - Legislative
  - Judicial
  - Executive/ Administrative

# Know Your Role...

- Legislative...
  - Some similar words: legislate, legislature, legislator.
- City Council or City Board
  - Some similar words: council-member, alderperson, board-member.
- Operate lawfully in a lawfully called meeting with a quorum.
  - Typically, a majority of the city council or board of directors. *See, e.g.,* A.C.A. §§ 14-43-501(a)(2)(A); 14-47-123(a)(1).

# Know Your Role...

- Judicial...
  - Some similar words:
  - Justice
  - Judiciary.
  - Judge
  - Judgment...
  - Not mayor, clerk, recorder, treasurer or councilmember/alderman.

# Know Your Role...

- Executive/ Administrative...
- Mayor! (City Manager or City Administrator)
  - 24/7 job
  - Day-to-day operations as opposed to council members (board members) holding a lawfully called and attended meeting



# Know Your Role

- Legislators / Council-Members (Board): legislate by setting policy.
- **Policy** comes in all forms: ordinances, resolutions, motions etc.
  - Examples: budget, employee handbook, record maintenance/retention etc.

# Know Your Role

- **Mayors (Managers/ Administrators):** run the day to day operations and implement policy.
- **Mayors (Managers/ Administrators):** supervise department heads and officers.
  - Examples: spending within the confines of the budget, counseling employees etc..

# Role of the Mayor

- CEO of city or town (sort of legislative and sort of executive)
- Ex-Officio member of council
- Presides over council meetings
- Mayor can vote sometimes (Cover later)
- Mayor can make up the quorum (A.C.A. §§ 14-43-501; 14-44-107; & 14-45-101(b))

# Role of the Mayor

- Mayor can call for a special meeting (yes, 3 council members can, too, and, yes, there must be an ordinance. A.C.A. § 14-43-502)
- Mayor signs ordinances along with Clerk/Recorder
- Mayor can veto (more on this later)

# ROLES (rules): THE MAYOR SHALL SUBMIT...

- **Ark. Code Ann. § 14-58-201. Annual submission.**
  - On or before December 1 of each year, the mayor of *all cities and incorporated towns* having the mayor-council form of government *shall submit* to the governing body of the city or town, for its approval or disapproval, a proposed *budget* for operation of the city or town from January 1 to December 31 of the forthcoming year.

# ROLES (rules): GOVERNING BODY SHALL PASS...(council, board...)

- **Ark. Code Ann. § 14-58-202. Adoption.**
  - . . . [T]he governing body of the municipality shall, on or before February 1 of each year, adopt a budget for operation of the city or town.

# RULES: YOU SHALL SPEND; BUT ONLY WHAT'S IN THE BUDGET

- Ark. Code Ann. § 14-58-203.  
Appropriations and changes.
  - (a) The approval by the municipal governing body of the budget under this subchapter shall, for the purposes of the budget from time to time amount to an appropriation of funds which are lawfully applicable to the items therein contained.

# RULES: BUDGET MAY'S VERSUS BUDGET SHALLS...

- **Ark. Code Ann. § 14-58-203.**  
**Appropriations and changes.**
  - (b) The governing body may alter or revise the budget and unpledged funds appropriated by the governing body for any purpose may be subsequently, by action of the governing body, appropriated to another purpose, subject to the following exceptions:



# BE CAREFUL

- EXCEPTIONS

- (1) Funds resulting from taxes levied under statutes or ordinances for specific purposes may not be diverted to another purpose;
  - (ILLEGAL EXACTIONS)
- (2) Appropriated funds may not be diverted to another purpose where any creditor of the municipality would be prejudiced thereby.
  - (CONTRACT LAWSUITS)

# RULES: THE SHALLS CONTINUE

- 14-43-313. City clerks and attorneys generally.
  - “The city clerks and the city attorneys in cities of the first class shall . . . receive such salary as is prescribed by ordinance in each of these cities.”

# RULES: THE SHALLS CONTINUE

- **14-43-316. City clerk, treasurer, or clerk-treasurer in mayor-council cities of fewer than 50,000. Only allowed in cities of the first class (*see* A.C.A. § 14-43-316(a))**
  - **(c)** The city clerk and city treasurer, or city clerk-treasurer shall . . . receive a salary as is prescribed by ordinance in each of these cities.
- **Cities of the second class and incorporated towns...lucky you!**

# Roles (Rules): More ...

- Mayor: report, report, report:
  - Within the first 90 days of the year, to the council the municipal affairs of the city; recommending such measures as may be advisable. *See* ACA §§ 14-43-504, 14-58-302.
  - I suggest monthly financial reports. (14-59-115 Treasurer is required to do a monthly report)
    - What do you do? Monthly, weekly...
  - The better informed the council is, the better the budget.

# Roles (Rules): More ...

- Mayor, don't forget the shalls: submit and spend)
  - Submit the budget, approve the budget, and spend within the budget! A.C.A. §§ 14-58-201; 14-58-202; 14-58-203

# Roles (Rules): Council

- **COUNCIL:**
  - PASS THE BUDGET! SHALL!!
  - What to Do:
    - Be well informed: read the financial statements *early and often*.
    - Ask the mayor for specific department needs.
    - Look at your long term plans and needs.
    - Meet and study *long before* the date of passage.

# Roles: Legislative... Council/Board Duties

- **SET POLICY**
  - Management/ Control money, property and policy
  - Finances
  - Property (real/ personal)
  - Set Policy (written and by practice)

# Roles: Legislative... Council/Board Duties

- **FOLLOW PROCEDURE**
  - Set procedures for purchases up to twenty-thousand (\$20,000) (or over \$20,000 for 2<sup>nd</sup> Class cities and Inc. Towns, *see* A.C.A. § 14-58-303(b)(1)(A)-(B)).
  - Set time/ place for meetings and rules (**January meeting**)
  - Know the FOIA, public meetings etc.
  - Set salaries for everyone: Mayor, Council, Employees, etc. (Ark. Const. amend. 56, § 4; A.C.A. § 14-43-409).
  - Salary may be increased during your term, but may not be reduced unless requested by official (A.C.A. § 14-42-113)



# Roles (Rules): Vacancies...and it's only January


- **Hold over –**
  - Ark. Const. Art. 19, § 5: All officers *shall* continue in office after the expiration of their official terms, *until their successors are elected and qualified.*
  - January 1 . . . who was there on December 31<sup>st</sup>?!
- **Mayor's vacancy –**
  - Cities of the 1<sup>st</sup> class (A.C.A. § 14-43-401)
    - Less than 1 year - Council appoints the Mayor's successor
    - More than 1 year – Special Election to fill the vacancy
  - Cities of the 2<sup>nd</sup> class (A.C.A. § 14-44-106)
    - Council: appoint or special election.
  - Incorporated towns (A.C.A. § 14-45-103)
    - Council: appoint or call for special election

# Roles (Rules): Vacancies...and it's only January

- **Council Member/Alderman vacancies –**
  - Cities of the 1<sup>st</sup> class (A.C.A. § 14-43-411)
    - Under 20K? City council appoints (quorum of whole council shall remain in order to fill the vacancy) (mayor cannot veto).
    - 20K or more and more than 1 year? Appoint or Special Election
    - 20k or more and less than 1 year? City council appoints
  - Cities of the 2<sup>nd</sup> class (A.C.A. § 14-44-104)
    - Council appoints – no veto
- Incorporated Towns, (A.C.A. § 14-45-103)
  - Council appoints

# THE ROLE OF...

- CLERK,
- RECORDER,
- TREASURER,
- CLERK-TREASURER,
- RECORDER-TREASURER

- 
- SUPPORT, RECORD-KEEPING AND CHECKS AND BALANCES!
  - The clerk, recorder...HANDBOOK
  - The AML Handbook.
  - Guidebooks (all types of municipal government)
  - Accounting Handbook
  - Sample Ordinances
  - Much, much more
  - All available through the AML
  - See [www.arml.org](http://www.arml.org) and click on publications

# Roles: Who Appoints...Who Removes...

- Who's Who?
  - Department Heads vs. Non-Department Heads
  - Non-Department Heads are those who aren't department heads
- State Law dictates who appoints and removes department heads.
  - No State Law for non-department heads.
  - Non-department heads are a matter of *local policy* – it's up to you!

# Department Heads?! Appoint...Remove?! Local Policy?!

- **Department Heads:**
  - What It Means:
    - Appoint = Hire
    - Remove = Fire
  - A.C.A. § 14-42-110
    - Department heads are *appointed and removed by the mayor*
    - But... the council can over-ride with a two thirds vote
    - But... the council **CANNOT** appoint and remove department heads

# More Appoint and More Removal Stuff

- **Non-Department Heads**
  - Non-department heads are a matter of local policy
    - What does your policy say?
  - What? No policy?!
    - What's your practice? And let's carefully take a look...
    - Recommendations versus decisions...
  - Who's actually hiring and firing?!

# Appoint and Remove... Some More

- **Non-Department Head, continued**
  - Non-department policy or practice...be careful
    - Council, legislative policy maker and legislative immunity
  - Mayor, elected to run the day to day operations



# Roles: Final Word on Appoint and Remove

- **Mayors may appoint:**
  - Building Officials (A.C.A. § 14-56-202)
  - Library Board (A.C.A. § 13-2-502)
  - Director of Public Safety (A.C.A. § 14-42-422)
  - Health Officers (A.C.A. § 14-262-102)
  - Airport Commission (w/ council approval) (A.C.A. § 14-359-101 *et seq.*)
  - Parks/Recreation Commission (w/ council approval) (A.C.A. § 14-269-302)
  - Marshall (A.C.A. § 14-44-111)

# Role of the Department Head

- Some duties or roles are the same for all department heads.
- Some, however, change depending upon the department in question.
- Some change from city to city.
  - Hint/Suggestion: read your ordinances, policies, handbooks, notes, memos, gum wrappers etc..
  - You just might learn what your role is and ISN'T.

# All Department Heads

- City budget/ department budget.
- Bidding and purchasing laws.
- Employee handbook and related policies and ordinances.
- “At Will Employment Doctrine”
- Working knowledge of labor laws (FLSA, FMLA, ADAAA, etc.).
- Specific laws, rules and regulations related to their department.
- Day to day operations.
- Managerial skills and education.

# Police Chief

- A.C.A. §§ 14-52-101 through 102.
  - Covers how the department was created, general powers, holiday pay, vacation, sick leave, fees etc.
- Commission on Law Enforcement Standards and Training:  
<http://www.clest.org/oles/Pages/default.aspx>.
  - Various certification requirements and standards.
  - *See also* A.C.A. § 12-9-101 and following, commission powers, duties etc.
- A.C.A. § 12-2-209: Training Cost Reimbursement.
- A.C.A. §§ 12-9-301 through 308: Auxiliary Officers.
- A.C.A. §§ 12-9-601 through 603: Officer employment, appointment, or separation.

# Police Chief, Continued

- A.C.A. §§ 12-10-301 through 324: The Arkansas Public Safety Communications Act of 1985.
- A.C.A. § 12-12-103: Pawn Shop Reporting.
- A.C.A. §§ 12-12-901 through 922: Sexual Offender Registration Act of 1997.
- A.C.A. §§ 12-12-1401 through 1405: Racial Profiling Act of 2003.
  - Note that the League has a publication and policy and that many of the training and reporting requirements are yearly.
- A.C.A. §§ 12-13-101 through 116: The Fire Prevention Act.
- General working knowledge of policing and arrest practices, policies, customs, weapons, etc.

# Fire Chief

- A.C.A. §§ 14-53-101 through 112.
  - Covers how the department was created,
  - General powers,
  - Hours,
  - Holiday pay,
  - Vacation,
  - Sick leave, etc.
- A.C.A. §§ 12-13-101 through 116: The Fire Prevention Act.
- General working knowledge of fire fighting practices, policies, customs, equipment, etc.

# Water Superintendant

- Certification requirements.
- Working knowledge of state and federal health and safety regulations and laws.
- Working knowledge of storm water laws and regulations.
- Working knowledge of state and federal pollution and ecology laws, policies and regulatory entities.

# Public Works (Streets/Sanitation) Director

- Working knowledge of local, state and federal law on weed lots, clean up, condemnation, etc..
- Working knowledge of local court system including but not limited to city citation authority.
- Code enforcement officers.
- Animal control.
- Working knowledge of bidding and purchasing laws.



# What is a quorum?

- For City Council governments
  - Cities of the First & Second Class – majority of the whole number of alderman is a quorum. ACA §§ 14-43-501; 14-44-107. (mayor can be counted)
  - Incorporated Towns – majority of the whole number of alderman is a quorum. ACA § 14-45-101.
- For City Administrator/Manager cities
  - A majority of the elected membership of the board is a quorum for the transaction of business. ACA § 14-47-123.

# Regular council meetings

- Held at regular intervals
  - Bi-weekly
  - Monthly
  - Quarterly (not suggested)
- Provide a time and a place for the meeting.
- All meetings must be open to the public. *See, e.g., A.C.A. § 14-43-502(b)(1)(B).*

# Special council meetings

- The mayor, or any three (3) council members of a town may call for a special meeting. *See, e.g.,* A.C.A. § 14-43-502(b)(1)(B).
- Special meetings may only be called as provided by ordinance. *See, e.g., id. (work sessions...a special word)*
- **MUST** be open to the public. *See, e.g.,* A.C.A. § 14-43-502(b)(2)(A) and 25-19-106

# Passing an ordinance

- A word or two on emergency ordinances . . .
- **Separate vote on emergency clause is required.**
  - Must be an emergency.
  - Clause must articulate the emergency.
  - (mayors can't vote on emergency clause AG OP 96-155)

# Passing an ordinance

- Each ordinance is limited to ONLY one subject. A.C.A. § 14-55-201.
- Reading Requirement
  - Ordinances must be read on three (3) different days. A.C.A. § 14-55-202.
  - Two-thirds of the council membership may suspend the reading requirement. *Id.*
  - If the reading requirement is suspended, read the ordinance once, then proceed to vote on the ordinance at the same meeting.

# Passing an ordinance (cont'd.)

- Majority vote enacts an ordinance. A.C.A. § 14-55-203(b).
- Mayor calls the vote, but does not participate in the voting process unless vote is needed to pass.
- The yea's and nay's are recorded. A.C.A. § 14-55-203(a).
- Applies to any resolutions or orders for the appropriation of the city's money. A.C.A. § 14-55-204.
- Once enacted, all ordinances shall be recorded in a book kept for that purpose. A.C.A. § 14-55-205.

# *Passing an ordinance (cont'd.)*

- Notice Requirement (A.C.A. § 14-55-206)
  - All ordinances of a general or permanent nature imposing any:
    - Fines, Penalties, OR Forfeitures
  - Must be published in some newspaper of general circulation in the municipality.
    - If no newspaper, post the ordinance in five (5) of the most public places in the city.
  - Failure to provide notice: “Life never breathed into the ordinance”
    - Citizen can say “I didn’t know!” . . . and the court will agree.

# Passing an ordinance (cont'd.)

- Notice Requirement (cont'd.)
  - Ordinances establishing rules and regulations for:
    - Zoning
    - Construction of buildings
    - Plumbing
    - Electrical wiring, AND
    - These Regulations/ Rules are published as a code in book form



# Passing an ordinance (cont'd.)

- Ordinance may reference the title of the code without further publication or posting.
- However, three (3) copies shall be filed for use and examination by the public in the city clerk's office.
- Failure to provide notice is a sufficient defense to any suit or prosecution for violating the rules and regulations.

# Passing an ordinance (cont'd.)

- Effective Date

- Ninety-one (91) days after passage by the governing body of the city or town. *See* A.C.A. § 14-55-203(c)(1)(A).
- Unless by ordinance set between 30-90, *id.*
- Ordinances that are NOT of a general or permanent nature are effective on the date of passage, unless otherwise specified by the ordinance. *See* A.C.A. § 14-55-203(c)(2).

# Passing an ordinance (cont'd.)

- Effective Date (cont'd.)
  - **Referendum deadline:** 60 days! See Act 1688 of 2015 (ACA 14-47-124 and 14-55-304)
  - Un-sure about how this may get tested/used.
  - Current ruling from a Circuit Judge in Garland County: Unconstitutional
  - A majority vote repeals the ordinance.

# Passing an ordinance (cont'd.)

- Emergency Clauses (Ark. Const. art. 5, § 1).
  - Council wants an ordinance *of a general or permanent nature* to take effect immediately.
  - What is required?
    - Must be necessary for the preservation of the public peace, health, and safety.
    - In the ordinance, state WHY the emergency clause is necessary for the public's peace, health, and safety.
      - You MUST state facts that give rise to the emergency.
    - Two-thirds of the *roll call vote* of the ordinance is required to pass.
    - Mayor may not vote on the emergency clause.

# The mayor's vote

- A mayor may vote, when the mayor's vote is necessary for passage. ACA §§ 14-43-501; 14-44-107; 14-45-105.
- Tie sounds like the only time necessary to vote, but it isn't.
  - 6 member council example.
  - 4 show for the meeting, but only three vote yes. You get the idea.

# The mayor's vote

- The Mayor may not vote on the following:
  - Emergency **clauses**
  - To amend or repeal an initiative measure enacted by a vote of the people.
  - Whenever the statute calls for a vote of those “elected to” the council.

# Understanding the veto

- What does veto mean?
  - According to Mr. Webster:
  - “A power of one department or branch of a government to forbid or prohibit finally or provisionally the carrying out of projects attempted by another department.”

# Understanding the veto, cont'd.

- Mayor can veto an ordinance, resolution, order, motion.
- Mayor must veto within **5 days, in writing**, and presented at the next council meeting. ACA §§ 14-43-504; 14-44-107; 14-45-105.



# Understanding the veto, cont'd.

- Statutes do not set forth a procedure to document, so, for example:
  - Veto “on the record” at council meeting (recorded in minutes); OR
  - File a written copy with the clerk or recorder with a date stamp.

# Procedural Rules...

- A.C.A. 14-43-501
- First meeting in January; ORGANIZE!
- AML Procedural Rules
- Regular Meeting Dates and Times
- Agenda Setting
- Quorum
- Voting

# January Rules Meeting

- A.C.A. § 14-43-501
  - All cities and towns
  - At the first meeting in January . . .
  - SHALL ORGANIZE!
- Requires:
  - Determine rules of proceedings
  - Keep a journal...must be open for inspection
  - **Without limitation** institute: rules for agenda setting, filing resolutions, citizen commentary, meeting dates, attendance, committees, reports...

# January Rules Meeting

- Consider AML Procedural Rules
- Don't be afraid to add to your rules as issues arise.
- Look at them every year as the statute requires.
- Put in ordinance form.
- Remember what an ordinance is...LAW!
- By doing so you *lessen debate over form* and *encourage debate over substance*.

# Outline - COUNCIL MEETINGS

- Setting the Agenda
  - Procedural Rules
- Order of meeting
  - Minutes, committee reports, old/new business, adjourn, etc..
- Motions
- Public Comments

# Remember to Have an Agenda

- Agenda
  - How is it set?
  - By whom?
  - When is it set?
- Time certain before the meeting?
  - During the meeting?

# Procedural rules for council meetings

- Order of the Meeting
  - Call to order
  - Roll call
  - Reading of the minutes (previous meeting)
  - Reports of boards or standing committees
  - Reports of special committees
  - Unfinished (Old) business
  - New business
  - Announcements
  - Citizen Commentary
  - Adjournment

# Procedural Rules: Call to order

- Let's make this easy
  - Who's there . . . And who isn't?
  - Mayor = Count heads
  - If there IS a quorum . . .
    - Call the meeting to Order, declare a quorum present and start the business agenda.
  - If there ISN'T a quorum . . .
    - Go home.



# Roll Call

- *So.....*
  - Take the roll and,
  - Keep a record of the same
  - Rules should require that the clerk or the recorder call the roll.
- Simple

# Procedural rules: reading of the minutes

- This involves . . .
  - Ready . . .
    - Reading the minutes of the previous meeting.
    - Mayor: “Clerk (or Recorder), please read the minutes unless there’s a motion to dispense with same.”
    - Postpone reading/ passage the minutes to another meeting
- Minutes can be amended!!

# Procedural rules: reading of the minutes

- Minutes can be mailed early
  - If so, a verbal reading of the minutes is not required.
- Use your time well
- Minutes aren't transcripts!
- And they can be amended!

# Transcript means...

- According to Webster...
  - *a*: a written, printed, or typed copy; *especially*: usually a typed copy of dictated or recorded material
  - *b*: an official or legal and often published copy <a court reporter's *transcript*>; *especially*: an official copy of a student's educational record

# Minutes mean...

- Webster again...
  - *a*: a brief note (as of summary or recommendation)
  - *b*: the official record of the proceedings of a meeting

## Procedural Rules: Reports of committees

- Again, let's not overly complicate things.
- If you have committees, set a process for them to report.
  - Committee reports are, effectively, for informational purposes, AND
  - To make recommendations to the council as a whole. (More on this later.)

# Procedural Rules: Reports of committees

- Chair of committee should report
  - Order: (1) Chairmen of the standing committees, then (2) the chairmen of special committees
- Your own rules should define the committee, the chair, etc.

# Procedural Rules: Reports of commissions

- While autonomous, you might consider getting a regular report.
- The chair of the commission could report or the director of the program governed by the commission.
- Historically, commissions often go out of sight, out of mind for city government.



# Procedural rules: New business

- ✘ This is the meat of your meeting.
  - ✚ It is critical that your elected officials all have the ability to get new business items on the agenda.
- ✘ Again, what are your local rules?
  - ✚ This is where the January rule-setting meeting is critical.
- ✘ Mayor, ask if anyone has any new business.

# Procedural rules: announcements

- Again, simple, simple, simple.
- When business is concluded . . .
  - Mayor, ask for any announcements.
- It is okay to set an order by which folks will be asked, or to ask generally.
- Whatever works for you.

# Procedural rules: adjournment

- ✘ When business appears complete, a member (council or board) may move to adjourn.
- ✘ Mayor, you may ask for such a motion if one hasn't yet been made.
  - + Vote taken, and if it passes, the meeting is adjourned.
- ✘ Mayor, you should state that the meeting is adjourned.

# Procedural rules: motions and the like

- A quick word or two:
  - Mayors run the meeting
  - Mayors must call on those on the council wishing to speak, and must recognize motions even if the mayor isn't in favor of same.
- Decorum is required by all
- Again, debating substance is true democracy; debating form is a waste of time.

## PROCEDURAL RULES: MOTIONS AND THE LIKE

- Steps in Handling a Motion
  - Member addresses the mayor
  - Mayor recognizes the member
  - Member states his or her motion
  - Another member seconds the motion
  - Mayor re-states the motion (confirmation)
  - If debatable, members may discuss the motion
  - Clerk or recorder takes the vote
  - Mayor announces the result
- The Basics:
  - Motion → Second → Discussion → Vote

# PROCEDURAL RULES: MOTIONS AND THE LIKE

- More rules to remember . . .
  - Any member of the council may propose a motion
  - As soon as the member is recognized by the mayor, the member is entitled to the council's undivided attention.
  - Discussion or debate not usually permissible until a motion has been re-stated by the mayor.
  - If the motion is not seconded, it is defeated.
  - Debate is restricted to the motion under consideration

# PUBLIC COMMENTS: EGG TIMER

- Have Rules for Public Speech
- General Ideas
  - To allow or not to allow, that is the question.
  - And how long one gets to chat, etc.
- Topics
  - Time, place, and manner – NO CONTENT RESTRICTIONS! *See* U.S. Const. Amend. I.
- USE AN EGG TIMER!

# Public comments

- × Public Comments can be put at the beginning of a meeting, in the middle, or at the end.
- × Can be directed to agenda and/or non-agenda items.
- × Have a structure . . . And a set of rules



# PUBLIC COMMENTS

✘ For example:

+ Issues *not* on the agenda *may be* addressed.

✘ While items on the agenda will be allowed for public comment when being discussed by the Council.

+ Have a time limit on the length of any individual citizen's comment.

✘ May be revoked in instances of inappropriate language or subject matter

# Public comments

- Have the citizen state his or her name, address, and a concise statement of his or her position or concern.
- Remarks should be addressed to the Mayor or the Council as a whole, and not to any individual members of the Council.
- Only the Mayor, the Council and the person with the floor should speak during this time.
- Speak only when recognized!

# Public comments

- Agenda Items
  - Complete a speaker's card listing the specific agenda item to be discussed
  - Give the card to the City Clerk prior to the time when the item is called.
  - Enforce maximum time limits (typically 5 minutes)
  - Mayor calls for speakers after the item is called and before Council discussion on the item.

# Public comments (cont'd.)

- Non-Agenda Items

- Use the Public Comment portion of the meeting (typically at the end of Old Business and before adjournment)
- Speakers must fill out a comment card, and indicate they are planning to speak about a non-agenda item.
- Give the comment card to the City Clerk prior to adjournment.
- Enforce time limits (typically 5 minutes)

# Commissions and Committees: The Great Unknown

- The major difference is as follows:
  - **Commissions** are creatures of state law that cities or towns create under the confines of that state law (AKA: a statute).
  - **Committees** are created locally and are not found in state law.

# Commissions and Committees: The Great Unknown

- Thus:
  - what *statute did you use* to create your commission,  
AND
  - what *do you have in writing* that establishes your committee(s).

# Commissions

- Examples:
  - Airport commission (A.C.A. § 14-359-104)
  - Parks/Recreation commission (A.C.A. § 14-269-104)
  - Water commission (A.C.A. § 14-199-402)
  - Wastewater commission (A.C.A. § 14-230-103)
  - Civil Service commission (A.C.A. § 14-51-201 *et seq.*)

# Creating a Commission, Ex. 1

- Municipal Airport Commission
  - Enact by majority vote of the council;
  - Creating a commission;
  - Of 7 citizens;
  - Who are qualified electors in the state.



# Creating a Commission, Ex. 1

- Additional Requirements
  - 1 must be fully experienced in aviation
    - Means: Holding a pilot's license
    - BUT: City may waive, if no pilot is willing or able to serve.
  - Only 1 may have a financial interest in an aeronautical enterprise while serving.

# Creating a Commission, Example 2

- Parks & Recreation Commission
  - Can consist of 3, 6, or 9 members
    - 1/3 must serve for a term of 1 year
    - Another 1/3 must serve for a term of 2 years
    - The last 1/3 must serve for a term of 3 years
  - BUT, replacement members serve 3 year terms

# Creating a Commission, Example 2

- Initial appointees are named by the council
  - BUT, successor members are selected *by the remaining members of the commission.*
  - Members only need to be a qualified elector
    - They do not have to be a resident of the municipality
  - They cannot be paid for their service.

# Creating a Commission, Example 3

- **Civil Service Commission**
  - By ordinance, “name five (5) upright and intelligent citizens of [your city].”
  - Terms of Office:
    - 1 until first Monday in April of 2<sup>nd</sup> year
    - 1 until first Monday in April of 4<sup>th</sup> year
    - 1 until first Monday in April of 6<sup>th</sup> year
    - 1 until first Monday in April of 8<sup>th</sup> year
    - AND, 1 until first Monday in April of 10<sup>th</sup> year
  - Can add two more, *see* ACA § 14-51-201

# Creating a Commission, Example 3

- Requirements
  - Must be citizens of Arkansas
  - Residents of the city for more than 3 years
  - Qualified electors of the city at all times during service
  - Cannot hold, or be a candidate for, political office

# Commissions

- **STEPS FOR UNDERSTANDING YOUR COMMISSION:**
  - Always start with the relevant state statute.
  - Then read the ordinance.
  - Then read the commission minutes.
  - Then discuss with chair or other relevant folks.

# Committees (and departments)

- Cities of the First Class (ACA § 14-58-301)
  - City council may appoint 1 or more committees, to be composed from its membership
  - May also create 1 or more departments, fixing compensation and manner of employment
    - BUT, watch out: ultimately departments & compensation are only within the mayor and/or the council's authority and NOT a committee's.

# Committees (and departments)

- City Administrator Cities (ACA § 14-48-117(5)(B))
  - Board may appoint 1 or more committees to be selected from its membership
  - Can also create any new office or department
  - Appointed person to the new office or department reports to city administrator.
    - AGAIN, watch out: Some departments can only be created by the Board.
    - NOT a committee.



# Committees (and departments)

- City Manager Cities (ACA § 14-47-131(a)(1))
  - Board may create:
  - Departments
  - Offices
  - Employment positions
  - Boards
  - Authorities
  - Commissions
  - Agencies
  - NOTE: committee's are NOT mentioned.

# Committees

- Remember, these are created locally.
  - Find the writings that created them.
  - If there aren't any, draft some!

# Committees

- Several AG's opinions that you should read:
  - 95-195: Creation of committees is a legislative function
  - 95-248: In a city manager form of government, service of a board member on a committee is generally disfavored; they cannot serve on a committee that exercises ministerial or administrative powers (which almost all committees do).

# Committees

- Several AG's opinions that you should read:
  - *2004-198*: Committee cannot be used to hire Chief of Police, or to determine the Chief's salary – those responsibilities are left to the mayor and the city council, respectively.
  - *2009-138*: Mayor may veto council's creation of a commission by ordinance.

# Committees

- Committees are advisory only.
  - Cannot vest them with powers contra to state law (i.e.: council sets budget, can't vest that power in a committee).
  - Also, in all likelihood your committees have been subject to the home rule issue previously discussed.

# Committees

- Must keep legislative exclusivity (Council/Board v. Committee's) and not go outside that scope, regardless of home rule.
  - Again, it's critical that the council/board have established the make up and duties of the committee system.

# Committees

- To summarize, they are...
- Bodies created to:
- Study
- And make  
recommendations to the  
legislative body

# The End!

- Thanks for your attendance...
  - And good questions.
  - We're honored to represent you!
- 
- Mark R. Hayes
  - [mhayes@arml.org](mailto:mhayes@arml.org)
  - 501-978-6102



# CITY GOVERNMENT 101

APRIL 4, 2018

THE FOIA

12:45 to 2:15

# FREEDOM OF INFORMATION ACT

Presented By:

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# Brief Introduction to FOIA

- Act 93 of 1967
- *“It is vital in a democratic society that public business be performed in an open and public manner* so that the electors shall be advised of the *performance of public officials and of the decisions that are reached* in public activity and in making public policy. A.C.A. section 25-19-102.

# Brief Introduction to FOIA

- And there's more...
- “Toward this end, this chapter is adopted, making it possible for them or their representatives *to learn and to report fully the activities of their public officials.*” A.C.A. section 25-19-102.

# Them?

- Me...
- You...
- Us...
- The press...
- Arkansas citizens...
- ***INCLUDING THOSE YOU DON'T LIKE AND POLITICAL OPPONENTS.***

## Costs, Attorney Fees Given in FOIA Case

By STAFF REPORT

Friday, April 30, 2010

FAYETTEVILLE — A judge has ruled Washington County Coroner Roger Morris must pay \$2,500 in costs and attorney fees for failing to respond to an Arkansas Freedom of Information Act request in time. County Attorney George Butler said the county will pay the fees and costs because Morris was acting in his official capacity. Dallas Hale filed a civil law suit claiming the Arkansas Medical examiner's Office, Washington County Sheriff's Office and Morris took too long to comply with his requests for information about the death, subsequent investigation, a later exhumation and autopsy of his late son, Denver "Barry" Hale. Barry Hale died Sept. 8, 2005, when his motorcycle ran off Habberton Road near Goshen.

Hale sent FOIA requests to all three entities then sued on Sept. 11 when he didn't get the documents, photographs and reports in what he considered a timely manner. Washington County Circuit Judge Doug Martin ruled the sheriff's office responded in a reasonable amount of time. The Arkansas State Crime Lab, a state agency, is not liable for attorney fees or litigation costs, Martin ruled. Morris, who was a part-time employee at the time, said he was on vacation when Hale's FOIA request was received. When Morris returned, he was overwhelmed with work and didn't respond immediately, he said. "Basically, I forgot," Morris told the judge at a hearing in March. Martin found that had Hale not sued, the documents he requested from Morris would not have been produced in a timely manner.

# 25-19-105 Examination and copying of public records

- (a)(1)(A) *Except as otherwise specifically provided* by this section or by laws specifically enacted to provide otherwise,
- *all public records shall be open to inspection and copying* by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.



## A.C.A. Section 25-19-105(e)

- If a *public record is in active use or storage and therefore not available* at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant
- and *set a date and hour within 3 working days* at which time the record will be available for the exercise of the right given by this chapter.

What if the record is NOT in active use  
or storage?

- **IMMEDIATELY.**
- **Provide immediately.**
- Thus the rule is actually immediately, not three days.

# Clarity...

- The general rule is that ALL...
- ..city records are public. ALL.
- There are several significant exceptions.
- 23 in the FOIA and approximately 47 others in state law.
- But first, some terminology.
- Then we'll discuss meetings. (Hint, the rule there is all as well.)

# FOIA Terminology

*“Custodian”* – the person having administrative control of a public record, NOT a person who holds public records for storage, safekeeping, or data processing. ACA 25-19-103 (1)(A and B)

# “Public records” defined

## 25-19-103(1)

“Public records” means:

writings, recorded sounds, films, tapes, or data  
compilations

*in any form*

*required by law to be kept, and which  
constitute a record of the performance or  
lack of performance of official functions*

*(Note how broad this is...)*

# “Public records” defined

25-19-103(1)

“*which are or should be* carried out by a public official or employee, a governmental agency, or any other agency

*wholly or partially* supported by public funds or expending public funds.

All records maintained in public offices or by public employees within the scope of their employment *shall be presumed to be public records.*

# 25-10-105(b) Exemptions

- (1) State income tax records
- (2) Medical records, scholastic records and adoption records;
- (3) The site files and records maintained by the Arkansas historic Preservation Program of the Department of Arkansas Heritage and the Arkansas Archeological Survey;
- (4) Grand jury minutes;
- (5) Unpublished drafts of judicial or quasi-judicial opinions and decisions;

...continued

**(6) *Undisclosed investigations by law enforcement agencies of suspected criminal activity;***

(7) Unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals, Judges, and the Attorney General;

**(8) *Documents that are protected from disclosure by order or rule of court;***

(9) Files which, if disclosed, would give advantage to competitors or bidders; (including some AEDC records and the like)



# Summary of the 23 Exceptions

**(10) (A)** The identities of law enforcement officers currently *working undercover with their agencies and identified in the Arkansas Minimum Standards Office* as undercover officers. **(B)** Records of the *number of undercover officers and agency lists are not exempt* from this chapter;

# Summary of the 23 Exceptions

- (11) Records containing data used to cause a computer or network to perform security functions, including passwords, pins, transaction authorization mechanisms, and other means of preventing access to computers or networks.
- (12) *Personnel records* to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy;

# Summary of the 23 Exceptions

- (13) *Personal contact information*, including without limitation home or mobile telephone numbers, personal email addresses, and home addresses of nonelected state employees, *nonelected municipal employees*, nonelected school employees, and nonelected county employees contained in employer records, *except that the custodian of the records shall verify an employee's city or county of residence or address on record upon request;*

# Summary of the 23 Exceptions

**(14)** Materials, information, exams, and answers to exams used by boards and commission to test applicants for licensure.

**(15)** Military service discharge records or DD Form 214 filed with the county recorder for veterans discharged from service less than 70 years from the current date;

# Summary of the 23 Exceptions

- (16)** Vulnerability assessments submitted by a public water system on or before June 30, 2004, to the Administrator of the EPA for a period of 10 years from the date of submission;
- (17) (A)** Records containing information relating to any Department of Human Services risk or security assessment related to compliance with the Health Insurance Portability and Accountability Act of 1996 or protection of other confidential department information.

# Summary of the 23 Exceptions

- (18)(A) *Records*, including analyses, investigations, studies, reports, recommendations, requests for proposals, drawings, diagrams, blueprints, and plans containing information relating to security for any *public water system or municipally owned utility system*.
- (B) The records under subdivision (b)(18)(A) include:
  - (i) Risk and vulnerability assessments;
  - (ii) Plans and proposals for preventing and mitigating security risks;

# Summary of the 23 Exceptions

- 18 con't
- (iii) Emergency response and recovery records;
- (iv) Security plans and procedures;
- (v) Plans and related information for generation, transmission, and distribution systems; and
- (vi) Other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect the public water system or municipally owned utility system;

# Summary of the 23 Exceptions

**(19)** Records pertaining to the issuance, renewal, expiration, suspension, or revocation of a license to carry a concealed handgun, or a present or past licensee under 5-73-301 et seq.,

**(20)** *Personal information of current and former public water or municipally owed utility system customers.* (Home/mobile phone numbers, email/home addresses, usage data.)



# Water Exceptions and Exceptions from the Exceptions

- May disclose...
- To the customer, former customer
- Attorney, guardian etc. of customer
- Tenant etc. regarding service termination
- State and Feds research
- Shared billing purposes
- Billing systems

# Summary of the 23 Exceptions

**(21)** Electronic data information maintained by disaster recovery system.

**(22)** Date of birth, home and email address, phone number, and other contact info from county or municipal parks and recreation dept. records of a person under 18 yrs. of age when request made.

**(23)** Information related to taxes collected by particular entities under § 26-74-501 et seq.

# A.C.A. section 25-9-105(b)(12)

- Remember:
- Personnel records are exempted to the extent that disclosure would constitute a *clearly unwarranted invasion of personal privacy.*
- Be careful, it's not what you think.

# What constitutes a clearly unwarranted invasion of personal privacy?

- FOIA does not define the meaning or scope of this phrase.
- Arkansas Supreme Court **utilizes a balancing test, balancing:**
  - The **interest of the public** in accessing the records against
  - The **individual's interest in keeping the records private**. *Young v. Rice*, 308 Ark. 593 (1992).
  - **Public's interest > individual's interest = no clearly unwarranted invasion of personal privacy.**
  - *Byrne v. Eagle*, 319 Ark. 587 (1995): balancing test will be administered using a “common sense” approach.

# Personnel Records: be careful

- ACA 25-19-105 (c)(1) Notwithstanding subdivision (b)(12) of this section, *all employee evaluation or job performance* records, including preliminary notes and other materials, *shall be open to public inspection*
- only *upon final administrative resolution of any suspension or termination proceeding* at which the records *form a basis for the decision to suspend or terminate* the employee *and if there is a compelling public interest in their disclosure.*

# Personnel Records: be careful

- (2) Any personnel or evaluation records exempt from disclosure under this chapter shall nonetheless be made available to the person about whom the records are maintained or to that person's designated representative.
- (3)(A) Upon receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall determine within twenty-four (24) hours of the receipt of the request whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision.

# Personnel Records: be careful

- (B)(i) *If the subject of the records cannot be contacted in person or by telephone within the twenty-four-hour period*, the custodian shall send written notice *via overnight mail to the subject of the records at his or her last known address*. Either the custodian, requester, or the subject of the records may *immediately seek an opinion from the Attorney General*, who, within three (3) working days of receipt of the request, shall issue an opinion stating whether the decision is consistent with this chapter.

# Personnel Records: be careful

- (ii) In the event of a review by the Attorney General, the custodian shall not disclose the records until the Attorney General has issued his or her opinion.
- (C) However, nothing in this subsection shall be construed to prevent the requester or the subject of the records from *seeking judicial review* of the custodian's decision or the decision of the Attorney General.



# Other Exceptions...don't release

- *47 other exceptions* found in Arkansas law.
- See the list in your packets.

# More Considerations

- (d)(1) Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records shall not be denied to any citizen.
- (2)(A) Upon request and payment of a fee as provided in subdivision (d)(3) of this section, the custodian shall furnish copies of public records if the custodian has the necessary duplicating equipment.
- (B) A citizen may request a copy of a public record in any medium in which the record is readily available or in any format to which it is readily convertible with the custodian's existing software.
- (C) A custodian is not required to compile information or create a record in response to a request made under this section.

# Fees

- (3)(A)(i) Except as provided in [§ 25-19-109](#) or by law, any fee for copies **shall not exceed the actual costs of reproduction**, including the costs of the medium of reproduction, supplies, equipment, and maintenance, **but not including existing agency personnel time** associated with searching for, retrieving, reviewing, or copying the records.
- (ii) The custodian may also charge the **actual costs** of mailing or transmitting the record by facsimile or other electronic means.
- (iii) If the estimated fee exceeds twenty-five dollars **(\$25.00)**, **the custodian may require the requester to pay that fee in advance.**
- (iv) **Copies may be furnished without charge** or at a reduced charge if the custodian determines that the records have been requested primarily for noncommercial purposes and that waiver or reduction of the fee is in the public interest.
- (B) The custodian shall provide an **itemized breakdown of charges** under subdivision (d)(3)(A) of this section.

# The Redaction Tool...Sharpie!

- (f)(1) No request to inspect, copy, or obtain copies of public *records shall be denied on the ground that information exempt from disclosure is commingled with nonexempt information.*
- (2) Any *reasonably segregable portion* of a record shall be provided after deletion of the exempt information.
- (3) The amount of information deleted shall be indicated on the released portion of the record and, if technically feasible, at the place in the record where the deletion was made.
- (4) *If it is necessary to separate exempt from nonexempt information in order to permit a citizen to inspect, copy, or obtain copies of public records, the custodian shall bear the cost of the separation.*

# Computers and Such

- (g) Any computer hardware or software acquired by an entity subject to [§ 25-19-103\(7\)\(A\)](#) after July 1, 2001, **shall be in full compliance with the requirements of this section** and shall not impede public access to records in electronic form.

# Settlements!

- 
- (h) Notwithstanding any Arkansas law to the contrary, at the conclusion of any investigation conducted by a state agency in pursuit of civil penalties against the subject of the investigation, *any settlement agreement entered into by a state agency shall be deemed a public document* for the purposes of this chapter. However, the provisions of this subsection shall not apply to any investigation or settlement agreement involving any state tax covered by the Arkansas Tax Procedure Act, [§ 26-18-101 et seq.](#)

# PUBLIC RECORDS

*Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004)

- The definition of “public record” under the FOIA is not dependent upon who keeps the record or where it is kept—just that it either is required to be kept or is otherwise kept.



# PUBLIC RECORDS

*McMahan v. Board of Trustees of the University of Arkansas*, 255 Ark. 108, 499 S.W.2d 56 (1973)

The act does not itself provide that any particular records shall be kept.

(A word of caution...you are not required to create a record in order to comply with a request!)



# PUBLIC RECORDS

The FOIA should be *broadly construed* in favor of disclosure

*Scott v. Smith*, 292 Ark. 174, 728 S.W.2d 515 (1987)

“Under the rules of evidence now in effect, there is no exception for the attorney client privilege concerning state-agency records in the possession of its attorney, and such records are subject to public disclosure.”

(A word of caution...the high court has also said that there is no attorney work product privilege either!)

# PUBLIC RECORDS

INTENT: the intent behind the FOIA contemplates that a corporation doing business in this state is a party entitled to information.

*Arkansas Hwy. Transp. Dept. v. Hope Brick Works. Inc.*, 294 Ark. 490, 744 S.W.2d 711 (1988)

“A representative of a corporation is entitled to receive any information that any other person would be entitled to receive pursuant to the FOIA.”

(For those of you really interested...in *Edmark (covered in a later slide)*, the court applied this rule to a private attorney representing a city. What remains unclear in the law is when a tax dollar ceases being a tax dollar. For example public money paying an insurance premium and attorneys hired by the private carrier. Public or private files?)

# PUBLIC RECORDS

For a record to be subject to the FOIA and available to the public, it must be:

*Nabholz Const. Corp. v. Contractors for Public Protection Assn.*,  
371 Ark. 411, 266 S.W.3d 689 (2007).

1. Possessed by an entity covered by the FOIA
2. Fall within the FOIA's definition of a "public record"
3. Not be exempted by the FOIA or other statutes

# PUBLIC RECORDS

Pulaski County v. Arkansas Democrat Gazette, Inc.,  
370 Ark. 435, 260 S.W.3d 716 (2007):

“Possession of a public document does not alone make it a public document available for inspection under the FOIA.”

# PUBLIC RECORDS

*McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989)

- “Public records” are those *required by law to be kept or otherwise kept and that constitute a record of the performance or lack of performance of official functions.*
- The *constitutional right to privacy* can supersede the disclosure requirements of the FOIA under a balancing test.
- The court will *balance* the individual’s privacy interest in nondisclosure against the governmental interest in disclosure under the FOIA.

# PUBLIC RECORDS

*Martin v. Musteen*, 303 Ark. 656, 799 S.W.2d 540 (1990)

Records that are part of an open and ongoing law enforcement investigation are protected as “undisclosed investigations” under the FOIA

*Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (1991)

Not all documents connected with law enforcement are sufficiently investigative in nature to fall within the exemption for “undisclosed investigations.”

The Jail log, arrest records and shift sheets of the police department are not records containing undisclosed law enforcement investigations and are therefore subject to disclosure under the FOIA.

The department’s records must be available for reasonable inspection by the public at all times during hours of operation.

# PUBLIC RECORDS

*Bradford v. Director*, 83 Ark. App. 332, 128 S.W.3d 20 (2003)

E-mails transmitted between a state employee and the Governor that involved the public's business are subject to inspection and copying under the FOIA, **regardless of whether they were transmitted to private e-mail addresses** through private internet providers or sent to an official government e-mail address

# PUBLIC RECORDS

*Depoyster v. Cole*, 298 Ark. 203, 766 S.W.2d 606 (1989)

The use of unsigned written slips as ballots that were not retained as part of the records of the Arkansas Activities Association, a state organization, violated the FOIA in part because the Association's normal **policy was to retain ballots.**

The **recorded votes of the individual members of the organization constitute a record of the performance of or lack of performance** of official functions carried out by the organization and, as such, are open to inspection and copying



# PUBLIC RECORDS

Waterworks v. Kristen Investment Properties, 72 Ark. App. 37, 32 S.W.3d 60 (2000)

The FOIA applies to a **privately-owned water system** that serves the public purpose of providing water service under a publicly funded contract.

# PUBLIC RECORDS

Records in the possession of a city's retained attorney, who was hired in lieu of the city attorney, are subject to disclosure under the FOIA.

Attorney's retained for the city in lieu of the regular city attorney are the functional equivalent of the regular city attorney, and the city cannot avoid the FOIA requirements by substituting a private attorney for the city attorney.

*City of Fayetteville v. Edmark*, 304 Ark. 179, 801 S.W.2d 275 (1990)

“Legal memoranda prepared by outside counsel for the city for litigation purposes were public records within the meaning of the FOIA.”

# PUBLIC RECORDS

*Swaney v. Tilford*, 320 Ark. 652, 898 S.W.2d 462 (1995)

“The FOIA requires that state agency to arrange for reasonable access to public records, notwithstanding the agency’s contention that the records are not in its actual or constructive possession or control.”

# PUBLIC RECORDS

*Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992)

- In determining whether personnel records are exempt from disclosure under Ark. Code Ann. § 25-19-105(b)(12), the court will weigh the public interest in the requested records against the affected individuals' privacy interest in withholding them.
- Revealing "intimate details" of a person's life gives rise to a substantial privacy interest.

*Stilley v. McBride*, 332 Ark. 306, 965 S.W.2d 125 (1998)

- In considering the "public interest" prong of the balancing test, the court will examine the degree to which release of the information would keep the citizens advised of the performance of their public officials.

# Open Public Meetings

25-19-106

- (a) Except as otherwise specifically provided by law, **all meetings, formal or informal, special or regular, of the governing bodies of all municipalities...shall be public meetings.**
- (b) (1) The time and place of each regular meeting shall be furnished to anyone who requests the information.  
(2) In the event of **emergency or special meetings**, the person calling the meeting shall notify newspapers, radio stations, and television stations ...**two hours** before the meeting takes place...

# Open Public Meetings

25-19-106

- (c)(1)(A) Except as provided under subdivision (c)(6) of this section, an *executive session will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation* of any public officer or employee.
- (B) The *specific purpose of the executive session shall be announced* in public before going into executive session.

# Executive Sessions: who attends?

25-19-106

- (2)(A) Only the person holding the *top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present* at the executive session when so requested by the governing body, board, commission, or other public body holding the executive session.
- (B) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission, or other public body holding the executive session.

# Executive Sessions: vote?

25-19-106

- (3) Executive sessions must never be called for the purpose of defeating the reason or the spirit of this chapter.
- (4) *No resolution, ordinance, rule, contract, regulation, or motion considered or arrived at in executive session will be legal* unless, following the executive session, *the public body reconvenes in public session and presents and votes* on the resolution, ordinance, rule, contract, regulation, or motion.



# Executive sessions

- “Any meeting of a governing body would need to be open to the public, unless the meeting qualified as an “**executive session**” called to consider personnel matters recited at A.C.A. section 25-19-106(c). Ark. Op. Att’y. Gen. No. 2001-363.
- Executive session, undefined by FOIA – “a meeting held to consider personnel matters regarding a particular employee.” Ark. Op. Att’y. Gen. No. 97-310.

# Executive sessions

- According to A.C.A. 25-19-106(c)(5), executive sessions may also be held for the purpose of “preparing examination materials and answers to examination materials” administered to applicants for licensure from state agencies.
- No Attorney General Opinions or cases have addressed this statutory section.

# Executive session rules

- 1. “Permitted *only* for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee.”
  - Ark. Op. Att’y. Gen. No. 2009-077: “only for the purpose of” precedes a list of grounds, and that list of grounds is therefore *exhaustive*.
  - Same opinion: “employment” means “hiring” only.
- 2. “The specific purpose of the executive session shall be announced in public before going into executive session.”

# Executive session rules

- 3. Who may attend executive sessions?
  - The governing body itself;
  - The person holding the top administrative position in the department;
  - The employee's immediate supervisor; &
  - The employee.
- 4. No resolutions, ordinances, rules, contracts, regulations, or motions may be passed in executive session without subsequently being put to a public vote.

# Public Meeting: 2? Quorum?

ACA 14-43-501 tells us a quorum of the council is necessary *for a meeting.*

Long debated for purposes of the FOIA.

Perhaps not.

*Perhaps* the answer is simple: a quorum is a quorum in municipal government.

*If a statute is silent, read in conjunction with another more specific statute.*

# PUBLIC MEETINGS

*Laman v. McCord*, 245 Ark. 401, 432 S.W.2d  
753 (1968)

- ❖ Statutes enacted for the public benefit are to be **construed most favorably to the public.**
- ❖ The FOIA was passed wholly in the public interest and is therefore **to be LIBERALLY interpreted in the public's favor**
- ❖ The FOIA states that “except as otherwise specifically provided by law, all meetings...of the governing bodies of all municipalities... **shall be public meetings.**”
- ❖ No law “specifically” exempts meetings between the city council and the city attorney from the FOIA’s public meetings rules.

# PUBLIC MEETINGS

*Arkansas Gazette Company v. Pickens, 258 Ark. 69, 522 S.W.2d 350 (1975)*

When a **committee of a board or commission** that is subject to the FOIA meets to conduct business, **the meeting is a public meeting** and subject to the FOIA.

**Members of the news media** are interested parties and **have standing to institute a declaratory-judgment** action to enforce the FOIA.

# PUBLIC MEETINGS

*Mayor and City Council of El Dorado v. El Dorado Broadcasting Co.*,  
260 Ark. 821, 544 S.W.2d 206 (1976)

- ❖ A group meeting of the members of a city council, **even if less than a quorum, is subject to the FOIA if members of the council discuss or take action on any matter on which foreseeable city-council action will be taken.**
- ❖ The act covers informal, unofficial group meetings for the discussion of governmental business.



# PUBLIC MEETINGS

*Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004)

One-on-one discussions between a city administrator and city board members to **approve** a proposed real estate purchase violated the FOIA's open meeting requirements.

# PUBLIC MEETINGS

*North Central Association of Colleges and Schools v. Troutt Brothers,*  
261 Ark. 378, 548 S.W.2d 825 (1977)

The meetings of the Arkansas State Committee of the North Central Association of Colleges and Schools,  
a private nonprofit organization:

- are subject to the FOIA because the Association's state committee is composed of public servants,
- has its official situs and operation in a publicly owned facility, and
- is supported wholly or in part with public funds.

# PUBLIC MEETINGS

*Baxter County Newspapers, Inc. v. Medical Staff of Baxter General Hospital*, 273 Ark. 511, 622 S.W.2d 495 (1981).

The FOIA allows the board of publicly supported agency (i.e., county hospital board), or committee of a publicly funded agency to discuss or **consider a personnel issue in an executive session**. However, testimony and voting on the issue must be done in public session. **(CAUTION: see page 13!)**

# PUBLIC MEETINGS

*Rehab. Hosp. Services Corp. v. Delta Hills Health Systems Agency and Flener*, 285 Ark. 397, 687 S.W.2d 840 (1985).

“A nonprofit regional health-planning corporation that received its primary funding from the federal government was subject to the FOIA and violated its open meeting requirements when it reconsidered an official action by conducting a telephone poll of members of the executive committee.”

# QUESTIONS AND ANSWERS

Q. Who is Subject to the FOIA?

A. All governmental entities are subject to the FOIA. And a private entity is subject to the FOIA if it receives public funds and is intertwined with the activities of government

Q. Who may obtain records?

A. “Any citizen of the State of Arkansas” may inspect and copy public records. “Citizen” includes corporations.

Q. What records are subject to the act?

A. Any record “required by law to be kept or otherwise kept and that constitutes a record of the performance or lack of performance of official functions” is a public record.

**Note:** “all records maintained in public offices or by public employees within the scope of their employment are presumed to be public records.”

# QUESTIONS AND ANSWERS

Q. What records are exempt from disclosure?

A. The FOIA lists **18 specific exemptions**, plus a catch all exemption that incorporates the confidentiality provisions of other statutes.

Q. How does one request records?

A. The request should be directed to the **“custodian of the records.”** **It need not be in writing**, though written request is advisable, because it provides a record if litigation becomes necessary. The request must be specific enough for the custodian to locate the records with reasonable effort.

Q. Does the request have to be made in person?

A. **No.** It can be made in person or by telephone, fax, mail, e-mail, or via the Internet if the custodian has created an on-line form for that purpose.

# QUESTIONS AND ANSWERS

Q. When must the agency respond?

A. Records must be made available immediately unless in active use or storage, in which case they must be made available within three working days of the request.

Records for personnel records and employee evaluation records must be acted upon within 24 hours of the custodian's receipt of the request.

Q. Is the Custodian required to furnish copies of public records?

A. Yes, for a fee, if the custodian has the necessary duplicating equipment.

# QUESTIONS AND ANSWERS

Q. Is the Custodian required to mail the copies?

A. **Probably yes**, although this is not entirely clear under the act.

Q. What fee may be charged?

A. Copy charges cannot exceed actual reproduction costs and the custodian must provide an itemized breakdown of the charges. The charges can include actual costs of mailing or faxing or e-mailing the records.

Q. Can the Custodian require that the fee be paid in advance?

A. Yes, if the estimated copy fee exceeds \$25.00



# QUESTIONS AND ANSWERS

Q. Can the Custodian waive the fee?

- A. Yes, if the custodian determines that the records are requested primarily for noncommercial purposes and that the waiver is in the **public interest**

Q. Who may attend public meetings?

- A. Because meetings “shall be public,” **any person may attend.**

Q. What is a meeting?

- A. Any meeting, formal or informal, regular or special, of a governing body need not be present for the meeting to be subject to the FOIA.

**If two members meet informally to discuss past or pending business, that meeting may be subject to the FOIA.**

# QUESTIONS AND ANSWERS

Q. What meetings are exempt from the FOIA?

A. An **executive session** may be held “for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee.”

In contrast, an executive session to consider general salary matters, an across the board pay increase, or the overall performance of employees as a group is **not permissible**.

An executive session may also be held by state licensing boards and commissions “for purposes of preparing examination materials and answers to examination materials,” and for “administering examinations.”

# QUESTIONS AND ANSWERS

Q. Is violation of the FOIA a criminal offense?

A. A person who “negligently violates” the FOIA is guilty of a Class C misdemeanor.

In addition, if the FOIA is not complied with, a person may petition the circuit court for an order of compliance, and if the plaintiff prevails, the defendant will be liable for reasonable attorney’s fees and litigation expenses.

# FOIA Requests: Helpful to Us

- Be specific in your request!
  - Describe as specifically as possible the records that you are seeking.
  - You don't need to know the name or title of a document, but provide a reasonable enough description that government employees can identify the records that you want.
- Note-
  - Agencies are not required to create a record in response to your request, but must only provide existing records. A.C.A § 25-19-105(d)(2)(C)

# Questions

- Must an FOI request be made either in person or in writing? No.
- A.C.A. section 25-19-105(a)(2)
  - (A) A citizen may make a request to the custodian (person having administrative control of a record) to inspect, copy, or receive copies of public records.
  - (B) The request may be made **in person, by telephone, by mail, by facsimile transmission, by electronic mail, or by other electronic means provided by the custodian.**

# Questions

- Do arrest reports, jail logs, and shift sheets that are maintained by a police department qualify for FOIA exemption?
  - No –Not listed in FOIA as exemptions in section 105(b)(6).
  - *Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (Ark. 1991) – these records are not exempt from disclosure because they are not “**sufficiently investigative in nature**” to qualify for the exemption.
  - Confirmed by Ark. Op. Att’y. Gen. No. 2002-188.

# Questions

- Does internal work product containing details of an investigation such as an officer's speculations and views on a suspect's guilt, credibility of witnesses, informant statements, ballistic reports, or laboratory tests, qualify for FOIA exemption?
  - Yes – see Ark. Op. Att'y. Gen. No. 2006-094: "Incident reports are not **sufficiently investigative** to qualify for the 'undisclosed investigation' exemption unless they contain information such as . . . Officers' speculations of a suspect's guilt, officers' views as to the credibility of witnesses, statements by informants, ballistics reports, fingerprint comparisons, or blood and other laboratory tests."

# Questions

- May an FOIA request be denied where sufficient non-releasable information is commingled with otherwise releasable information?
- No. See A.C.A. section 25-19-105(f):
  - (1) **No request** to inspect, copy, or obtain copies of public records **shall be denied** on the ground that information exempt from disclosure is commingled with non-exempt information.
  - Ark. Op. Atty. Gen. No. 2006-094: “It is [the custodian’s] responsibility to make a determination as to which, if any, portions of the record fall, as a factual matter, within the exempt types of information described above”
  - Ark. Op. Atty. Gen. No. 2006-189: “The proper approach, in my opinion, is to release the non-exempt information after redacting any information that is exempt from disclosure.”



Thank you!

Any questions?

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## **FOIA Exceptions in the Act**

Currently, there are twenty-three listed exceptions to the public records provision of the Arkansas Freedom of Information Act, located at Ark. Code Ann. § 25-19-105(b)(1)-(23). These exceptions are not absolute and require analysis before using them to deny any FOIA request. Particularly, those public records which contain personal information, sensitive data, or other confidential information should be reviewed thoroughly with the law and related Attorney General opinions before releasing or withholding the information.

## **Other Statutory Exceptions**

As of now, there are approximately forty-seven (47) exceptions to the Arkansas Freedom of Information Act, which are located outside Ark. Code Ann. § 25-19-105. These are constantly changing so ensure you're using the most current version of the statutes before relying upon one of the exceptions.

Ark. Const., amend. 98, §§ 5 and 10 (Application or renewal and supporting information and dispensary records of a qualifying patient under the Arkansas Medical Marijuana Amendment)

Ark. Code Ann. § 5-55-104 (Records of Medicaid recipients)

Ark. Code Ann. §§ 5-64-1104 to -1112 (Sale records of certain pharmaceutical products)

Ark. Code Ann. § 5-73-325 (Security plans of firearm-sensitive areas)

Ark. Code Ann. § 6-15-503 (Notice information regarding home-schooled children provided to local school district superintendents)

Ark. Code Ann. §§ 6-15-1304, 6-61-139 (Records or information regarding security or emergency plans of public schools and institutions of higher education)

Ark. Code Ann. § 6-15-2909 (Personally identifiable information of student test-takers under the Arkansas Educational Support and Accountability Act)

Ark. Code Ann. § 6-17-2804 (Raw Teacher Excellence and Support System data reported to and collected by the Dept. of Education)

Ark. Code Ann. § 9-9-217 (Uniform Adoption Act)

Ark. Code Ann. § 9-9-506 (Voluntary adoption registry)

Ark. Code Ann. §§ 9-27-309<sup>1</sup> and 9-28-217 (Confidentiality of juvenile records)

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<sup>1</sup> A portion of this law replaced § 9-27-352, which has been repealed.

Ark. Code Ann. § 9-28-208 (Court's report on juvenile committed to Division of Youth Services)

Ark. Code Ann. § 10-3-305 (Records of Legislative Council)

Ark. Code Ann. § 10-4-422 (Working papers of Division of Legislative Audit)

Ark. Code Ann. § 11-10-314 (Certain records of Employment Security Division)

Ark. Code Ann. § 11-10-902 (Information gathered by the state new-hire registry)

Ark. Code Ann. § 12-6-601 (Records that depict or record the death of a law-enforcement officer)

Ark. Code Ann. § 12-8-108 (Security and emergency information concerning the Governor's Mansion and mansion grounds)

Ark. Code Ann. § 12-12-211 (Arkansas Crime Information Center)

Ark. Code Ann. § 12-12-312 (State Crime Laboratory) Ark. Code Ann. § 12-18-104 (Records concerning child abuse investigations);

Ark. Code Ann. § 12-12-913 (Sex and Child Offender Registration Act of 1997)

Ark. Code Ann. § 12-12-1003(e), (provides that criminal history information collected and maintained by ACIC is not considered public record information within the intent and meaning of the FOIA).

Ark. Code Ann. § 12-14-109 (Certain information related to State Capitol Police)

Ark. Code Ann. § 12-27-148 (Dept. of Community Correction Emergency Preparedness Manual)

Ark. Code Ann., title 12, ch. 75, note 1 (Homeland Security Information Act; expires July 1, 2019)

Ark. Code Ann. § 14-2-102 (Military Service Discharge Record, i.e., "DDForm 214s")

Ark. Code Ann. § 14-14-110 (County privacy statute)

Ark. Code Ann. § 14-15-304 (Coroner's investigation records)

Ark. Code Ann. § 16-10-404 (Records of Judicial Discipline and Disability Commission)

Ark. Code Ann. § 16-32-111 (Confidentiality of juror information)

Ark. Code Ann. § 16-46-105 (Records and meetings of hospital medical staff or medical peer review committees)

Ark. Code Ann. § 16-85-408 (Indictment issued against person not in confinement)

Ark Code Ann. § 17-12-508 (Confidential documents of licensed certified public accountants undergoing peer review)

Ark. Code Ann. § 17-95-104 (Reports of physician misconduct submitted to State Medical Board)

Ark. Code Ann. § 20-9-304 (Certain records of State Board of Health)

Ark. Code Ann. § 20-14-506 (Personally identifiable information in program for handicapped children)

Ark. Code Ann. § 20-15-203 (Arkansas Regional Cancer Registry)

Ark. Code Ann. § 20-16-207 (Certain records of Arkansas Reproductive Health Monitoring System)

Ark. Code Ann. §§ 20-16-501, 504 (Venereal disease records of Dept. of Health's Division of Health Maintenance)

Ark. Code Ann. §§ 20-18-304, 305 (Birth certificates, death certificates, other vital records)

Ark. Code Ann. § 20-46-103 (Certain records of State Board of Health, Arkansas Medical Society used in medical research)

Ark. Code Ann. § 20-46-104 (Certain records of State Hospital)

Ark. Code Ann. § 23-61-205 (Examination report of Insurance Commissioner)

Ark. Code Ann. § 26-18-303 (Confidential tax records)

Ark. Code Ann. §§ 27-19-501, 510 (Accident report filed by driver)

Ark. Code Ann. §§ 27-50-906, 907 (Abstracts of driver's record)

Ark. Sup. Ct. Administrative Order No. 19 (Governing access to court records)

## Steps to Pass an Ordinance, Waive the Three Readings, and Enact an Emergency Clause

### **Introduction**

Cities and towns have both the power to pass ordinances concerning municipal affairs and the related ordinances within their police power. With respect to the first of these powers, the Legislature has authorized cities and towns to enact provisions concerning municipal affairs, provided that they do not conflict with state law. “Municipal affairs” comprise “all matters and affairs of government germane to, affecting, or concerning the municipality or its government[.]” Ark. Code Ann. § 14-43-601.

Ark. Code Ann. 14-55-202 requires all “bylaws and ordinances of a general or permanent nature” to be read on three different days. This “rule” may be suspended however, by a two-thirds vote of the council. For example, four votes on a six-member council, or three votes on a four-member council. If the council votes to suspend the three readings, then the council may then proceed to vote on whether to pass the ordinance at the same meeting.

However, the reading requirement can be waived individual for the first, second, or third reading, and can be waived so that only the title of the ordinance is read. This places some pressure on the mayor to articulate and reiterate what exactly the council member is proposing when they make a motion to waive the reading requirement. For example, one might say “I move to waive the reading requirement” and the mayor could follow-up with “Is the motion to waive all the readings, the second and third reading, or to waive the reading of the complete ordinance and only read the title?” These are some considerations you should bear in mind at your next meeting.

An emergency clause is used when the council wants an ordinance to take effect immediately and is authorized by the Arkansas Constitution, art. 5 sec. 1, “Emergency.” In order to understand why this may be necessary, we need to understand the law pertaining to effective dates of ordinances. When an ordinance is passed without an emergency clause, it will go into effect after the last day allowed for the filing of a referendum petition on the ordinance. The time allowed for filing a referendum petition on a municipal ordinance is customarily set by a city ordinance and can be not less than 30 days nor more than 90 days after the passage of any ordinance. If the city does not have an ordinance setting the time limit for filing a referendum petition, any ordinance passed without an emergency clause will go into effect after 90 days is allowed for filing a referendum petition, or on the 91st day. Ark. Const. Art. 5 § 1; Ark. Code Ann. §14-55-203; Clark v. Mahan, 268 Ark. 37, 594 S.W.2d 7 (1980); Paving Dist. No. 36 v. Little, 170 Ark. 1160, 282 S.W. 971 (1926).

As the above paragraphs indicate, there are three (3) votes a city council should contemplate: 1) a reading requirement vote, 2) a vote on the ordinance itself, and 3) a vote on the emergency clause. Below you will find a check list to help guide you through the process of passing an ordinance.

## Steps to Passing an Ordinance

1. The mayor, or other presiding officer if the mayor is absent, introduces the ordinance.
  - a. Discussion of the proposed ordinance should follow.
2. Motion to put the proposed ordinance on its first reading.
  - a. If the first reading, or all readings are waived, move to Step 3.
  - b. If moved and seconded, after any discussion, vote to place the ordinance on its first reading.
  - c. Read the proposed ordinance for the first time.
  - d. Remember that the proposed ordinance still requires two more readings on separate days, unless waived at Step 3.<sup>1</sup>

*(Go to Step 3 to waive the reading requirement, otherwise continue to Step 4.)*

3. Motion to suspend the rules and to waive reading requirements. Remember all the readings maybe waived, individual readings could be waived (first, second, or third reading waived), or the motion could waive the reading except for the ordinance title.
  - a. If the motion receives a second, then discussion should follow.
  - b. Next, vote on waiving the reading requirement (remember this requires a 2/3 vote to pass).
4. After the third reading, or the reading requirement is waived:
  - a. A motion and second to adopt the proposed ordinance as read.
  - b. A final vote on adopting the ordinance.

*(Only proceed to Step 5 to adopt an Emergency Clause.)*

5. Motion to Adopt Emergency Clause.
  - a. Second.
  - b. Discussion.
  - c. Vote (remember this vote requires 2/3 of the entire council, and the mayor may not vote.)<sup>2</sup>

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<sup>1</sup> The statute which allows to waive the reading requirement does not specifically require a first reading. The statute allows the municipality to waive all of the readings, however, it is good practice to read the ordinance at least one time so that the public is aware of the full-breadth of the ordinance prior to its adoption.

<sup>2</sup> In order to have a valid emergency clause, art. 5 sec. 1 requires that the following requirements must be met:

- a. An emergency clause must be “necessary for the preservation of the public peace, health and safety.”
- b. The necessity for immediate effectiveness must be separately stated in one section (the “emergency clause.”)
- c. A two-thirds roll call vote of the council is required to pass the measure.
- d. The mayor may not vote on the emergency clause. Ark. Op. Atty. Gen. 96-155; *see Thompson v. Younts*, 282 Ark. 524 (1984) (language in constitution referring to vote of elected members of the council excludes mayor, who is an ex officio member);
- e. The emergency clause must state the facts which constitutes such emergency.
- f. An emergency shall not be declared on any franchise or special privilege or act creating any vested right or interest.
- g. If a citizen’s referendum is filed against any emergency measure such measure shall be a law until it is voted upon by the people, and if it is then rejected by a majority of the electors voting thereon, it shall be thereby repealed.

# Professional Development Classes Offered by the League

## Defensive Driving:

For municipalities who are members of the AML Vehicle Program

1. Defensive Driving for Municipal Police Officers (Presented @ League Headquarters, can train 2-5 officers at a time, usually less than 3 hours).
  2. Defensive Driving for Non-Police Municipal Employees (Presented @ Your City, can train up to 30 at a time, about 2 hours long).
- Objectives :
    - Facilitate situational awareness
    - Eliminate distracted driving
    - Reinforce positive driving habits



# Professional Development Classes Offered by the League

## Respect and Understanding:

This is about 3-4 hours long

- Objectives :
  - Leadership Class.
  - Develop cultural awareness of yourself and others.
  - Help create inclusive work environment and provide bias-free service in in your municipality.
  - Help your employees develop better communication and conflict management skills.





# Professional Development Classes Offered by the League

Providing Exceptional Customer Service in the Arkansas  
Municipal Workplace:

This is about 2 hours long

- Objectives :
  - Leadership class.
  - Improve listening skills to facilitate greater understanding, communication, and customer service.
  - Understanding the importance of first impressions.
  - Identify strategies to effectively and respectfully handle and meet the needs of customers even in difficult situations.



# Professional Development Classes Offered by the League

## Helping Prevent Violence in the Arkansas Municipal Workplace

This is about 2 hours long

- Objectives :
  - Impact of Workplace Violence.
  - What is Workplace Violence?
  - Why Does Workplace Violence Happen?
  - What Can I Do to Help Prevent Violence in My Municipal Workplace?
  - Active Shooter Prevention.



# Professional Development Classes Offered by the League

## Arkansas Municipal League's Wellness Program #AMLMoves

This is about an hour long

- Objectives :
  - Help make employees aware of lifestyle risk factors.
  - How to improve overall health and wellness with healthier eating habits and exercise.
  - Explain the MHBF wellness benefits.







## Contact Information

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