Overview & Goals:

- Clerks Rule the World!!
- Historical continuity.
- Assist you in identifying legal issues that may require attention.
- Update you on laws that directly impact your job.

Federal Government

- Given its authority entirely from the United States Constitution
- Whatever is not stated in the U.S. Constitution is assumed to belong to the States (Tenth Amendment), therefore the Federal Government shares power with State Governments
- United States Constitution supersedes all other laws
State Government

- Given its authority from the United States Constitution (mainly the 10th amendment)
- Also creates its own authority through State Constitutions
- Every State is allowed to formulate their laws and policies within the boundaries of the U.S. Constitution
- 50 States = 50 different government structures

Typical City/County Roles and Responsibilities

- Roads and Bridges
- Court and Jail Services
- Public Safety (Police/Fire)
- Local Codes (Animal, Noise, Junk Car, etc.)
- Zoning
- Parks and Recreation
Federal Laws

- U.S. Constitution
- U.S. Statutes
- U.S. Rules and Regulations
- U.S. Agency Advisory Opinions

State Laws

- Georgia Constitution
- Georgia Statutes & Jurisdictional Legislation
- Georgia Rules & Regulations
- Georgia Attorney General Opinions
Local Laws

• Ordinances
• Resolutions & Motions
• SOPs/Handbooks/Departmental Operating Rules

IMPORTANT STATE CONSTITUTIONAL PROVISIONS

Home Rule: Ga. Const. Art. 9, §2, ¶I

• O.C.G.A. § 36-5-3(a): The General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly.

• Governing authority authorized to adopt “clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government…”

• “…for which no provision has been made by general law…”

• “…and which are not inconsistent with this Constitution or any Charter provision applicable thereto.”
Amendments to Charters: O.C.G.A. § 36-35-3(b)(1)

- May amend or repeal by ordinance
  - Adopted at 2 regular consecutive meetings
  - Not less than 7 nor more than 60 days apart
  - Notice published once a week for 3 weeks within 60 days preceding final adoption
  - File with Secretary of State

Limits to Home Rule: O.C.G.A. § 36-35-6(a)

- Cannot legislate or amend related to:
  - Composition, form, procedure for election or appointment, continuation in office and limitations thereon for members of the municipal governing authority
  - Action defining any offense, also an offense under the criminal laws of Georgia, providing confinement exceeding six months and fines/forfeitures exceeding $1,000.00

Limits to Home Rule: O.C.G.A. § 36-35-6(a) (Cont.)

- Action adopting any form of taxation beyond that authorized by law or by the Constitution
- Action affecting the exercise of the power of eminent domain
- Action expanding the power of regulation over any business activity regulated by the Public Service Commission beyond that authorized by charter or general law or by the Constitution
- Action affecting the jurisdiction of any court
- Action changing charter provisions relating to the establishment and operations of an independent school system
- Or other areas preempted.
Intergovernmental Contracts:
Ga. Const. Art. 9, §3, ¶I

- Not to exceed 50 years
- Between governmental entities
- Related to facilities or functions the governments are authorized to undertake

Limitation on Local Debt:
Ga. Const. Art. 9, §5, ¶I

- Shall never exceed 10% of assessed value of all taxable property
- Generally incur debt by vote
- Temporary loans authorized

Power to Tax:
Ga. Const. Art. 9, §4, ¶I

- May tax for valid municipal purposes
- May collect business & occupational license taxes & fees in the municipality
Some “Gotta Know” Local Government Rules

Cannot Bind Future Boards:  
O.C.G.A. §36-30-3

• “One council may not, by an ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government.”
• Why does such a restriction make sense?
• Some exceptions:
  ▫ Intergovernmental Agreements
  ▫ Industrial wastewater treatment services (O.C.G.A. §36-60-2) – allows cities and counties to contract for as long as 50 years!
  ▫ Valid multi-year contracts

Multi-Year Lease, Purchase, Lease-Purchase Agreements

• O.C.G.A. §36-60-13
  ▫ Must terminate at close of calendar or fiscal year
  ▫ Automatic renewal unless positive action
  ▫ Total obligation stated
  ▫ Title to any supplies, materials, equipment or personal property shall remain with the vendor until fully paid for by municipality
  ▫ Applies to agreements of “all kind for the acquisition of goods, materials, real and personal property, services, and supplies”
  ▫ Some exceptions (may not result in a cumulative amount of debt loading in excess of 10% of the assessed value of all taxable property within such county or city)
**Ante Litem Notices**

- Claims against the municipality must be presented in writing within 6 months
- Claims against the county must be presented in writing within one (1) year

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**Minutes**

- O.C.G.A. §36-32-24(d): The council shall maintain minutes of its meetings and such other records as it deems necessary.

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**Minutes**

- O.C.G.A. §36-10-1: All contracts entered into by the county governing authority with other persons in behalf of the county shall be in writing and entered on its minutes.
**Minutes**

- While there is no legal requirement for municipalities to ensure that all of their contracts are in writing and entered on their minutes, it is nevertheless a prudent procedure to follow.

**Codification of Ordinances & Resolutions**

- Rule since 2002
- Amendments to the Code of Ordinances shall be incorporated & published at least annually
- Must be made available on the Internet or in the county law library

**Budgets & Audits**

**O.C.G.A. §36-81-1, et seq.**

- Budget must be available to public & media the DAY submitted to governing authority (O.C.G.A. §36-81-5(d))
- Budget must have at least one public hearing – cannot adopt until following meeting
- Act specifically anticipates that the governing authority may hold additional hearings!
- Budget ads cannot be published where legal notices appear
- Audit must be performed each fiscal year, with some exceptions for small municipalities
Registration of Authorities
O.C.G.A §36-80-16

- All authorities must register annually with Department of Community Affairs
- Before January 1st of each year
- If fail to do so, the authority cannot incur new debt

Local Government Efficiency Act
O.C.G.A §36-86-1, et seq.

- Grant program by DCA
- To allow local government to conduct efficiency studies regarding need for consolidation of government units or services, including privatization
- To fund planning of consolidations
- To fund implementation of consolidations
- DCA Rules & Regulations, Ch. 110-5-1

Ethics

- Local Ethics Ordinances
- Code of Ethics for Government Service – O.C.G.A. §45-10-1
O.C.G.A. §45-10-1:

Any person in government service should:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.

II. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.

III. Give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought.

IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

VI. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.

VII. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

VIII. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust.

Records Retention
Uniform Electronic Transactions Act
O.C.G.A. § 10-12-1, et seq.
- Act applies "to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after July 1, 2009."
- "Each governmental agency of the state shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records."
- "If a law requires that a record be retained, such requirements shall be satisfied by retaining an electronic record."
- Must accurately reflect record
- Must remain accessible for retention period required by law

O.C.G.A. § 10-12-2. Definitions
- As used in this chapter, the term:
  - (7) "Electronic record" means: a record created, generated, sent, communicated, received, or stored by electronic means
  - (9) "Governmental agency" means: an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.
  - (10) "Information" means: data, text, images, sounds, codes, computer programs, software, data bases, or the like.

O.C.G.A. § 10-12-2. Definitions (cont.)
- (13) "Record" means: information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (14) "Security procedure" means: a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.
- (16) "Transaction" means: an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.
O.C.G.A. § 10-12-3. Application of chapter; government agency records retention

Note: A governmental agency which is a party to a transaction subject to this chapter shall also be further subject to the records retention requirements for state and local government records established by state law.

O.C.G.A. § 10-12-7. Legal effect and enforceability of electronic record or signature

(a) A record or signature shall not be denied effect or enforceability solely because it is in electronic form.
(b) A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation.
(c) If a law requires a record to be in writing, an electronic record shall satisfy the law.
(d) If a law requires a signature, an electronic signature shall satisfy the law.

O.C.G.A. § 10-12-9. Person electronic record or signature is attributable

• "An electronic record or electronic signature shall be attributable to a person if such record or signature was the act of the person.
• The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to whom the electronic record or electronic signature was attributable."
O.C.G.A. § 10-12-11. Requirement of notarization, acknowledgment, verification, or oath

“If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, such requirement shall be satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.”

O.C.G.A. § 10-12-12. Retention of records

(a) If a law requires that a record be retained, such requirement shall be satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) Remains accessible for the retention period required by law.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a) of this Code section.

(f) A record retained as an electronic record in accordance with subsection (a) of this Code section shall satisfy a law requiring a person to retain a record for evidentiary, audit, or like purposes if the law enacted after July 1, 2009, specifically prohibits the use of an electronic record for the specified purpose.

(g) This Code section shall not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency’s jurisdiction.

O.C.G.A. § 10-12-13. Exclusion of record or signature due to electronic form

“In a proceeding, evidence of a record or signature shall not be excluded solely because it is in electronic form.”
O.C.G.A. § 10-12-17. Agency creation and retention of electronic records; conversion of written records

“Each governmental agency of this state shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.”

O.C.G.A. § 10-12-18. Agency determination of whether to use electronic records and signatures; security considerations

(b): To the extent that a governmental agency uses electronic records and electronic signatures . . ., the governmental agency, giving due consideration to security, may specify:

1. The manner and format in which the electronic records shall be created, generated, sent, communicated, received, and stored and the systems established for those purposes;
2. If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature shall be affixed to the record, and the identity of, or criteria that shall be met by, any third party used by a person filing a document to facilitate the process;
3. Control process and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and
4. Any other required attributes for electronic records which are specified for corresponding non-electronic records or reasonably necessary under the circumstances.

Record Retention


- Must designate a records custodian
- Must establish a records retention schedule that follows the State Archives Division’s standard records retention schedule
- County may retain longer
- May only destroy records per law or it’s a misdemeanor
Record Retention

O.C.G.A. § 50-18-91. Definitions

(1) “Agency” means any state office, department, division, board, commission, authority, or separate unit of state government created or established by law.

(2) “Court record” means all documents, papers, letters, maps, books (except books formally organized in libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in the necessary performance of any judicial function, created or received by an official of the Supreme Court, Court of Appeals, or any inferior state, probate, or magistrate court.

(3) “Court record” includes records of the offices of the judge, clerk, prosecuting attorney, public defender, court reporter, or any employee of the court.

(4) “Records” means all documents, papers, letters, maps, books (except books formally organized in libraries, microfilm, magnetic tape, or other material), regardless of physical form or characteristics, made or received pursuant to law or ordinance or in performance of function by any agency.

(5) “Retention schedule” means a set of disposition instructions prescribing how long, where, and in what form a record series shall be kept.


(a) As used in this Code section, the term:

(1) “Governing body” means the governing body of any county, municipality, or consolidated government. The term includes school boards of this state.

(2) “Office or officer” means any county office or officer or any office or officer under the jurisdiction of a governing body which maintains or is responsible for records.

(b) This article shall apply to local governments except as modified in this Code section.

(c) All records created or received in the performance of a public duty or paid for by public funds by a governing body are deemed to be public property and shall constitute a record of public acts.

O.C.G.A. § 50-18-99. Applicability to local governments (cont.)

(e) Prior to January 1, 1984, each governing body shall approve by resolution or ordinance a records management plan which shall include but not be limited to:

(1) The name of the person or title of the officer who will coordinate and perform the responsibilities of the governing body under this article;

(2) Each retention schedule approved by the governing body; and

(3) Provisions for maintenance and security of the records.

(f) The Secretary of State, through the division, shall coordinate all records management matters for purposes of this Code section. The division shall guide local governments with a list of common types of records maintained together with recommended retention periods and shall provide training and assistance as required. The division shall advise local governments of records of historical value which may be deposited in the state archives. All other records shall be maintained by the local government.
O.C.G.A. § 50-18-102. Disposal of records; liability

(a) All records created or received in the performance of duty and paid for by public funds are deemed to be public property and shall constitute a record of public acts.

(b) The destruction of records shall occur only through the operation of an approved retention schedule. The records shall not be placed in the custody of private individuals or institutions or semiprivate organizations unless authorized by retention schedules.

(c) The alienation, alteration, theft, or destruction of records by any person or persons in a manner not authorized by an applicable retention schedule is a misdemeanor.

(d) No person acting in compliance with this article shall be held personally liable.

How to Read the Schedules

The columns in the schedules are:

- RECORD TITLE: The common name of the records and the information contained therein. Record title may also include the designation "VR" identifying the record as a vital record for disaster recovery.

- DESCRIPTION: A brief summary of the records.

- RETENTION: The period of time the record or information must be kept. Retention periods are stated from the creation of the record (i.e., Retain for 5 years) or triggered by an event (i.e., Retain for 5 years after settlement of case).

- LEGAL CITATION: The specific Federal and/or State Code which stipulates the retention period. This information may not exist for certain records.

- RETENTION CLASSIFICATION: One of four general classifications used to group records by disposition.

How to Read the Schedules (Continued)

The four classifications are:

- TRANSITORY: Information of a temporary nature that does not meet the requirements for longer retention prescribed by O.C.G.A. § 50-18-94(1).

- TEMPORARY-SHORT TERM: Information that needs to be retained less than fifteen years.

- TEMPORARY-LONG TERM: Information that needs to be retained for fifteen years or longer, but which does not need to be retained permanently.

- PERMANENT: Information that for legal, historical, fiscal, or administrative reasons needs to be retained forever.
<table>
<thead>
<tr>
<th>Record Title</th>
<th>Description</th>
<th>Retention</th>
<th>Legal Citation</th>
<th>Special Instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emails, Transitory</td>
<td>Messages of short-term interest with no documentary or evidentiary value; examples – routine requests for public information, social media communications, subject matter of an individual or organization.</td>
<td>Transitory</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emails, Policy and Program</td>
<td>Messages documenting the formulation and adoption of agency programs or functions; examples – case file management, constituent correspondence, periodic reports, budget documents.</td>
<td>Identify functional content (financial, administrative, etc.) and consult relevant common schedules.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emails, Administration Support</td>
<td>Messages documenting the formulation and adoption of agency programs or functions; examples – case file management, constituent correspondence, periodic reports, budget documents.</td>
<td>Identify functional content (financial, administrative, etc.) and consult relevant common schedules.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Email Messages</td>
<td>Email messages which are not related, and deleted in an electronic format, such as an email to a department head, in response to a request, or an email to a subordinate.</td>
<td>Identify functional content (financial, administrative, etc.) and consult relevant common schedules.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telephone Return Message Records</td>
<td>&quot;While You Were Out&quot; message slips and related data</td>
<td>Retain for useful life</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telephone and Fax Machine Contact Logs</td>
<td>Lists of telephone and fax machine contacts and related data</td>
<td>Retain for useful life</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Record Title</th>
<th>Description</th>
<th>Retention</th>
<th>Legal Citation</th>
<th>Special Instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court Calendar</td>
<td>Books which generally contain essential information in summary form about each traffic case adjudicated.</td>
<td>10 years from date of last entry</td>
<td>SCO0502 (81-0630)</td>
<td>Common Records Retention Schedule for Courts MPR-5 Temporary Short Term</td>
</tr>
<tr>
<td>Cash Bond List</td>
<td>List of offenders under the county's jurisdiction and amount of bond for each offense.</td>
<td>3 years after superseded</td>
<td></td>
<td>Temporary Short Term</td>
</tr>
<tr>
<td>Citation-Related List</td>
<td>List of citations received from public safety officers and related data.</td>
<td>Until no longer useful</td>
<td></td>
<td>Temporary Short Term</td>
</tr>
<tr>
<td>DUI Dockets</td>
<td>List of citations and related data.</td>
<td>8 years</td>
<td></td>
<td>Temporary Short Term</td>
</tr>
<tr>
<td>Jail List</td>
<td>Lists of offenders under the county's jurisdiction and amount of bond for each offense.</td>
<td>Until no longer useful</td>
<td>O.C.G.A. 40-6-391 (J)(1)</td>
<td>Temporary Short Term</td>
</tr>
<tr>
<td>Arrest Warrants</td>
<td>Summons for an individual who has not appeared in court for sentencing.</td>
<td>50 years for murder; 15 years for all others</td>
<td></td>
<td>Temporary Long Term</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Record Title</th>
<th>Description</th>
<th>Retention</th>
<th>Legal Citation</th>
<th>Special Instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court Docket</td>
<td>Documents relating to a list of traffic cases to be heard, active and closed by year.</td>
<td>30 years from date of last entry</td>
<td></td>
<td>Temporary Short Term.</td>
</tr>
<tr>
<td>Record Title</td>
<td>Description</td>
<td>Retention</td>
<td>Legal Citation</td>
<td>Retention Classification</td>
</tr>
<tr>
<td>------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>--------------------------------</td>
<td>---------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Misdemeanor Case Records</td>
<td>Covers reports supporting the application of a case</td>
<td>30 years after closure</td>
<td></td>
<td>Temporary Long Term</td>
</tr>
<tr>
<td>Traffic Tickets</td>
<td>Transferred to another jurisdiction</td>
<td>5 years after court closure</td>
<td>O.C.G.A. Title 40, Chapters 5, 6, 8, and 9</td>
<td>Temporary Short Term</td>
</tr>
<tr>
<td>Prison Mail Logs</td>
<td>Record of all mail received by an inmate</td>
<td>1 year</td>
<td></td>
<td>Temporary Short Term</td>
</tr>
<tr>
<td>Arrest Warrants</td>
<td>Summons for an individual who has not appeared in court for sentencing</td>
<td>3 years after arrest</td>
<td></td>
<td>Temporary Short Term</td>
</tr>
<tr>
<td>Court-Ordered Busing Plans</td>
<td>Overall plans designating which neighborhoods are served by each school in the system and indicating bus routes to be provided to a court order</td>
<td>Permanent</td>
<td></td>
<td>Permanent</td>
</tr>
<tr>
<td>Evidence and Property Logs</td>
<td>Documents evidence, property seized or unclaimed, and found property acquired and maintained by the police department</td>
<td>Evidence log 2 years</td>
<td></td>
<td>Temporary Short Term</td>
</tr>
<tr>
<td>Arrest Warrants, Executed</td>
<td>Summons for an individual who has not appeared in court for sentencing</td>
<td>5 years after arrest</td>
<td></td>
<td>Temporary Short Term</td>
</tr>
<tr>
<td>Misdemeanor Case Files, Traffic Court</td>
<td>Court adjudication of environment violations caused by unauthorized public activities</td>
<td>5 years after closure</td>
<td></td>
<td>Temporary Short Term</td>
</tr>
</tbody>
</table>

**General Guidelines**

Certain guidelines apply to all records listed in this schedule:

- These retention periods apply to all record formats. The retention periods shown in this guideline apply to all records and information created by the local government regardless of physical format (paper, film, electronic, etc.).

- These retention periods are the minimum requirements. Each retention period in this schedule is the minimum length of time the record must be retained. The decision to retain specific information longer than the minimum retention period should be made by local government administration and legal counsel. Such a decision should be documented in the records management plan and/or local ordinance.

- These retention periods are intended to guide local governments. Each local government must adopt a retention schedule (O.C.G.A. 50-18-99(d)). Records retention periods should be established to serve the needs of the local government, but the retention period can never be less than the minimum retention periods indicated in this schedule.
General Guidelines (cont.)

- These retention periods apply to records under normal business conditions. The retention periods in this schedule apply to records created and used under normal business conditions. If a particular series of records is required for litigation, audit, or other special administrative needs, it must be retained for as long as needed.
- Disposition requirements are stated in the following manner—from the creation of the record or following an event or occurrence. For example, Accounts Receivable Files have a retention of retain 5 years (after creation) while Bank Loan Records are retained for 5 years after settlement of the loan (an event).

PROPERTY ACQUISITION & DISPOSITION

Disposal Generally

- Disposal- O.C.G.A. § 36-37-6 (rules regarding sale of municipal property)
- Generally, must be by sealed bid or auction – O.C.G.A. § 36-37-6(a)
- Exceptions for trading or exchanging real property (swaps), irregular pieces to abutting property owners, property in established municipal industrial parks or municipally designated industrial development areas, sales to other government agency for public purpose, establishing conservation easements & other exceptions (i.e., conveying easements)
Disposal of Roads — 
**O.C.G.A. §32-7-4**

- Notify owner at time of acquisition or any new owner of abutting land
- Owner has right to acquire
- No less than price paid for acquisition if full parcel (if donated; then the land may be conveyed free of charge)
- If less than $30,000 (by department estimate), can negotiate the sale (i.e., no public auction)
- If no purchase after 60 days, sealed bid, listed with agent, or auction

Abandonment of Roads — 
**O.C.G.A. §36-7-2**

- Public Notice & Hearing requirements
- Must find that road has “ceased to be used by the public to the extent that no substantial public purpose is served by it”
- OR find that “its removal from the municipal street system is otherwise in the best public interest”

Exchanges of Land

- For Road Purposes -
  O.C.G.A. § 32-3-3(b) – city our county may exchange right of way for other grants of property for road purposes so long as what is being received is of equal or greater value than what is being relinquished.

- General Property -
  O.C.G.A. § 36-37-6(c) – authorizes property swaps for property of equal or greater value. Requires advertising the exchange in the legal organ.
Acquisition

- First steps...
- Eminent Domain – Ga. Const. Art. 9, §2, ¶V
- For public purposes on payment of just & adequate compensation
- Procedures for transportation takings – O.C.G.A. §32-3-1 et seq.
- Procedures for other takings - O.C.G.A. §22-2-1 et seq.

Purchasing/Procurement

Georgia Local Government Public Works

- Applies if contract greater than $100,000 (O.C.G.A. 36-91-22(a))
- Not applicable to:
  - Inmate labor (do not have to “bid out” the use of inmate labor)
  - If municipality does not pay for labor
  - Federal requirements for federal grants (you use the federal requirements if they are different)
  - Emergency recorded on minutes
  - Roads – See Title 32
  - Sole Source
Public Works Construction Contract Requirements

• In writing
• Advertise opportunity – newspaper or Internet
• Sealed bids or proposals
• Can reject all & waive technicalities and formalities (O.C.G.A. § 36-91-20(c))
• No changes within 72 hours of opening or must extend 72 hours
• May include change orders without additional bid/proposal requirements

Bonds

• Bid bonds - to “insure” that the bidder can perform what they are bidding to perform (O.C.G.A. § 36-91-50)
• Performance bonds - a bond to make a claim against if the contractor performs the work poorly or improperly and the government must use another contractor to correct. (O.C.G.A. § 36-91-70)
• Payment bonds - a bond to ensure that the contractor pays all of their subcontractors and suppliers. They claim against the bond and not the government. (O.C.G.A. § 36-91-90)

Penalty?

• Illegal not to do competitive award requirements
• If contractor knows municipality failed to comply, contractor is not entitled to payment
Road Construction Projects

- Contracts must be in writing (O.C.G.A. §32-4-111)
- All contracts must be let by public sealed bids, unless less than $20,000 or meeting requirements for other statutory exemptions (O.C.G.A. §32-4-113 through -114)
- If contract greater than $5,000, must have performance bond & payment bond (O.C.G.A. §32-4-119)
- City may obtain a “bid bond”, which can be kept as liquidated damages if contractor refuses to sign (O.C.G.A. §32-4-117)

Purchasing Preferences: O.C.G.A. §36-84-1

- When purchasing supplies, materials, equipment, or agricultural products, shall give preferences to Georgia manufacturers & producers
- “As far as may be reasonable and practical”
**Zoning Procedures Law**

- Authorizes administrative officers, bodies, or agencies to assist with zoning powers
  - Planning Commission
  - Zoning Board of Appeals
  - Other boards & committees
- Authorizes rules & regulations – Zoning Ordinance

**What is a “Zoning Decision”?**

- Ordinance & Zoning Map
- Amendment to ordinance
- Zoning of property from one zoning classification to another
- Special use permit

**Procedures for Zoning Decisions**

- Advertise hearing at least 15 days & no more than 45 days prior to meeting
- If citizen rezoning property, sign must be posted at least 15 days in advance
- Public hearing - at least one
- By Board or is Planning Commission ok?
- If defeated, cannot be reconsidered for 6 months
Adoption of Hearing Policies

• “Shall” adopt policies governing public hearings
• Policies must specify minimum time period for each side; at least 10 minutes per side

Conflict of Interest in Zoning Actions

• O.C.G.A. §36-67A-1 et seq.
• Disclosure of financial interests – if a member of the zoning authority has a financial interest in the property being zoned; they must announce and recuse.
• Disclosure of campaign contributions

Annexation

• 100% (O.C.G.A. § 36-36-20) – if 100% of all owners of the land to be annexed request it.
• 60% (O.C.G.A. § 36-36-30) – application by 60% of owners of land and 60% of electors residing in the area to be annexed
• Resolution & Referendum – for urban purposes and requires a successful referendum by those that can vote in the area to be annexed
• Local Act of General Assembly
5-Day Deadline Regarding County Property  
(O.C.G.A. §36-36-7)

- County must notify city of any county-owned property within the area to be annexed.
- Annexation does not diminish ownership & control of county-owned properties.
- If county property is “no longer usable for service to the unincorporated area of the County…”
  - Provides service solely to unincorporated
  - County adopts resolution
  - County shall be compensated at fair market value
  - If no agreement for 180 days, special master decides value.

Impact on County Road  
(O.C.G.A. §36-36-7(b))

- If land annexed on both sides of a county road, city must assume ownership, control, care & maintenance of the right-of-way unless parties agree otherwise by joint resolution.

Land Dispute Resolution Process:  
O.C.G.A. §36-36-110 et seq.

- County may object based on “material increase in burden” on the county directly related to any one or more of the following:
  - The proposed change in zoning or land use
  - Proposed increase in density
  - Infrastructure demands related to the proposed change in zoning or land use
Objection Based on Zoning

- If based on zoning:
  Must result in “substantial change in intensity of allowable use or a change to a significantly different allowable use”; or
  - A use which significantly increases the cost of infrastructure or significantly diminishes the useful life of a capital outlay project furnished by the county to annexed area; and
  - Differs substantially from the existing uses suggested by the county’s comprehensive plan or zoning ordinance.

Binding Arbitration Process

- DCA has pools of arbitrators
- 4 county, 4 city, 3 academics chosen randomly by DCA
- 2/1 strikes
- County pays 75% & remainder apportioned by panel

Arbitration Panel Results

- Panel makes findings & recommendations that are recorded in deed records
- Can appeal to Superior Court, but only based upon errors, bias/misconduct of arbitrator, or panel abuse of discretion
- Any unappealed Order of Arbitration Panel is binding (O.C.G.A. § 36-36-116)
What Happens to Zoning Upon Annexation?

- City must zone the property
- Can city adopt county zoning ordinance?
- What if no zoning?
- No change to more intense land use for one year after annexation & initial zoning

Comprehensive Plan: O.C.G.A § 36-70-1

- Minimum Standards & Procedures established by DCA
- Geared to size of jurisdiction
- Must amend when conditions significantly change, but at least every 10 years
- Penalty? Loss of qualified local government certification

Service Delivery Strategy: O.C.G.A § 36-70-20

- Must identify services & geographic area of services
- Describe funding for each service
- Requirements to ensure fair rates across service areas
- Dispute resolution process
- Updates to Service Delivery Strategy required in conjunction with updates to comprehensive plan or when service delivery changes
Georgia Development Impact Fee Act
O.C.G.A. §36-71-1 et seq.

- Just what it says: Fees charged to minimize impact of development
- Must have ordinance, Capital Improvement element in Comprehensive Plan, & create an Impact Fee Advisory Committee
- Adoption requires 2 public hearings at least 2 weeks apart (O.C.G.A § 36-71-6)
- Impact Fee Credits & Refunds

County Officials

- The County Clerk: the clerk is responsible for recording the board of commissioners' official actions, preparing correspondence and reports, maintaining county records, and any other responsibilities and duties as provided in the local act.
- County Manager: many Georgia counties employee a manager or administrator as the chief administrative official for the county. This individual is responsible for the day-to-day operations of the county.
- County Attorney: the primary function of this position is to advise the governing authority and other county officers on their powers and duties under the law, to prepare ordinances and legal documents, to review proposed contracts, and to represent the county in court.
Constitutional Officers

- Sheriff
- Clerk of Superior Court
- Judge of Probate Court
- Tax Commissioner

Sheriff - O.C.G.A. § 15-16-10

- Duties of the office of sheriff:
  • To execute and return the processes and orders of the courts;
  • To attend all sessions of the superior court and all sessions of the probate court whenever required by the judge;
  • To be present on election days at all election locations from the opening to the closing of the polls;
  • To publish sales, citations and other proceedings as required by law and to keep a file containing all such official advertisements.

Sheriff - O.C.G.A. § 15-16-10

- To keep an execution docket for entering a description of all executions received, the dates of their delivery, and the actions taken on them;
- To keep a book which contains a record of all sales made by process of the court or by agreement under the sanction of the court and which describes the property and the process under which sold, the date of the levy and sale, the purchaser, and the price;
- To receive from the preceding sheriff all unexecuted writs and processes and proceed to execute them and to complete other unfinished duties;
- To serve as the county jailor (O.C.G.A. § 42-4-1)
To develop and implement a comprehensive plan for courthouse security subject to budget approved by the commissioners and
To perform all other duties imposed on that office by law.

Deputies - the Sheriff has the authority to appoint deputies to assist in carrying out the duties of the office. Unless a sheriff has agreed to participate in a civil service system, deputy sheriffs are considered employees of the sheriff, not of the county. O.C.G.A. § 15-16-23

The powers and duties of the clerk of superior court are almost entirely ministerial and include the maintenance of court records, the registration of property transactions, oversight of the board of equalization, and the recording of subdivision plats.

Elected for four-year terms of office;
The county must furnish the clerk with office supplies, equipment, furniture, record books, and other items necessary to maintain the office.

The judge of the probate court is charged with the performance of judicial, ministerial, and clerical duties and has original, exclusive, and general jurisdiction over:

1. The probate of wills;
2. The granting of letters testamentary and of administration and the repeal or revocation of the same;
3. All controversies in relation to the right of executorship or administration;
4. The sale and disposition of the property belonging to, and the distribution of, deceased persons estates;
5. The appointment and removal of guardians of minors, conservators of minors, guardians of incapacitated adults, and conservators of incapacitated adults and persons who are incompetent because of mental illness or mental retardation;
(6) All controversies as to the right of guardianship and conservatorship, except that the probate court shall not be an appropriate court to take action under O.C.G.A. § 19-7-4;
(7) The auditing and passing of returns of all executors, administrators, guardians of property, conservators, and guardians;
(8) The discharge of former sureties and the requiring of new sureties from administrators, guardians of property, conservators, and guardians;
(9) All matters as may be conferred on them by Chapter 3 of Title 37;
(10) All other matters and things as appertain or relate to estates of deceased persons and to persons who are incompetent because of mental illness or mental retardation; and
(11) All matters as may be conferred on them by the Constitution and laws.

Judge of the Probate Court

• Elected for four year terms
• Have various other powers pursuant to O.C.G.A. § 15-9-30(b) for example, administer oaths to public officers, issue marriage licenses, accept, file, approve and record bonds of public officers

Tax Commissioner

• The state constitution authorizes the General Assembly to consolidate the offices of tax receiver and tax collector into the office of tax commissioner, and every county in Georgia has consolidated the positions.
• The tax commissioner is elected to a four-year term.
• Other enumerated duties are found at O.C.G.A. § 48-5-121 et seq.
Local Elected Judicial Officers:

- **Judge(s) of the Superior Courts**: elected on a non-partisan basis and hold office for four years. The Superior Court is the highest ranking court in the state with original and general trial jurisdiction. The state is divided into 49 judicial circuits, each of which consist of at least one county.

- **District Attorney**: elected to four year terms of office. Represents the state in all criminal cases in superior court and in all cases taken up from the superior courts to the court of appeals and the supreme court. Other duties include advising grand juries and assisting the attorney general in certain prosecutions.

- **Judge(s) of the State Court**: elected on a non-partisan basis and hold office for four years. State courts are essentially county courts that enforce state laws (e.g., non-felony criminal cases, civil cases where exclusive jurisdiction is not vested in the superior court).

Other Elected and Appointed Officers:

- **Solicitor General of the State Court**: elected to a four year term of office. In counties with a state court, the solicitor general represents the state in all criminal cases in that court unless a local law designates that the district attorney will do so.

- **Chief Magistrates**: elected to a four year term and appoints other magistrates.

Other County Officials

- Circuit public defender
- Coroner/Medical examiner
- Surveyor
- Treasurer
- Emergency management director
- County police
- Grand jury

County Boards and Authorities

- Board of Tax Assessors
- Board of Equalization
- County Appraisal Staff
- Board of Health
- Board of Family and Children Services
- Regional Planning Boards for Mental Health/Community Service Boards
- Planning Commission
- Board of Zoning Appeals and Variances
- Public Library Board
County Boards and Authorities

- Board of Trustees of the County Law Library
- Parks or Recreation Boards
- Development Authority
- Hospital Authority
- Housing Authority
- Airports/Airport Authority
- 9-1-1 Authority
- Board of Education
- Superintendent of Schools
- Regional Commissions-intergovernmental relations

Motions, Resolutions, & Proclamations

Motions

- The most common procedural method of exercising your authority is by making motions.
- It is always desirable to put your motions in writing. Of course, your meetings are recorded and reported, but to ensure that there is not a mistake, it is preferable to put motions in writing and give them to the clerk or reporter for placement in the record. This ensures there is no question about what was intended.
- Consistency should be your goal. Make sure that your decisions and conditions are imposed in an even handed manner.
Quick Tips for Making Motions

1. Remember the motion will be reduced to black and white.
2. Avoid "so moved" unless it is unmistakably clear what is going on.
3. If voting to approve an action, just make sure to identify what you are approving (i.e. the Resolution, the Ordinance, the plan, the contract)
4. If denying something, particularly in the land use context, try to give reasons arising from the code you are working under.
5. Remember that a main motion is on the bottom with respect to priority. A motion to adjourn, recess, postpone or amend will take priority.

Accuracy of Motion

- Many times the agency members are engaged in earnest deliberation and debate and are attempting to craft compromise by the motion. In the give and take of deliberation, many times EVERYONE can know what the motion meant, but in black and white it does not come out very well.
- Ideally, have your motions in written format. If not, perhaps use the same motion language each time. I move that the PC make a recommendation of approval of Zoning X, with the conditions that were displayed on the screen. Or, with the conditions displayed on the screen, and to include the requested 10 foot side yard variance.

Minute adoption procedures

- Fully appropriate to circulate draft minutes in advance;
- Further appropriate to question the accuracy of the minutes;
- Further it is appropriate for the minutes to be changed from what was originally circulated;
- However, any suggested change is ONLY as good as it is agreed upon by the rest of the members.
- And, minutes are important. Make no mistake about that. They are, legally, the official record of what transpired at the meeting. However, if a Board member makes a suggestion that the draft minutes be modified in a manner that means they are different than what actually occurred, then that is not appropriate.
- Touchstone of minutes. They must reflect what actually transpired at the meeting; good, bad or ugly.
Meeting efficiency

• No magic bullet here.
• First of all, efficiency is in some respects in the eye of the beholder. For one member, efficiency may mean a very quick meeting with little discussion and quick votes.
• For another member, efficiency may mean that the meeting is “run” properly, but there is much, much, much discussion.
• For another member it might be a melding of these two concepts.
• Efficiency is in the eye of the beholder.
• However, if there is not unanimity on the topic of what is efficiency, then there are procedural steps that can be employed to ensure that the meeting stays on target.

Meeting efficiency (Cont’d)

• Chairman – as the presiding officer can encourage the members to be concise and efficient in their deliberations, etc.,
• The Commissioner could consider adopting procedural devices to incentivize efficient discussions (i.e., motions to call the question; motions to suspend debate; motions to set a time certain for deliberation). However, these tools are only effective if they work.
• However, those tools notwithstanding, the best way to ensure the business of the PC is handled efficiently, is to have a common understanding between all the members that an efficiently run board is the sort of thing that instills confidence into the public; and we can agree that this is a laudable goal.
• Finally, another way to incentivize efficiency is to really exploit work sessions. Ask questions, roll up the sleeves and really dig in deep. Again, a work session is not substitute for the actual meeting, but it is an invaluable tool to address questions in a way that incentivizes more efficient decision making in the big room.
Proclamation

2015 National Breast Cancer Awareness Month

WHEREAS, October is the National Breast Cancer Awareness Month and
WHEREAS, breast cancer is the second most common cancer among women after skin cancer; and
WHEREAS, one in eight women will be diagnosed with breast cancer at some point in her life; and
WHEREAS, over 200,000 new cases of invasive breast cancer will be diagnosed in 2015 and about 40,000 women will die from the disease each year; and
WHEREAS, every woman is at risk for breast cancer even if she has no family history or other factors that increase her likelihood of the disease; and
WHEREAS, the efforts of various organizations have made widespread community outreach and public information the norm as programs provide resources and support to women with the0 minimizing delays of early diagnosis and the importance of having breast mammograms;
NOW THEREFORE, be it Resolved by the Board of City Council of the city of Milton, Georgia that the month of October be proclaimed "National Breast Cancer Awareness Month" in the City of Milton, Georgia.

Dated at Milton, Georgia this 31st day of October, 2015.

JON L. GRIFFITH, Mayor

Proclamation

Recognizing Principal Pamela E. Wagner's contribution to the citizens of Milton

WHEREAS, Principal Pamela E. Wagner is a graduate of Milton High School and has served the Milton School System for 25 years; and
WHEREAS, Principal Wagner serves as the principal of Milton High School, a five-star school and a National Blue Ribbon School; and
WHEREAS, Principal Wagner has directed Milton High School to achievement a top ranking school in the state of Georgia; and
WHEREAS, Principal Wagner is committed to providing the highest quality education and fostering a sense of community in the Milton community; and
WHEREAS, Principal Wagner has been a driving force in the success of Milton High School and has played a significant role in shaping the future of Milton; and
WHEREAS, Principal Wagner has been recognized with numerous awards and honors for her dedication and commitment to education; and
NOW, WHEREAS, be it Resolved by the Board of City Council of the City of Milton, hereby the City Council of the City of Milton recognizes Principal Pamela E. Wagner for her contribution to the citizens of Milton.

Dated at Milton, Georgia this 31st day of October, 2015.

JON L. GRIFFITH, Mayor
The Open Meetings or "Sunshine" Act was enacted to ensure that the proceedings of all public agencies are conducted in an open and public manner, so that the people may be informed about the actions of their governments and retain control of them.
### Function of the Act

- The Act provides a framework for managing business by public agencies through posting agendas, keeping minutes, and dealing with personnel issues.
- The Act provides a mechanism for an aggrieved citizen who believes a governmental agency has committed a violation of the Act.

### Who Must be Granted Access?

- The Public – At All Times.
- Any radio or television station may broadcast an open meeting, as can a private citizen. The public body may reasonably control the placement and use of cameras so as not to unduly interfere with the meeting.
- Each governing body may adopt reasonable rules for attendance of the public at its meetings.

### Who Must Comply with the Open Meetings Act?

**What organizations are covered?**

- All organizations created under statute or by resolution of a local board, council, commission, or other governmental unit exercising policy-making authority.
- Every county, municipal corporation, school district, or other political subdivision of this state.
- Every department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation or other political subdivision of the state.
**What is a “Meeting”?**

- Gathering of a Quorum of the Members of the governing body of an agency at which any official business, policy or public matter of the agency is formulated, presented, discussed, or voted upon.
- The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed or voted upon.
- The statutory inclusion of a quorum of any committee created by the governing authority constituting a meeting irrespective of whether the committee has members of the governing body on it, is a significant change in the law.

**What is NOT a Meeting**

The gathering of a quorum of the governing body or a committee for the purpose of:

- Making inspections of physical facilities or property under the jurisdiction of the agency – where no other business is discussed or official action is taken;
- Attending a statewide, multi-jurisdictional or regional meeting to participate in seminars or courses of training on agency matters – where no official action is taken;
- Meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;

**What is NOT a Meeting (cont.)**

- Traveling to any of the above assemblies so long as no official business, policy, or public matter is formulated, presented, discussed or voted upon by the quorum;
- Attending a social, ceremonial, civic or religious event – no municipal business;
- Incidental conversations unrelated to the business of the agency.
- E-mail communications among members of an agency, provided, however, that such communications shall be subject to disclosure pursuant to the Open Records Act;
- Staff meetings held for investigative purposes under duties imposed by law.
What is NOT a Meeting (cont.)

- Gatherings involving an agency & one or more neutral parties in mediation of a dispute between the agency & any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution of the conflict, & any such caucus shall not be subject to open meetings requirements.
- Caveat: Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting & the terms of any such decision or resolution are disclosed to the public.

But Wait!

The exclusions/exemptions discussed above shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

What Meetings Must be Open? (and, is there an exception to this rule)

- Meetings of the governing bodies and committees of all public agencies must be open to the public, unless a specific statutory exception applies. These statutory exceptions authorize the governing body or committee to enter into an “executive session”.
- In the rewrite, executive session is now defined as “a portion of a meeting lawfully closed to the public.”
Participation in Meetings

• Historically, the Open Meetings Act prohibited meetings via teleconference, except for certain statewide agencies. Under the rewrite, an agency may conduct a teleconference meeting under the following circumstances:
  • For emergency conditions involving public safety or the preservation of property;
  • The public notice requirements must be met;
  • The public must have simultaneous access to the teleconference meeting.

May a Member Participate Via Teleconference or Other Electronic Method Where a Quorum of the Agency is Physically Assembled?

• Under the new law, the answer is clearly yes.
• Only may do so if (1) away from the jurisdiction, or (2) necessary for health reasons.
• May only do so twice a year, absent an emergency condition or the member has a written opinion by a health care professional that reasons of health prevent the member’s physical attendance.

Caution: Situations to Watch!

• Seminars, Work Sessions and Retreats
• Pre-Meeting Meetings
• Breaks during Regular Meetings
• 2 x 2 Meetings
Making the Public AWARE

• For Regular meetings - the following is required:
The agency shall prescribe the time, place and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted at least one week in advance and maintained in a conspicuous place available to the public at the regular place of an agency or committee meeting as well as on the agency's website, if any.

Making the Public AWARE (cont.)

• For OTHER than Regular meetings:
Written or oral notice shall be given at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held - or a paper that has the equivalent circulation of the legal organ. If the legal organ publishes less than 4 times per week, then sufficient notice shall be posting of written notice at least 24 hours at the place of regular meeting and, upon written request from the media, notice by telephone, email, facsimile, or to the media at least 24 hours in advance.

Making the Public AWARE (cont.)

For OTHER than Regular meetings with LESS THAN 24 hours advance notice:
• The touchstone here is “reasonable notice.”
• Notice must be reasonable under the circumstances, to include (1) notice to the county legal organ or its equivalent, (2) recording in the minutes the need for such an emergency meeting, (3) providing telephonic, facsimile or email notification to other media outlets that have a place of business in the County and that have requested such notice.
What is Required for an Agenda?

• Must produce Written Agenda prior to any meeting,
• The Public Body or committee must provide for all matters expected to be considered,
• Agenda shall be available upon request, and
• Posted at the meeting site, as far in advance of the meeting as reasonably possible, but not more than two weeks (14 days) prior.
• Failure to include an item does not stop its consideration by the Public Body.

Requirement for Minutes

• Public agencies must keep written minutes of all meetings, and must make them available to the public.
• These minutes must include all measures proposed and the results of all votes taken.
• Voting by secret or written ballot is prohibited.

Minutes – Technical Requirements

• A SUMMARY of the subjects acted on and those members present at a meeting shall be written and made available within two (2) business days of adjournment; and
• The minutes shall be promptly recorded and be open to public inspection once approved, but not later than the following regular meeting.
• The minutes shall, at a minimum, include:
  ▫ Names of the members present;
  ▫ A description of each motion or other proposal made, and a record of all votes;
  ▫ The identify of the person making and seconding the motion or other proposal [new requirement]; and
  ▫ A record of all votes. However, if unanimous, the law assumes that we know who was at the meeting. However, if the vote is split, identify who was for and against.
Minutes in Executive Session

- Traditionally, minutes were not required for executive session, except in the context of land acquisition.
- New rules require minutes of executive session, which must include:
  - a specification and brief description of each issue discussed
  - the legislation is not specific regarding votes - but the preferred rule is to record motions and votes the same as in open session
  - if attorney-client privileged, record fact that a privileged discussion occurred & its subject, but the substance of the discussion need not be recorded.
- Executive session minutes shall not be open to the public, but are to be preserved in case of a court challenge.

Voting

OLD LAW
- All votes in open session, except binding voting in closed meeting allowed for land acquisition and litigation purposes.
- Voting in executive session for personnel matters was not authorized and could be challenged and stricken within 90 days of vote.

NEW LAW
- All votes at any meeting shall be taken in public; however, votes regarding settlement, negotiations to purchase land, options to purchase land, and appraisals may be taken in executive session, but no settlement, lease, disposal or acquisition shall become binding until voted on in public.

Exceptions to the Open Meetings Act

- A governing body of a public agency may hold an executive session (closed meeting) during a regular, special or emergency meeting, when the specific reason for such closure is entered upon the official minutes. To close a meeting, there must be a vote by a majority of a quorum to close the meeting and the minutes shall reflect:
  - The names of the members present; and
  - The names of the members that voted to close the meeting; and
  - The reason for the closure.
Executive Session Affidavit

- When an executive session occurs, the person presiding over such meeting – or the membership of the entire agency if the agency’s policies so provide – shall execute and file a notarized affidavit affirming that the subject matter of the meeting was authorized by pertinent law.
- If a discussion occurs in executive session on a topic not authorized by the law, the presiding officer shall declare the discussion out of order and the discussion shall cease. If the discussion continues, the meeting shall be adjourned.

Closed Meetings “Executive Session”

Topics

Litigation Matters
- When consulting with legal counsel regarding pending or potential litigation, settlement, claims, administrative proceedings, or other judicial action brought or to be brought by or against any agency or any officer or employee or in which the agency or any officer or employee may be directly involved.
- Cannot close a meeting for advice/consultation on whether to close a meeting.
- To discuss settlement of any matter which may be properly discussed in executive session, but a vote in executive session to settle shall not be binding until a subsequent vote is taken in open session.

Land Acquisition Matters
- Meetings when any agency is discussing or voting to:
  - Authorize negotiations to purchase, dispose of, or lease property;
  - Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;
  - Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote;
  - Enter into an option to purchase, dispose of, or lease real estate subject to approval in a public vote

Caveat: No vote in executive session to acquire, dispose of, or lease real estate shall be binding on an agency until a subsequent vote is taken in open session. The mere authorization of negotiations to secure appraisals have no requirement.
Closed Meetings “Executive Session”
Topics (cont.)

Personnel matters - meetings when discussing or deliberating upon the:
- Appointment;
- Employment;
- Compensation;
- Hiring;
- Disciplinary action;
- Dismissal or periodic evaluation or rating of a public officer or employee; or
- [new section] interviewing applicants for the position of executive head of an agency.

Votes on any matter involving personnel issues must be taken in open session and otherwise will not be binding.

Closed Meetings “Executive Session”
Topics (cont.)

- Portions of meetings during which that portion of a record made exempt from public inspection or disclosure pursuant to the Open Records Act is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed.

Enforcement

- The Superior Court has jurisdiction over Open Meetings Act complaints.
- The Attorney General may bring a civil or criminal complaint to enforce compliance, as may any citizen, firm, corporation or other entity.
- Unless action taken with substantial justification, the agency shall be responsible for prevailing party attorney fees and litigation costs.
- Any person knowingly and willfully conducting or participating in a meeting in violation of the Open Meetings Act shall be guilty of a misdemeanor and face up to a $1,000 fine per violation.
- A civil penalty of up to $1,000 per violation may be assessed when the violation was negligent.
- A civil or criminal penalty of up to $2,500 per offense will be imposed for additional violations within a 12 month period from the date that the first penalty was imposed.
Who can be Sued?

• The Public Entity and members of the governing body
• Anyone conducting or participating in the meeting
• Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision shall be commenced within 90 days of the date such contested action was taken; or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken.

What Legal Remedies may be Available?

• Injunctive Relief
• Mandamus
• Civil Penalties (Attorney Fees)
• Criminal Penalties
• Invalidating Official Action
• Forfeiture of Office
• Contempt of Court

Defenses to the Lawsuit

• Substantial Compliance
• Advice of Counsel
• Nonparticipation in the Violation
• Good Faith (defense in criminal action)
• Harmless or De Minimus Violation
Practice Pointers

• Become familiar with the Act’s Requirements - Address questions about the law to legal counsel.
• Assure yourself that the public body follows the Act’s requirements for notifying the public and press and for making and preserving records.
• Presume that meetings will be open, unless there is a clear showing of need for a closed meeting specifically authorized by the Act.
• When voting to close a meeting:
  ▫ Specify which exemption is being used to close the meeting;
  ▫ Have this noted in the minutes; and
  ▫ Stick to the topic.
• Take final action in public.

Open Records Act

Public Policy of the Open Records Act

"The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society, and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that public records should be made available for public inspection without delay. This article shall be broadly construed to allow for inspection of governmental records."
**Importance of Access**

- The Act allows the citizens, the public, or anyone to know how the government is doing its business & functioning as a public agency. The records are a way that the citizens can understand what their government is doing.

**What is a “Public Record”**

- Georgia law does not restrict the concept of a “public record” by focusing on the content, formal approval or format of document.
- Public record means “all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.”

**What is the Appropriate Format of an Open Records Act Request?**

- A request may be made either orally or in writing, to include email, facsimile, or by any other method approved by the agency. Email & facsimile delivery are only appropriate if the agency uses email & facsimile communications in the ordinary course of business.
- However, an agency may (but is not required) to require that all written requests be made upon the agency’s choice of one of the following:
  - The agency’s director;
  - The agency’s chairperson;
  - The agency’s chief executive officer;
  - The agency’s senior official at a any satellite office;
  - A clerk specifically designated as the custodian of agency records or a duly designated open records officer of an agency.
- **NOTE** The lack of availability of any of the above persons may not delay an agency’s response.
Both Inspection and Copying are Contemplated

- All public records shall be open for inspection & copying, except those which by order of a court of this state or by law are specifically exempted from disclosure.
- Citizens have the right to both inspect the originals of documents & to copy them.
- At the time of inspection, a person is entitled to make copies or other electronic reproductions (i.e., scans) of the records using their own electronic devices.

Important Caveat

The enforcement provisions in the Open Records Act shall be available only to enforce compliance & punish noncompliance when a written request is made consistent with this subsection & shall not be available when made orally.

How Much Detail in the Request?

- Many times this is not an issue, as the request is sufficiently clear.
- If unclear, typically parties requesting records are very willing to provide further clarity.
- Where you see confusion is requests for electronic records. The new law provides:
  - Requests for electronic messages (email, texts) should contain information about the messages that is reasonably calculated to allow the recipient of the request to locate the messages sought, including, if known, the name, title or office of the specific person or persons whose electronic messages are sought & to the extent possible, the specific databases to be searched.
What if the Request is Sent to Someone Other Than the Records Custodian?

- If an agency designates a records officer, the three-day responsive period does not begin until the written request is delivered to that office.
- If an open records officer is designated, the agency has an obligation to instruct a party requesting records of the name of that officer either orally or in writing.
- If a records officer is so designated, the agency shall also have an obligation to notify the legal organ of such designation & shall prominently display the records officer on the agency’s website.

So Who Replies to the Request?

- If an agency has designated a records officer, then that person will respond.
- If not, then the custodian of the requested records, or perhaps the city attorney, should respond.
- Reviews each request, organizes the documents, & replies to ensure compliance with the law.

How Long Does the Agency Have to Respond?

- A reasonable amount of time to determine whether or not the records are subject to access & to permit inspection & copying. In no event shall this time exceed three (3) business days.
What to do if Records are not Available in 3 Days

- Where responsive records exist, are not exempted, but are not available within three business days of the request, a written description of such records, together with a timetable for their inspection & copying, shall be provided within that period. The records shall then be produced as quickly as practicable.

What are Options for Responding?

- If no responsive records, then advise.
- If records exist, but cannot be assembled in three days, then you produce the description & timetable as mentioned previously within 3 days. If some records can be produced immediately, but not others, then you produce what you can.
- If records are immediately available, then you produce in 3 days.
- At the time of production, you must specify the specific code section that allows either the withholding of records or the redaction of information within records.

Caveat to the Above Options

- If an agency estimates that the cost to produce responsive records will cost more than $25.00, the agency shall notify the requesting party within three (3) business days of this cost estimate, & the agency may defer its search until the requesting party has confirmed its willingness to pay the estimated cost - UNLESS -
  - The requesting party has stated in their request that they agree on the front end to be responsible for an amount in excess of the estimated search & retrieval costs.
  - One FINAL caveat: If the agency estimates that the cost to search & assemble responsive documents will exceed $500.00, the agency may demand advance payment prior to beginning the search, retrieval, review or production.
Lawful Reasons to Delay 3-Day Production of Records (not responding – just production)

- Records do not exist;
- Agreement of requesting party;
- Records are not subject to retrieval within 3 days;
- Preretrieval estimate provided (for amount greater than $25.00)
  - awaiting agreement to pay;
  - awaiting prepayment if estimate over $500.00;
- Requesting party has previous unpaid balance with agency, and therefore, the law allows agency to demand prepayment;
- Delay awaiting court filing by company that believes information held by agency is trade secret information, so long as trade secret affidavit is provided.

What if a Private Firm is Holding the Records?

- A governmental body cannot prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions.
- Disclosure is required as if received or maintained by such agency, public agency, or public office.

Special Rules - Computers

- **Computer Programs:** No right to access & inspect any computer program or computer software used or maintained in the course of operation of a public office or agency.
- **Computer Records:** Records maintained by computer shall be made available where practicable by electronic means, including Internet access, subject to reasonable security restrictions.
- **Computer Indexes:** Any computerized index of deed records shall be printed every 30 days.
Situations to Watch

- Email
- Settlement Agreements
- Your letters
- Handwritten notes

What Fees May be Assessed by the Agency? (administrative costs for retrieval)

- The agency may impose a reasonable charge for the search, retrieval, redaction, & production or copying costs for the production of records;
- An agency must use the most economical means to make records available;
- The charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the custodian of records, has the necessary skill & training to perform the request – less the first 15 minutes of time.
- The specific authority in the Act to charge for the cost to redact records is new.

Copy Costs

- A fee may be charged for the copying of records or data;
- 10¢ per page for letter or legal size documents; [this is a reduction from 25¢ per page]
- In the event of oversize documents, the actual cost to the agency for copies;
- For electronic records, the actual cost of digital media to reproduce the electronic content.
What if the Requesting Party Receives a Preretrieval Estimate, Agrees to it, & Then Will Not Pay?

• The agency has the right to collect any lawfully assessed charges against the requesting party “in any manner authorized by law for the collection of taxes, fees, or assessments” by the agency.
• An agency may require prepayment for compliance with all future requests for production of records from that person until the costs for the prior production of records have been paid or the dispute regarding payment has been resolved.

What Happens if the Fee is Disputed?

• Custodian must justify fee.
• May an agency impose fees that are high & discourage requestors?

Special Rules in New Law

• Requests made by litigants during civil or administrative litigation where the agency is a party:
  • Must be made in writing;
  • Copied on counsel of record for the agency at the same time as it is delivered to the agency; and
  • The agency shall serve a copy of its response on the requesting party & its attorney of record in the litigation (unless the attorney of record declines).
### Special Rules in New Law (cont.)

**Electronic Records**

- Agencies must produce:
  - Electronic copies or
  - Printouts of electronic data; or
  - Data from database fields from the computer programs the agency has in its possession.
- An agency shall not refuse a request for electronic records merely because producing such will require (1) inputting range, (2) search, (3) filter, (4) report parameters, or similar commands or instructions into an agency's computer system, so long as such commands or instructions can be executed using existing computer programs that the agency uses in the ordinary course of business.

**A requestor may request electronic data in the same format as maintained by the agency** - or - subject to technical feasibility, may request that the agency produce the electronic data in a standard export format such as flat file electronic American Standard Code for Information Interchange (ASCII) format.

**Access to public records via websites:**

- In lieu of providing separate printouts or copies of records or data, an agency may provide access to records through a website accessible by the public. However, if data fields are requested, the agency may not refuse to provide such data on the grounds that it is otherwise on the website.
- The public has a right to electronic data in its original form, if requested.
No Requirement to Create a Document That Does Not Already Exist

- The long standing rule remains that an agency shall not be required to prepare new reports, summaries, or compilations not in existence at the time of the request.

Records or Types of Data That May be Withheld

- The exemptions under the Open Records Act are the most complex part of this legislation, because they encompass a broad spectrum of policy objectives, privacy, & public safety rationales. Some exemptions are purely discretionary. Some exemptions are based upon other federal & state law protecting data against release. Other exemptions protect the lives of law enforcement personnel or sensitive infrastructure related to national secrets.

Most Common Exemptions Routinely Used by Local Governments

- Law enforcement records that might reveal confidential sources or the release of which might endanger physical safety
- Law enforcement, prosecutorial or regulatory agencies’ records during a pending investigation or prosecution (except initial incident reports)
- Individual Georgia Uniform Motor Vehicle Reports, except upon a statement of need
- Confidential evaluations submitted to or examinations prepared by a governmental agency & prepared in connection with the appointment or hiring of a public officer or employee
- Investigation material related to the suspension or firing of a public officer or employee, until 10 days following its presentation to agency
Most Common Exemptions Routinely Used by Local Governments (cont.)

• Pending, rejected, or deferred sealed bids or proposals & detailed cost estimates related thereto until final award of contract or until the bid process is abandoned or terminated, or until the agency takes a public vote on the bid award.

• Records that would reveal individuals under consideration for the executive head of an agency, except that 14 days prior to taking a final vote on such appointment, information regarding up to 3 candidates shall be subject to inspection & copying.

• Records that would reveal the name, home addresses, telephone numbers, security codes, e-mail addresses, or any other data regarding a neighborhood watch or public safety notification program or security systems.

Most Common Exemptions Routinely Used by Local Governments (cont.)

• Records that reveal an individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number if so designated in a public record, personal e-mail address or cellular telephone number, day & month of birth, & information regarding public utility, television, internet or telephone accounts held by private customers, provided that non-itemized bills showing amounts owed & amounts paid shall be available, except a bona fide media organization may access social security and day & month of birth information.

Most Common Exemptions Routinely Used by Local Governments (cont.)

• Records concerning public employees that reveal the public employee's home address, home telephone number, day & month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, & the identity of the public employee's immediate family members or dependents.

• This paragraph only applies on public records that specifically identify the public employee by their job, title or office.
Most Common Exemptions Routinely Used by Local Governments (cont.)

- Records the disclosure of which might compromise security against sabotage or criminal or terrorist acts & the nondisclosure of which is necessary for the protection of life, safety or public property.
  - Security plans & assessments
  - Plans for protection against terrorism
  - Locations of security devices
  - Records regarding training relative to government security measures
- 911 records if the release of such records would compromise a confidential source or endanger the physical safety of any person
- Trade secret information, if identified as such & if the agency concurs.

Most Common Exemptions Routinely Used by Local Governments (cont.)

- Records protected by the Attorney Client Privilege & Attorney Work Product doctrine as recognized by state law, except for:
  - Factual finds of an agency attorney investigation, unrelated to pending litigation, settlement, claims, administrative proceedings or other actions
  - Legal conclusions of such an investigation remain privileged
- Information withheld under Attorney Client Privilege may be challenged in a court proceeding & the withheld communications may be reviewed in camera by the court.
- Certain protected tax information (business returns, etc.)

What if a Record Contains Some Confidential Information?

- If a record contains some information that is confidential by law, the remaining portion of the record should be provided. Mere inclusion of some information that is confidential by law does not make an entire record exempt from disclosure.
Enforcement

- The Superior Court has jurisdiction over Open Records Act complaints.
- The Attorney General may bring a civil or criminal complaint to enforce compliance, as may any citizen, firm, corporation or other entity.
- Unless action taken with substantial justification, the agency shall be responsible for prevailing party attorney fees and litigation costs.

Penalties

- Any person knowingly and willfully frustrating or attempting to frustrate access to records by making records difficult to review shall be guilty of a misdemeanor & face up to a $1,000 fine per violation.
- A civil penalty of up to $1,000 per violation may also be assessed for negligent violations.
- A civil or criminal penalty of up to $2,500 per offense will be imposed for additional violations within a 12-month period from the date that the first penalty was imposed.

Who Can be Sued?

- The Public Entity
- Employees or public officials
- Records custodian or records officer
What Legal Remedies may be Available?

• Injunctive Relief
• Mandamus
• Civil Penalties (including Attorney Fees)
• Criminal Penalties
• Contempt of Court

Defenses to the Lawsuit

• Substantial Compliance
• Advice of Counsel
• Failure to Make Specific Demands
• Records Do Not Exist
• Acted in Good Faith

I sent to [redacted] on Oct. 1, 2005 for these specific records we are speaking of.

Neither [redacted] nor did Ken Jarrett's office respond in the three day period as required by Georgia State Law. Instead Ken Jarrett's office decided to lie or perpetuate a lie by the [redacted] that they did not receive this Records Request until Oct. 14, 2005, a full 13 days later.

Please review my original dated Open Records Request and the violation of proper response for these records. This response was not made by the [redacted] as required by Law, but by Mitch M. McKinney, from the law office of Ken Jarrett and Angela Davis. You can ask for yourself that Penelope County's hired attorney firm, who somehow blocks the Citizens access to Public Records, answered for the [redacted] which directly violates our Constitutional Rights for Records to our Elected Officials. I did not ask a peace county attorney for anything. If I had wished for some Taxpayer or other to respond to me I would have written to this person in the first place. I wrote the letter to my Elected Officials as provided for by Constitutional Law.
Questions?

UNIVERSITY OF GEORGIA
Carl Vinson Institute of Government

Government 102
Georgia Clerks Education Institute

Presenter: Jeffrey M. Strickland
County Attorney for Forsyth County, Cherokee County, Barrow County, Jackson County, Greene County, Newton County & City Attorney for the City of Milton

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