

**AGENDA REQUEST FORM**

**FOR: Council Meeting of October 5, 2021**

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**FROM: Council Member D'Andre Jones**

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**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

A RESOLUTION TO AMEND RULE A. 10. **SPECIAL PROCEDURES DURING PANDEMIC EMERGENCY OF THE RULES OF ORDER AND PROCEDURE OF THE FAYETTEVILLE CITY COUNCIL TO AUTHORIZE CITY COUNCIL MEMBERS TO ATTEND, SPEAK AND VOTE DURING CITY COUNCIL MEETINGS BY ELECTRONIC MEANS WITHOUT BEING PHYSICALLY PRESENT**


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**APPROVED FOR AGENDA:**

*Approved by Email - Attached*  
\_\_\_\_\_  
City Council Member  
D'Andre Jones

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
City Attorney Kit Williams  
Approved as to form

*October 5 2021*  
\_\_\_\_\_  
Date

## Williams, Kit

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**From:** D'Andre Jones <dre91732000@gmail.com>  
**Sent:** Wednesday, September 29, 2021 11:14 AM  
**To:** Williams, Kit  
**Cc:** Pennington, Blake  
**Subject:** Re: Virtual City Council meetings

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Yes, I approve.

Best Regards,

D'Andre L. Jones - MSW, MA  
Fayetteville City Council  
Ward 1 Position 2

***“Everybody can be great ... because anybody can serve. You don't have to have a college degree to serve. You don't have to make your subject and verb agree to serve. You only need a heart full of grace. A soul generated by love. Dr. Martin Luther King Jr.***

On Wed, Sep 29, 2021 at 10:49 AM Williams, Kit <[kwilliams@fayetteville-ar.gov](mailto:kwilliams@fayetteville-ar.gov)> wrote:

D'Andre,

Attached is my proposed Resolution to change the Council's Rules of Procedure to authorize virtual City Council Meetings. If you approve, we will get it ready for you to walk it onto the Oct. 5 City Council meeting. It will be the very first thing to be considered at th start of the meeting. We will need 6 affirmative votes of Physically present Council Members to get it on the agenda.

Kit



## DEPARTMENTAL CORRESPONDENCE

OFFICE OF THE  
CITY ATTORNEY



TO: **Mayor Jordan**  
**City Council**

**Kit Williams**  
*City Attorney*

**Blake Pennington**  
*Assistant City Attorney*

CC: **Susan Norton**, Chief of Staff  
**Paul Becker**, Finance Director  
**Jonathan Curth**, Development Services Director

**Jodi Batker**  
*Paralegal*

FROM: **Kit Williams**, City Attorney

DATE: **September 28, 2021**

**RE: Virtual Meetings of City Council and Planning Commission After Governor's  
Emergency Proclamation Has Expired**

On August 3, 2021, I wrote my memo to you to explain that you could meet by electronic means as long as the public can hear your conversation during the ongoing declaration of pandemic emergency. I did warn that: "if the Governor ends the 'disaster emergency', then the City Council would again need to appear in person to carry out City business." (memo attached)

In my August 23, 2021 memo I reported that the Attorney General had opined that with proper rules of procedure, "a City Council can meet by telephone or virtually. . . ." Since the rule of procedure passed by the City Council was entitled "**Special Procedures During Pandemic Emergency**" and began: "During the Pandemic Emergency, the City Council Members are authorized to attend, speak and vote using Zoom . . . ," it is clear that this rule allowing zoom meetings is strictly limited to a time of pandemic emergency. I ended my August 23<sup>rd</sup> one-page memo to you by offering to amend this rule if any Council Member so desired. See below:

"However, in deference to the Attorney General, if a Council Member wishes to amend your Rules of Order and Procedure to allow virtual meetings even with no pandemic or other emergency, I will draft such Resolution for the City Council to consider. The Planning Commission might similarly write this into their Rules of Order." (August 23, 2021 memo attached) No one contacted me.

The Governor's Proclamation of Disaster Emergency has just automatically expired as confirmed by the Governor today. The City Council may no longer meet virtually, but now must meet and vote in person on items on its agenda.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION TO AMEND RULE A. 10. SPECIAL PROCEDURES DURING PANDEMIC EMERGENCY OF THE RULES OF ORDER AND PROCEDURE OF THE FAYETTEVILLE CITY COUNCIL TO AUTHORIZE CITY COUNCIL MEMBERS TO ATTEND, SPEAK AND VOTE DURING CITY COUNCIL MEETINGS BY ELECTRONIC MEANS WITHOUT BEING PHYSICALLY PRESENT**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends Rule A. 10. of the *Rules of Order and Procedure of the Fayetteville City Council* by repealing the current title and language in their entirety and replacing them as shown below:

**“10. Virtual City Council Meetings Authorized**

After proper notice has been provided to the public, City Council Members are authorized to assemble, gather, meet, and conduct open public meetings (including speaking, voting and passing ordinances and resolutions) through appropriate electronic means which ensure the public’s right to attend by being able to listen to the proceedings and discussions. These open public meetings include City Council meetings and agenda sessions as well as City Council Member Committee meetings.”

**PASSED and APPROVED** this 5<sup>th</sup> day of October, 2021.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

By: \_\_\_\_\_  
**KARA PAXTON, City Clerk/Treasurer**



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



**Kit Williams**  
*City Attorney*

**Blake Pennington**  
*Assistant City Attorney*

**Jodi Batker**  
*Paralegal*

**TO: Mayor Jordan**  
**City Council**

**CC: Susan Norton, Chief of Staff**  
**Paul Becker, Finance Director**  
**Jonathan Curth, Development Services Director**

**FROM: Kit Williams, City Attorney**

A handwritten signature in blue ink, appearing to read "Kit Williams", written over a horizontal line.

**DATE: August 23, 2021**

**RE: Virtual Meetings of City Council**

The Attorney General has doubled down on her June 27, 2018, Opinion that a City Council can meet by telephone or virtually "so long as there is some means of ensuring that members of the public in attendance can hear the conversation." She did not address the fact that the Legislature twice passed statutes that allowed virtual city council meetings only during a Governor's emergency declaration. If state law had properly authorized this already, why would the Legislature twice feel the need to pass what would be mere duplicative authorizations?

However, in deference to the Attorney General, if a Council Member wishes to amend your Rules of Order and Procedure to allow virtual meetings even with no pandemic or other emergency, I will draft such Resolution for the City Council to consider. The Planning Commission might similarly write this into their Rules of Order.

Attached is the Attorney General's Opinion.



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2021-048

August 18, 2021

The Honorable David Whitaker  
State Representative  
717 North Lewis Avenue  
Fayetteville, AR 72701-1611

Dear Representative Whitaker:

This is in response to your request for my opinion regarding Arkansas cities' conducting their city council meetings virtually. In your correspondence, you referred to a 2018 opinion from this office,<sup>1</sup> wherein I opined that a city council may adopt rules to enable council committees to conduct open public meetings by telephone conference so long as there is some means of ensuring that members of the public in attendance can hear the conversation. In light of that opinion and recently enacted state law concerning virtual public meetings, you have asked the following questions:

1. If a city council has adopted rules of procedure pursuant to Arkansas Code § 14-43-501, which includes authorization to meet virtually rather than physically, can the city council meet through electronic means rather than in person as long as there are means in place to ensure that members of the public can hear and participate in the conversation and debate?
2. Are Act 2 of the Fiscal Session of the 92nd General Assembly and Act 56 of the Regular Session of the 93rd General Assembly, either collectively or individually, still applicable and effective despite the expiration of the Governor's Pandemic Emergency Decree?

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<sup>1</sup> Op. Att'y Gen. 2018-017.

## RESPONSE

The answer to your first question is “yes,” so long as safeguards for the public to virtually “attend” these meetings are in place and followed. With respect to your second question, while the relevant portions of Act 2 of 2020 have expired, Act 56 of 2021 *is* currently applicable because of the Governor’s emergency declaration of July 29, 2021.

## DISCUSSION

***Question 1: If a city council has adopted rules of procedure pursuant to Arkansas Code § 14-43-501, which includes authorization to meet virtually rather than physically, can the city council meet through electronic means rather than in person as long as there are means in place to ensure that members of the public can hear and participate in the conversation and debate?***

Yes. In Op. Att’y Gen. 2018-017, which I have enclosed for your convenience, I opined that a city council’s rules permitting its members to fully attend council committee meetings via conference call, wherein a speaker would broadcast a council member’s voice so that it would be audible for anyone in attendance to hear, did not violate the FOIA. In my opinion, the analysis in that 2018 opinion remains sound, and that reasoning can easily be extended to council meetings as a whole.

It is important to keep in mind, as I wrote in Opinion 2018-017, that these procedural rules do implicate the open-meetings section of the Arkansas Freedom of Information Act (FOIA).<sup>2</sup> Thus, it is crucial that any such rules the city council promulgates provide for giving proper notice of the virtual meeting and unmistakably protect the public’s right to attend (by being able to listen to, or listen *and* view, the proceedings and discussions via the appropriate electronic means). “If safeguards are not present, however, the meeting violates the FOIA.”<sup>3</sup>

***Question 2: Are Act 2 of the Fiscal Session of the 92nd General Assembly and Act 56 of the Regular Session of the 93rd General Assembly, either collectively or individually, still applicable and effective despite the expiration of the Governor’s Pandemic Emergency Decree?***

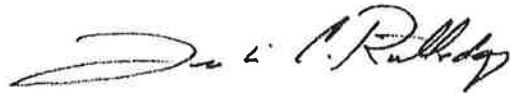
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<sup>2</sup> Ark. Code Ann. § 25-19-106 (Supp. 2019).

<sup>3</sup> John J. Watkins, Richard J. Peltz-Steele, & Robert Steinbuch, *THE ARKANSAS FREEDOM OF INFORMATION ACT* 344 (Arkansas Law Press, 6th ed., 2017).

While the relevant provisions of Act 2 of 2020 have expired, Act 56 of 2021 *is* currently applicable. The law that permitted virtual meetings in 2020, and that was included as special language in appropriation Act 2 of 2020, expired December 31, 2020.<sup>4</sup> However, Act 56 of 2021—which codified Act 2’s expired language,<sup>5</sup> and which only applies during a gubernatorial disaster-emergency declaration<sup>6</sup>—is in force as of this writing. This is in light of the Governor’s emergency declaration of July 29, 2021.<sup>7</sup> When that executive order is rescinded, the provisions of Act 56 will become inapplicable.

Sincerely,



LESLIE RUTLEDGE  
Attorney General

Enclosure

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<sup>4</sup> 2020 Ark. Acts No. 2, §§ 42, 43. Act 2 of 2020 as a whole expired June 30, 2021.

<sup>5</sup> 2021 Ark. Acts No. 56, § 1, to be codified at Ark. Code Ann. § 25-19-106(e).

<sup>6</sup> *Id.* to be codified at Ark. Code Ann. § 25-19-106(e)(1) (“If the Governor declares a disaster emergency under the Arkansas Emergency Services Act of 1973, § 12-75-101 et. seq., a public entity may assemble, gather, meet, and conduct an open public meeting through electronic means....”).

<sup>7</sup> [https://governor.arkansas.gov/images/uploads/executiveOrders/21.07\\_.29\\_EO\\_21-14\\_.pdf](https://governor.arkansas.gov/images/uploads/executiveOrders/21.07_.29_EO_21-14_.pdf).



(2) **Public Comments.** Public comment at a City Council meeting shall be allowed for all members of the audience who have signed up prior to the beginning of the agenda item they wish to address being opened for public comment. Speakers shall be limited to a maximum of five (5) minutes to be broken into segments of three and two minutes. Amendments may receive public comments only if approved by the City Council by unanimous consent or majority vote. If public comment is allowed for an amendment, speakers will only be allowed to speak for three (3) minutes. The City Council may allow both a speaker additional time and an unsigned-up person to speak by unanimous consent or majority vote.

e. **Courtesy and Respect.** All members of the public, all city staff and elected officials shall accord the utmost courtesy and respect to each other at all times. All shall refrain from rude or derogatory remarks, reflections as to integrity, abusive comments and statements about motives or personalities. Any member of the public who violates these standards shall be ruled out of order by the Mayor, must immediately cease speaking and shall leave the podium.

8. **Smoking Prohibited.**

There will be no smoking allowed in the City Council Chambers during City Council meetings.

9. **Cell Phones and Pagers.**

Cell phones must be turned off or put in silent mode and not used within the City Council Chambers during City Council meetings. Pagers must be turned off or put in silent mode within the City Council Chambers during City Council meetings. These restrictions also apply during Agenda Sessions.

10. **Special Procedures During Pandemic Emergency**

During the Pandemic Emergency, City Council Members are authorized to attend, speak and vote using Zoom or other virtual communications means during City Council Meetings and Committee Meetings. Citizens are also authorized to attend and speak virtually if in compliance with other provisions of these *Rules*.

B. **DUTIES AND PRIVILEGES OF COUNCIL MEMBERS AT CITY COUNCIL MEETINGS**

1. **Seating**

Members shall occupy the respective seats in the City Council Chambers assigned by position number. The Mayor (or Assistant Mayor in the Mayor's absence) shall be seated near the center of the City Council table.

2. **Conduct**