

L.A.P.R. GUIDANCE ON ARS § 9-802 – ADOPTION BY REFERENCE

ARS § 9-802 provides an alternative method of adopting a “code or public record” by reference. This statute allows Municipalities to adopt a “code or public record” by reference in an Ordinance, with only a summary of the adopted code or publication required in the Ordinance, which is then published. The complete code or publication is attached to a connected Resolution, which is not required to be published.

This statute was revised during the past legislative session to allow Municipalities a choice in maintaining either three (3) paper copies of the adopted code, or one (1) paper and one (1) electronic copy of the adopted code.

The Library, Archives and Public Records (L.A.P.R.) has never issued any guidance on this statute or process in the past, but we have recently been asked to review the statute in light of the revised requirement involving an electronic copy of the code.

Connection between ARS § 9-802 and ARS § 44-4071

I believe the connection between ARS § 9-802 and ARS § 44-7041 is in the section I have highlighted in yellow, in the statute below. Since Ordinances are subject to the records retention requirements of ARS § 41-151.12 - 151.19, then so, too, are the codes that are adopted as the result of these Ordinances.

Retention for Ordinances and “code or public record” adopted by the method set forth in ARS § 9-802

- A. Ordinances are Permanent records, per the Clerk, Municipal General Retention Schedule, records series #9:
9. **Ordinances** (municipal codes)...Perm. Preserve pursuant to A.R.S. §39-101

This General Retention Schedule is available at the following link:
http://apps.azlibrary.gov/records/general_rs/Clerk,%20Municipal.pdf

- B. With regard to the “code or public record” adopted by Ordinance:
Since Ordinances are Permanent records, then any “code or public record” adopted by Ordinance should be a Permanent record, since it serves as supplementary documentation to help better understand the Ordinance.

Records Management has always been concerned with the “economical and efficient management” of records in the custody of public bodies. (ARS § 41-151.14) Since ARS § 9-802 requires either three paper copies or one paper and one electronic copy of any “code or public record” adopted per this method, we would neither require nor recommend that all three paper copies, or both the paper and electronic copy be kept as a Permanent record, or as an official record.

One of the copies (paper or electronic) needs to be designated as the Permanent record, under records series #9 above. The other copies are exactly that, copies. Per ARS § 41-151.18, copies are not records and do not need to be retained any longer than their administrative or reference value.

L.A.P.R. GUIDANCE ON ARS § 9-802 – ADOPTION BY REFERENCE

Here is the direction the L.A.P.R. should give out with regard to these records:

One version (we would recommend a paper version, since paper is easier to retain as a Permanent record) shall be retained per records series #9. **Ordinances** (municipal codes)...Perm. Preserve pursuant to A.R.S. §39-101.

One version (either paper or electronic) should be retained per records series #13b., of the *Clerk, Municipal General Retention Schedule*:

13. Code Books:

b. **Uniform codes**...5 years after codes revised.

Recommended Solution by option:

If the Municipality chooses to retain 3 paper copies:

- One paper version shall be retained in accordance with records series #9.
- One paper version is to be retained in accordance with records series #13.
- The remaining paper copy shall be viewed as a copy, and needs to be retained only as long as needed to satisfy the requirements of ARS § 9-802.

If the Municipality chooses to retain one paper and one electronic copy:

- It is up to each Municipality to decide whether the paper or electronic version is going to be retained in accordance with records series #9.
- The remaining version is to be retained in accordance with records series #13.
- The L.A.P.R. recommends retaining the paper version as the permanent record, but that is only a recommendation.
- The choice of which version is to serve as the Permanent version is up to each Municipality.

L.A.P.R. GUIDANCE ON ARS § 9-802 – ADOPTION BY REFERENCE

9-802. Procedure for adoption by reference

A municipality may enact the provisions of a code or public record theretofore in existence without setting forth the provisions, but the adopting ordinance shall be published in full. At least three paper copies or one paper copy and one electronic copy maintained in compliance with section 44-7041 of the code or public record shall be filed in the office of the clerk of the municipality and kept available for public use and inspection. A code or public record enacted by reference may be amended in the same manner.

44-7041. Creation; retention; conversion of written records

- A. Each governmental agency shall determine if, and the extent to which, the governmental agency will create and retain electronic records and convert written records to electronic records. Any governmental agency that is subject to the management, preservation, determination of value and disposition of records requirements prescribed in sections 41-151.12, 41-151.13, 41-151.14, 41-151.15, 41-151.16, 41-151.17, 41-151.18 and 41-151.19 and the permanent public records requirements prescribed in section 39-101 shall comply with those requirements.
- B. State agencies shall comply with the standards adopted by the department of administration pursuant to title 41, chapter 32.
- C. All governmental agencies shall comply with the policies that are established by the secretary of state pursuant to section 41-132 and that apply to the use of electronic signatures.