



City of Medina, WA City Council Retreat

▫ Form of Government ▫

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City Administration/Form of Government

WHAT WE WILL COVER:

Classifications of Cities

Forms of Municipal Government

Roles and Responsibilities of Council Members and Mayor

Legislative

Administrative

Quasi-judicial

The Foundation

IT ALL STARTS WITH THE CONSTITUTION:

- Article XI, Section 10:

...the legislature, by general laws, shall provide for the incorporation, organization and classification... of cities and towns...

The Foundation

Cities exercise power under the state constitution and within the limits established by statute and the state constitution.

Power flows from the state based on:

1. Classification

- *City or Town;*
- *Classes or City Code*



2. Form of Government

- *Mayor/Council or*
- *City Manager*



City Classifications

First Class City

- Over 10,000 population
- RCW 35.22

Second Class City

- Minimum 1,500
- RCW 35.23

Code City

- RCW 35A

Towns

- RCW 35.27

Question: What kind of city is Medina?

Medina

- Medina is a “code city” operating under the Optional Municipal Code form of government authorized by the legislature in 1967
- Of the 281 cities in Washington, 197 are code cities
- Advantage of “code city” status is broad powers

Charter or Non-Charter?

Code Cities Can Have Charters or Not

- RCW 35A.08.010 – cities over 10,000 population can have charters
 - Initiated by resolution of council or 10% petition by electors
 - Voters decide question and elect charter commissioners
 - Second vote on charter itself

Forms or Plans of Government

☐ **Mayor–Council RCW 35A.12**

☐ **Council–Manager RCW 35A.13**

☐ **Retained Commission RCW 35.17**

- Which form of government a city operates under impacts the roles of the mayor and councilmembers
- The form or “plan” of government may be changed by a vote of the people caused by council resolution or voter 10% petition

Question: What form of government does Medina have?

Council-Manager Form of Government

- All legislative and policymaking powers are vested in the city council; the council employs a professionally-trained public administrator, the city manager, to carry out the policies it develops
- The mayor's responsibilities are primarily to preside at council meetings, and act as head of the city for ceremonial purposes; the mayor votes as a council member and does not have any veto power

RCW 35A.13

Commission Form of Government

- The commission form gives one elective body combined authority over both the executive and legislative functions of municipal government
- The commissioners, sitting as a body, are authorized to determine by ordinance the powers and duties of all officers and employees of each department. Each commissioner administers a separate department
- The mayor has essentially the same powers as other members of the commission. The mayor has no veto power or any power to direct general city administration other than in their own department (RCW 35.17). Currently, there are no cities that operate under the commission form of government
- Think: Portland before their recent change in form of government

Mayor-Council Form of Government

- Mayor serves as the city's chief administrative officer
- A council serves as the legislative body
- The **council** formulates and adopts policies, and the **mayor** carries them out
- The mayor attends and presides over council meetings but does not vote, except in the case of a tie

RCW 35A.12

Common Characteristics of All Forms of Government

- Formal action must be taken in a public forum
- Regular meetings
 - Time set by ordinance
 - At the announced location
 - Rules of conduct; e.g. abstention
- Subject to Open Public Meetings Act (RCW 42.30)
- Special Meetings
 - Called by Mayor or majority of City Council members
 - 24-hour written notice
 - Action items limited to those listed in the notice

Council/Manager Teamwork

- This is a team process – nothing is accomplished alone
- Progress happens when all involved take the time to listen
- Every perspective or view is partial but has some truth

*“If you want to go fast, go alone.
If you want to go far, go together.”*

- African Proverb

Resolving and Preventing Council-Manager Conflict

- It is essential that managers and council members understand their roles and how they relate to each other and staff
- Many conflicts in city governments happen due to role confusion, resulting in overstepping the boundaries between the respective roles

Council Authority – In General

- In general, it is the council's role to adopt **policies** for the city and it is the city manager's role to administer or carry out those policies
- The council, being legislative, has the power to enact **laws and policies**, consistent with state law, usually through the enactment of ordinances and resolutions

Council Authority – In General

- 1) Powers are exercised by a majority of the City Council in an open public meeting
- 2) Council Members have the right to speak in accord with City Council rules and cast a vote
- 3) Outside of the meeting context, individual City Council Members are limited to a right of inquiry as any citizen

Council Authority – In Detail

RCW 35A.13.230 and RCW 35A.11.020

- Enact a city budget
- Enact ordinance to protect public health, safety and welfare
- Define the powers, functions, and duties of city officers and employees
- Fix the compensation of officers and employees
- Establish the working conditions of officers and employees
- Enter into contracts
- Impose taxes, if not prohibited by state law
- Regulate the acquisition and disposition of real property
- Order an audit of a city department or office and determine auditor
- Provide governmental, recreational, educational, cultural, and social services
- Cause the city to own and operate utilities
- Approve claims against the city
- Grant franchises for the use of public ways
- License, for the purpose of revenue and regulation, most any type of business
- Appoint/confirm planning commissioners and members of other boards and commissions
- **“...except insofar as such power and authority is vested in the city manager.”**

The City Council's Most Important Functions

Adopting Policy

- Use ideas from a variety of sources: staff, community groups, advisory committees, chambers of commerce, etc.
- Consider the merits of proposals and then approve, modify or reject them
- In doing so, Council Members analyze community needs, program alternatives, and available resources
- The budget and comprehensive plan are powerful policy tools that are adopted by ordinance

The City Council's Most Important Functions

...but, the budget.

Inertia:

- Employee costs/wages: 60-80 % of budget with multi-year Collective Bargaining Agreements
- Limits on Revenue
- Long Term Planning: Capital Improvement Plan (CIP) and Transportation Improvement Plan (TIP)
 - Six-year documents
 - Key to successful Grantsmanship
 - GMA, Citizen Involvement Plan and Transparency

City Manager's Authority – In General

- As the chief executive and administrative officer of the city, the city manager is in charge of carrying out the policies set by the council
- The city manager is basically in charge of the day-to-day operation of the city, including the supervision of all appointed officials and employees
- The city manager oversees the hiring and firing of all appointed officers and employees

City Manager's Authority – In Detail

RCW 35A.12.090 and 100

- Chief executive and administrative officer of the city
- In charge of all departments and employees
- See that all laws and ordinances are faithfully executed
- Enforces contracts
- Bring lawsuits, with council approval
- Prepare a proposed budget
- Report to the council on the financial and other affairs and needs of the city
- Recommend for Council adoptions measures deemed necessary or expedient
- Perform other duties determined by Council by ordinance or resolution

Council / Manager Conflicts

- Personnel and performance
- Hiring and firing
- Contract administration and enforcement
- Budget

Council / Manager Conflicts

Responding to Constituent Complaints

- Residents often contact a Council Member when they have a problem
- Keep in mind that as a City Council member you lack the authority to take action in administrative matters. Be careful not to appear to bind the City—no promises!
- Council Member may:
 - Refer to appropriate staff member
 - Raise at City Council meeting
 - Discuss complaints against public officials in executive session

Liability

Legislative Immunity RCW 4.24.470

- An appointed or **elected official** or member of the governing body of a public agency is immune from civil liability for damages for any **discretionary decision** or failure to make a discretionary decision **within his or her official capacity**, but liability shall remain on the public agency for the tortious conduct of its officials or members of the governing body
- To be immune, the act complained of must have been a discretionary action and one within your official capacity

Mission Springs v. City of Spokane

- After a building permit had been issued, the city council directed staff to hold up issuance of grading permits for a 790-unit apartment building due to citizen opposition
- The city attorney advised the council that the issuance of the grading permit was an administrative action, not a policy or legislative matter and the council didn't have the authority to delay the permit issuance
- Council member said, "We have the opportunity to put a stop to this and let's just see what happens. Let's see how confident they are. If they bring a suit, we can always turnaround and issue the permit, that's an option still available to us"

Continued....

Mission Springs v. City of Spokane *contd.*

The Court Held

- “Therefore, we have rather a straightforward situation where clear legal rights of the citizen were violated by city council members acting in excess of their lawful authority..”

And

- ... “The motion passed by the Spokane City Council was not legislation... It was administrative, not legislative, and therefore legislative immunity is not available here”

After incurring \$1.2 million in defense costs, the city paid the developer \$250,000

Examples

- Would legislative immunity apply to decision to not include the cost of a road repair in the budget?
- Would legislative immunity apply to directing building official to approve a building permit?
- Would legislative immunity apply to decision to rezone an area of the city?
- Would legislative immunity apply to telling landowner that they could make a specific use of their property?

Who is Covered By Insurance?

RMSA Liability Coverage Agreement, Definition of “Covered Party”

- The elected ... officials, ... councils, and officers of the “member entity” **acting in the course and scope of their official duties...**

Quasi-Judicial Role

Applies to

- Site specific rezone; MMC 16.72.050

Following actions are not quasi-judicial

- Adoption, amendment, or revision of comprehensive plans
- Adoption of area-wide zoning *ordinances*
- Adoption of area-wide zoning *amendments*

Bases for Disqualification

Appearance of Fairness Doctrine

- Originally a judicial doctrine established in 1969
- The Legislature codified it in 1982
- Chapter 42.36 RCW prohibits:
 - Bias
 - Prejudice
 - Prejudgment
- It requires fairness both in fact and in appearance

Examples

Potential Bias

- Financial gain
- Property ownership
- Employed by interested party
- Associational or membership ties
- Family or social relationships

How Do We Tell if There Was Bias?

Test for Bias

- Has the decision been made solely on the basis of matters of record?
- Would a fair-minded person, observing the proceedings, be able to conclude that everyone had been heard who should have been heard?
- Did decision-makers give reasonable faith and credit to all matters presented, according to the weight and force they were reasonably entitled to receive?

Ex Parte Contact

- During pendency of quasi-judicial matter, no ex parte contact **unless**:
 - Place substance of contact on the record; and
 - Announce right of parties' right to rebut the substance of the communication RCW 42.36.060
- Prior participation as a planning commission member does not preclude participation at a quasi-judicial matter RCW 42.36.070

Object or Lose Right to Claim Unfair Hearing

If the potential basis to claim a violation of the right to a fair hearing is placed on the record and an opportunity to rebut is provided, a party claiming a violation must raise the challenge as soon as the basis for disqualification is made known or lose the right to challenge.

RCW 42.36.080

What Could Possibly Go Wrong?

SEATTLE POST-INTELLIGENCER | THURSDAY, DECEMBER 8, 2005

Burien slapped with \$10.5 million verdict

Developer alleged project was delayed

BY JAKE ELLISON
P-I reporter

A Federal Way developer has won \$10.5 million in damages from the city of Burien after a 15-year battle over plans to build a housing complex.

A Snohomish County Superior Court jury decided last week that Burien officials illegally dragged out negotiations with Westmark Development Corp. over possible environmental impacts and building permits in the 1990s.

The company had planned to build a 216-unit complex overlooking Seahurst Park and Puget Sound, and later revised the project down to 176 units. Company officials said Wednesday they again will seek a building permit for the site.

Burien likely will appeal the verdict, said Lisa Marshall, the city's attorney. She said the court did not allow the city to present evidence it needed to make its case. Any delays in Westmark's permits were caused by the company's failure to file plans and

supporting information on time, Marshall said.

The jury agreed with the company that the delays were designed to thwart the developers and that Burien's "biggest mistake was failure to take any action at all," said Jon Ferguson, the attorney for Westmark.

The Federal Way company is run by four brothers who have developed about 20 housing and hotel projects in Federal Way and are working on a \$5.5 million hotel project in Tacoma, said Badru Sayani, one of the brothers. They also operate hotels and condominium buildings in Vancouver, B.C., he said.

The brothers have developed more than \$200 million worth of property since emigrating from Uganda in 1972, Sayani said. The brothers' other partner in Westmark is 90-year-old Alice Dobson, who owned the property in Burien.

Ferguson told the Snohomish jury that the company was on its way to getting a permit from King County until 1993, when its requests were transferred to the

newly incorporated city of Burien.

At that point, "an anti-growth citizens group that organized itself into the city of Burien" halted the project and sat on it for a year, Ferguson said.

Westmark sued for delay and, in 1998, believed it had a settlement with the city. Westmark sued again when the city denied it had made a settlement. During that suit, Westmark found out the settlement was no good because the city had not followed open meeting laws.

The company sued again in 2003 over the original delay and the delay caused by the open meeting issue, which Burien officials knew about years before they told Westmark, Ferguson said.

"The city was just incorporated and didn't have enough experience," Sayani said. "Someone should have advised them to negotiate (with the company), rather than hiding the files and just not responding."

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What Could Possibly Go Wrong?

SeaTac News (July 14, 2016)

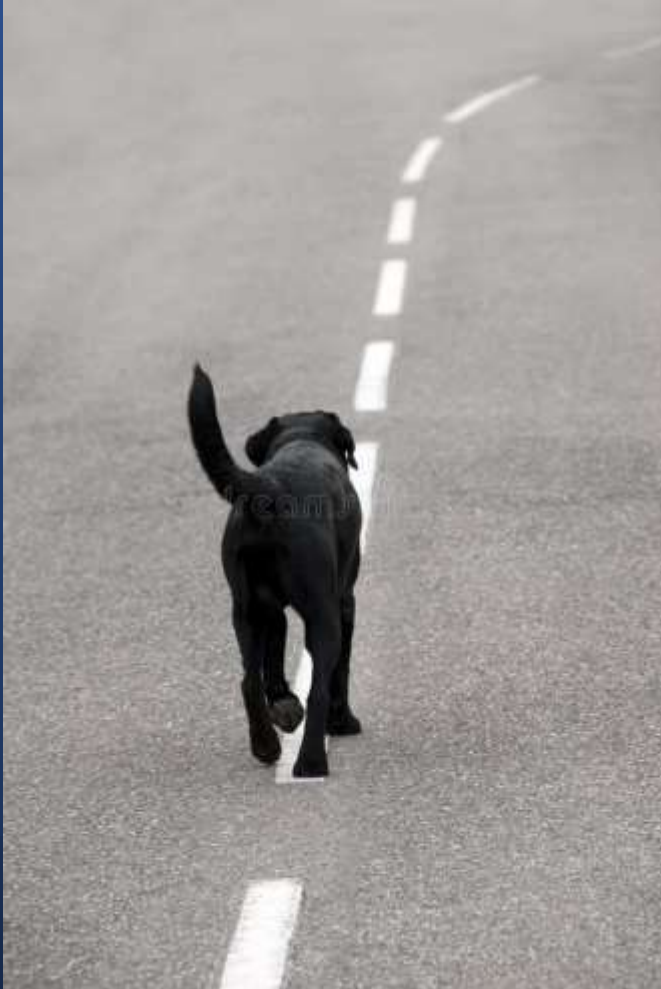
- City of SeaTac slapped with \$18.3 million judgment in land
- Use case; Judge calls for formal sanctions
- The trial judge also concluded the former SeaTac mayor wanted condos built on the site, believing they would price out Somalis who had moved into “his neighborhood”

What Could Possibly Go Wrong?

Embarrassment - A Tongue Lashing By the Court of Appeals

- “It is apparent that the Council gave **little consideration to the merits** of Maranatha's application, and that it **disregarded the facts** set forth in the examiner's findings. The Council seems to have heard **clearly the citizen complaints and the comments of one of its own members** while **disregarding the record**. We cannot escape the conclusion, in view of the evidence in support of Maranatha's application, that the Council **based its decision on community displeasure and not on reasons backed by policies and standards as the law requires.**”
- Maranatha was allowed to move forward with its claims against the county.

Maranatha Mining v. Pierce County



Practice

Context: City staff provide guidance subject to the standards of their license or profession and are employees of the City under the supervision of the City Manager and City administration.

Scenario: The City is considering a major street construction project. Randy is advocating for wider bike lanes as well as a lane solely designated for “pet walking.” Randy has met with engineering staff to discuss the design changes. He has researched online and discovered a report which questions the design to be presented by staff. Randy’s preferred design changes may not be consistent with the technical standards and may cause the City to lose access to grant funding.

Randy should:

- (a) Direct staff to make the design changes
- (b) Email staff and all council members with his position on the matter and indicate how he plans to vote on the issue when it comes before council
- (c) At the Council meeting, without notice, introduce the alternative design report and extensively question the City Engineer on the matter.
- (d) At the Council meeting, make a motion to terminate the City Engineer.

Conclusion

- You desire to do what you feel is best for the city
- But you can't do whatever you like
- Your authority and roles are legally prescribed and limited
- Stick to your roles, stay in your lane, work as a team and you will go far



Questions?

