

CITY OF STEVENSON
RESOLUTION NO. 2024-426
A RESOLUTION OF THE CITY OF STEVENSON
AMENDING CITY COUNCIL RULES OF PROCEDURE

WHEREAS, the City has adopted City Council rules of procedure that are in need of updates; and

WHEREAS, the City Council finds the adoption of this resolution to be in the best interest of all the city.

NOW, THEREFORE, be it resolved that the City Council of the City of Stevenson, Washington, hereby adopts the following policies as described and amended in Exhibit A, attached hereto and incorporated by reference, for the benefit of the city.

Key: ~~Strikethrough~~ means repealed. Underlined means new.

APPROVED AND PASSED by the City Council of the City of Stevenson, Washington at its regular meeting this 15th day of February, 2024.

Mayor of the City of Stevenson

ATTEST:

Clerk of the City of Stevenson

APPROVED AS TO FORM:

Attorney for the City of Stevenson

CITY OF STEVENSON



CITY COUNCIL

RULES OF PROCEDURE

Adopted by Resolution ~~2021-382~~2024-426
~~September 16, 2021~~February 15, 2024

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Section 1 - Authority

The Stevenson City Council hereby establishes the following Rules of Procedure for the conduct of council meetings, proceedings and business. These rules shall be in effect upon adoption by the Council and until such times as they are amended or new Rules of Procedure adopted.

Section 2 - Council Meetings

Types of Meetings

Regular Meetings - The Council shall conduct regular council meetings on the third Thursday of each month beginning at 6:00 p.m. Meetings will be conducted in the Council Chambers, City Hall. The time and place of regular council meetings must be fixed by ordinance. Meetings will adjourn no later than ~~10:00~~9:00 p.m. To continue past this time of adjournment will require concurrence of a majority of the Council. Minutes must be filed recording regular meetings.

Special Meetings – A special meeting is any Council meeting other than a regular council meeting. The Mayor or a majority of the Council Members may call a special meeting. Notice shall be given personally or by mail to all members of the governing body at least 24 hours in advance specifying the time and place of the meeting and the business to be transacted (an agenda). Whenever possible, notice of a special meeting shall be filed and/or published with the newspaper of record. The public shall be notified, 24 hours in advance, by posting at the main entrance of City Hall and on the City’s web site. Notice shall minimally include the agenda and time and place of the meeting. Only items on the agenda shall be acted upon or discussed. Minutes must be filed recording special meetings.

Study/Work Sessions – Study/Work Sessions may be held when a majority of the Council or the Mayor determines there is a need. These sessions are subject to the same notification requirements as a Special Meeting. Study/Work Sessions are informal meetings for the purpose of focusing on specific programs/projects. No final decisions are made at a study/work session. Special work sessions can be held with other agencies and jurisdictions or the City Planning Commission. Minutes must be filed recording Study/Work Sessions.

Executive Sessions – These are Council meetings that are closed to the public except for the Council and Mayor, authorized staff members, and consultants authorized by the Mayor. The public is restricted from attendance. Executive sessions may only be held during regular or special meetings (note there is no prohibition against holding a special meeting solely to consider one or more subjects in executive session, but the subject must be identified at least in general terms in the meeting notice). Prior to convening in to an executive session the Mayor must publicly announce the purpose of the meeting, reason for excluding the public, and anticipated time when the session will conclude. No minutes are taken during an executive session. Executive sessions can only be called to discuss the following items as per RCW 42.30.110:

1. To consider matters affecting national security
2. Real Estate: To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price
3. Real Estate: To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action of selling or leasing public property must be taken in a meeting open to the public

4. Public Bid Contract Performance: To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs
5. Personnel: To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge
6. Personnel: To evaluate qualifications of an applicant for public employment or to review the performance of a public employee. (Note: Final actions on salaries, wages, and other conditions of employment, hiring, disciplining or discharging must be taken in a meeting open to the public (RCW 42.30.140(4))
7. Elected officials: To evaluate the qualifications of a candidate for appointment to elective office. All interviews of such candidates must be conducted in a meeting open to the public
8. Litigation: To discuss with legal counsel representing the City in matters relating to enforcement actions or litigation or potential litigation

Emergency Meetings – An emergency meeting is a special council meeting called without the 24-hour notice. Generally, an emergency meeting is called to address an emergency involving injury or damage to persons or property or the potential thereof when time requirements of a 24-hour notice would make notice impractical or would increase the likelihood of further injury or damage. Emergency meetings may be called by the Mayor or the consent of a majority of the Council members. There may be occasions during emergent conditions (such as an epidemic declared by FEMA or the Health Department) that it will not be safe for the Council to assemble and conduct a meeting. The Mayor may direct staff to advertise a special emergency meeting that will be conducted via telephone conference call with a speaker phone available at City Hall for the public. Staff will tape and take minutes of all actions taken during such a meeting.

Remote Attendance by Conference Call – Occasionally a council member will not be able to physically attend a meeting ~~due to personal or work conflicts~~; the council member received a full council packet, is prepared to participate but cannot physically be present at the meeting, and is interested in and able to participate. The ~~Mayor may determine the council member's participation is necessary (due to quorum issues, etc) and allow the council member to~~ may participate via “conference call” or similar electronic device. Minimally, the conference call will allow the physically missing council member to hear the discussions, allows the same member to express his/her opinions and vote on the issues, and allows the members attending the meeting to hear the council member’s contributions over the telephone system or similar electronic device.

Section 3 – Quorum

At all meetings of the Council, three (3) Council Members, who are present and eligible to vote, shall constitute a quorum for the transaction of business. Two (2) or less Council Members and Mayor does not constitute a quorum for the transaction of business and that body may adjourn provided that written notice of said adjournment is posted on the exterior of City Hall door providing access to the Council Chamber per RCW 35A.12.120. Council meeting adjourned under these conditions shall be considered regular meetings for all purposes.

Section 4 – Agenda – Order of Regular Council Meetings

Agenda Preparation

The City Administrator will direct the preparation of agendas for each council meeting. The Agendas will specify the time and place of the meeting, and will briefly outline the items to be considered by the Council. Agendas will be provided to the Council in advance of the meeting to allow the Council members an opportunity to review prior to the meeting.

Items can be placed on the Council’s meeting agenda in the following ways:

1. A majority vote of the Council
2. Council consensus
3. By the City Administrator
4. By a Council Committee
5. By the Mayor

Notices of items to be placed on the agenda are due by the Thursday morning prior to the meeting. A draft agenda will be made available to the public by 5 pm the Friday before the meeting. Agendas will be finalized and made available by Tuesday at 10:00 AM of the week of the meeting. The agenda will be posted on the City’s website and at city hall.

The City Administrator or his/her assistant will schedule sufficient time between public hearings and other scheduled items to not keep the public waiting and provide the Council sufficient time to hear testimony and allow opportunity for deliberation. Legally required and advertised public hearings will have a higher priority over other agenda items that do not need to meet statutory or other legal regulations.

If an item needs to be placed on the agenda (other than the Voucher Packet) after the agenda is closed and notice published the Council will need to approve its addition by consensus of the Council.

Order of a Regular Meeting

1. Call to Order– The Mayor calls the meeting to order. The Mayor will announce the attendance and if a Council Member is not in attendance, council will vote on whether or not the Council Member has an excused absence.
2. Changes to Agenda - The Mayor, with the concurrence of the majority of the Council, may add agenda items or take agenda items out of order.
3. Consent Agenda – Consent Agenda items have either been fully considered by the City Council or are considered routine and non-controversial and may be approved by one motion. Items that may appear on the Consent Agenda may include but are not limited to meeting minutes, bid awards, previously authorized agreements, previously discussed resolutions, travel and training requests.

4. Citizen Comments – Special time set aside on the agenda for members of the audience to comment on items relating to any issue or matter. The City will have “Citizen Comment Sheets” available for any citizen wishing to make comments. (Ref. Citizens Comments Section).
5. Presentations from Outside Agencies/Proclamations/Recognitions – Periodically, outside agencies such as the Chamber of Commerce or Economic Development Council will present updates to council on their work.
6. Public Hearings – There are two kinds of public hearings – legislative and quasi-judicial. A public hearing may be scheduled at any point in the agenda to balance the needs of the audience and to ensure that proper time can be set aside if more than one public hearing has been scheduled for the same meeting day. Rules for conduct of a public hearing depend on the kind of hearing. Before each public hearing the Mayor will announce the purpose of the public hearing and state the procedural rules that will apply. (See Section 8 - Public Hearings). Citizens may comment on public hearing items.
7. Unfinished Business – These agenda items do not require public hearings, but do require council action or are policy issues requiring council discussion. These items have been discussed previously and are not resolved. It is not required to take citizens comment during this portion of the agenda.
8. Council Business – These agenda items do not require public hearings but do require council action or are policy issues requiring council discussion. It is not required to take citizens comment during this portion of the agenda.
9. Information Items – Items for council information only. Discussion may take place.
10. City Administrator and Staff Reports – This provides an opportunity for the City Administrator and other staff to update the Council members on current issues or items of Council interest.
11. Voucher Approval and Investments Update – Approval of the Claims and Payroll Vouchers and recognition of the City’s current investment sales and purchases.
12. Council and Mayor Reports – This provides council members an opportunity to report on significant activities since the last meeting.
13. Issues for the Next Meeting – This provides the Council Members an opportunity to focus the Mayor and Staff’s attention on issues they would like to have addressed at the next council meeting.
14. Executive Session – If needed an executive session may be called for the reasons outlined in RCW 42.30.110.

15. Adjournment – With no further business to come before the Council the Mayor adjourns the meeting. The minutes should reflect the time of adjournment.

Section 5 - Citizens Comments

Under the Open Public Meetings Act the public must be allowed to attend City Council meetings, but the Act does not require that the public be allowed to speak during the Council or Planning Commission meetings. It is up to the Council to determine its own rules about public participation.

The Council has determined that it is important to set aside a limited period of time during regular council meetings for public comment. This period ‘Citizens Comments’ will be scheduled for the beginning of each council meeting. Members of the audience may comment on items relating to any issue of concern or interest. Citizen comment sign-ups will be available at each regular council meeting for the use of those citizens wishing to address the Council. All speakers must sign in to be recognized. Comments are limited to three (3) minutes, except for a person speaking on behalf of a group; comments then are limited to five (5) minutes. The Mayor or Mayor Pro Tem may extend or further limit these time periods at his/her discretion. No speaker may convey or donate his or her time for speaking to another speaker.

Written comments, including the name and city residence of the commenter, may be submitted to the City Administrator up until noon the day of the meeting to be included in the council packet. In the subject line please state, “Public Comment for the Upcoming City Council Meeting on [date]” or “Public Comment for the Upcoming Public Hearing on [date] Regarding [topic].” Anonymous comments will not be accepted.

Citizens with specific complaints or concerns will be encouraged to first refer to the appropriate City department. If issues cannot be satisfied in the normal course of work the staff will help the citizen schedule time on the next council agenda for a more formal review and discussion.

The Mayor may allow citizens to comment on individual agenda items at times during any regularly scheduled City Council meeting outside of the Citizens Comments section or scheduled public hearings.

Section 6 - Council Discussion and Motions

All Council discussion and motions may be guided by Roberts Rules of Order, Newly Revised at the Mayor's discretion. Approval of council motions are determined by a simple majority. The Mayor does not vote except to break a tie in matters other than: the passage of an ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money (RCW 35A.12.100).

Vote is by voice. If the vote is split the Mayor may ask for a roll call to clarify actual outcome.

Although a quorum may be present, passage of most ordinances requires an affirmative vote of the majority of the council.

SECTION 7 VOUCHER CERTIFICATIONS AND APPROVALS FOR EXPENDITURES AND DISBURSEMENTS

All expenditures and disbursements made by the City to address claims against the City must follow procedures set forth by RCW 42.24.

City Staff Responsibilities

It is the responsibility of each Department Head to ensure that every claim presented to the City Council for payment for the furnishing of materials, rendering of services or performing labor, or for any other contractual purpose shall meet the following requirements:

1. An invoice is attached initialed by the responsible staff member. By initialing the invoice, the responsible staff member acknowledges that the product was received, the service delivered, or the contract obligations met.
2. The invoice clearly shows who provided the service or product.
3. The charges on the invoice clearly show what was purchased and/or provided so that the department head, the City's auditor the City Council can easily understand what was purchased.
4. If taxes need to be assessed the invoice should include the appropriate tax assessment or indicate that the taxes will be paid directly by the City to the Department of Revenue.
5. Vouchers are prepared by the accounting staff. Charges on the invoice are checked to ensure that charges were correctly transferred to the voucher.
6. The City Administrator or Deputy Clerk (the auditing officers) will review each voucher to determine that the BARS accounting code is correct and that funds are authorized and available to meet the obligation. The City Administrator or Deputy Clerk will certify (by signature) that the voucher has been reviewed and does not violate State or City policy.
7. Vouchers are assembled for presentation to the City Council at the next regularly scheduled public meeting. A listing of all vouchers scheduled for approval will be provided to each council member.
8. The City Council may stipulate that some expenditure claims may be paid in advance of a regular council meeting. This most frequently happens in large public works construction projects when contractual requirements require payments within a short time frame. Nevertheless, those payments will be included in the voucher packet for council approval at the next regularly scheduled council meeting.
9. Voucher packets are filed in the auditing office and stored for the period required by the State Law.

City Auditing Officer

The state requires that the vouchers pass through a formal certification process. The City uses a "blanket certification process" that includes the listing of vouchers being approved, the total amount expended by fund, the signature of the auditing officer. The certification statement is as follows:

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or the partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the City and that I am authorized to authenticate and certify to said claim.

The City Administrator or in his/her absence, the Deputy Clerk, shall serve as the auditing officer.

City Council Responsibilities

It is the City Council's responsibility to ensure that the system of auditing and certifying vouchers is operating in a manner to provide the greatest possible protection for the City Council, for the City and for their citizens. The State Auditor BARS Manual does state that the members of the governing body do have responsibility and liability for each voucher approved. State law more specifically states:

Any person who knowingly approves or pays or causes to be approved or paid a false or untrue claim shall be guilty of a gross misdemeanor and, in addition, he shall be civilly liable on his bond to the municipal corporation or political subdivision, as the case may be, for the amount so paid or for three hundred dollars whichever is the greater. (RCW 42.24.110)

The key is of course knowingly approves.

The Council shall make certain that the City staff properly implemented the process described in "City Staff Responsibilities" and may want to spot check an invoice to make certain the invoices are signed and properly transferred to the voucher. The City Council member should be alert to changes in disbursement trends and question those trends.

Both state and city laws require special procedures for reimbursement claims filed by city employees and elected officials as set forth in Section 17 "Eating and Drinking at Public Expense" of this document. Special attention should be paid that these disbursements are valid and meet requirements.

Section 8 - Public Hearings

Types

There are two types of public hearings: legislative and quasi-judicial. The Mayor will ensure the appropriate hearing procedures are followed and will inform the council of the proper procedures. Citizens may comment on public hearing items.

Legislative Public Hearings

The purpose of a legislative public hearing is to obtain public input on the legislative decision on matters of policy. These could include (without limitation) council review of budgets, land use plans and utility rate adoptions.

Quasi-Judicial Public Hearings

The purpose of a quasi-judicial public hearing is to decide issues including the right of specific parties and include, without limitations, certain land use matters such as site-specific rezones, preliminary plats, and variances. The City Council's decision on a quasi-judicial matter must be based upon and supported by the "record" of the matter. The "record" consists of all testimony or comment presented at the hearing and all documents and exhibits that have been submitted. In quasi-judicial hearings, Council Members shall comply with all applicable laws including without limitations the appearance of fairness doctrine (Ref. Appendix B).

Note! The Appearance of Fairness Doctrine does not require establishment of a conflict of interest, but whether there is an appearance of conflict of interest to the average person. This may involve the Council Member of a Council Member's business associate, or immediate family. It could involve *ex parte* (outside the hearing) communications, ownership of property in the vicinity, business dealings with the proponents and/or opponents before or after the hearing, business dealings of the Council Member's employer with the proponents and/or opponents, announced predispositions, and the like. Prior to any quasi-judicial hearing, each Council member should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If so, no matter how remote, the Council Member should disclose the facts to the City Administrator who will seek the opinion of the City Attorney. The City Attorney's opinion will be communicated to the Mayor and Council Member.

Section 9 - Ordinances

No ordinance should be prepared for presentation to the Council unless requested by the Council and/or Mayor, City Administrator or City Attorney. The City Attorney shall review all ordinances prior to adoption.

Two readings of an ordinance are required, except when there is an urgent need. Ordinances regarding franchise agreements must be adopted at a regular meeting.

Prior to enactment the Ordinance shall be tracked by its title which should be read prior to voting. The Clerk to the Council shall assign a permanent ordinance number after enactment.

Upon enactment of the ordinance, the Clerk to the Council shall obtain the signature of the City Attorney and the signature of the Mayor. After obtaining both signatures the Clerk to the Council shall sign the ordinance.

Summaries of all ordinances shall be published in the official newspaper as a legal publication immediately following enactment.

Section 10 - Mayor and Mayor Pro Tem

The presiding officer at all meetings of the Council shall be the Mayor, and in the absence of the Mayor, the Mayor Pro Tem will act in that capacity. The Council shall designate a Mayor Pro Tem at the beginning of every calendar year. If both the Mayor and Mayor Pro Tem are absent, the Council Members present shall elect one of its members to serve as Presiding Officer until the return of the Mayor or Mayor Pro Tem.

It is the responsibility of the Mayor or Presiding Officer to:

- Preserve order and decorum in the Council Chambers
- Observe and Enforce the Council Rules of Procedure
- Conduct the meeting in an orderly manner and decide questions of order.
- Recognize council members in the order in which they request the floor.
- From time to time the Mayor shall appoint Council Members to serve on special City Council or ad hoc committees.

Section 11 – Filling City Council Vacancies

The purpose of this section is to provide guidance to the City Council when a Stevenson City Council Member position becomes vacant before the expiration of the official's elected term of office. Causes of vacancy as set forth in RCW 42.12.010 include resignation, recall, forfeiture, written intent to resign, or death of a Council Member. Pursuant to state law, a vacancy shall be filled only until the next regular municipal election, to serve the remainder of the unexpired term. If a vacancy occurs in the office of a Council Member, the Council will follow the procedures outlined in the following:

RCW 35A.12.050 Vacancies – Filling of Vacancies in Council/Mayor Form of Government

RCW 42.30.110(h) – Executive Session Allowed to Consider Qualifications of a Candidate for Appointment to Elective Office

RCW 42.30.060 – Prohibition on Secret Ballots

RCW 42.12 – Vacant Position

In order to fill the vacancy with the most qualified person available until an election is held, the Council shall direct the City Administrator's Office to prepare, distribute and publish a notice of the vacancy in the City's official newspaper with courtesy copies to other appropriate outlets. All applicants must be a registered voter of the City of Stevenson and have a one (1) year residency in the City of Stevenson. Interested applicants will be asked to submit an application form stating they meet the qualification requirements and a letter of interest. All applications received by the deadline date for the position will be copied and circulated to the Mayor and Council Members. The Council will conduct interviews of the applicants at a public meeting (regular or special). The City Administrator's Office shall notify applicants of the location, date and time of the City Council interviews.

The Mayor shall determine the order of appearance, amount of time allotted for each interview, and format for the interviews. The Council shall conduct all interviews during the open public session of the meeting. Upon completion of the interviews, Council Members may convene into Executive Session to discuss the qualifications of applicants. However, all deliberations, nominations and votes taken by the Council shall be in open public session. The Mayor shall call for nomination(s) and deliberation for selection. Following the close of discussion, the Mayor shall call for the vote. The nominee receiving the majority vote shall receive the appointment.

The City Administrator shall ensure that the new Council Member be sworn in to office prior to the next regularly scheduled City Council meeting.

Section 12 – Committees

From time to time the City Council will identify the need to form special advisory committees, task forces, or commissions to address issues on behalf of the City Council. Their advice on a wide variety of subjects aid the Mayor and Council Members in their various decision-making process. Effective citizen participation is an invaluable tool for local government.

Committees can be established by ordinance or by motion of the City Council. Occasionally Washington Law will require establishment by ordinance, more often it is at the discretion of the City Council as to which method is employed. Persons of wide-ranging backgrounds who are interested in participating in public service but not interested in competing for public office can be involved in advisory committees, task forces or commissions.

Advisory Committees

Advisory Committees are formed to address specific issues or functions. Every advisory committee will be re-examined periodically by the City Council to determine its effectiveness and whether it has completed its working functions. The size of the advisory group shall be determined by the Council in relation to its duties and responsibilities. Members and alternate members of all advisory bodies are appointed by a majority vote of the City Council during a regularly scheduled meeting. Vacancies may be advertised so that interested citizens may submit letters of interest and/or applications.

Advisory Committees will be responsible for adopting their operating policies consistent with any established resolutions or ordinances. All meetings of advisory committees are open to the public in accordance with the public meeting laws of the State of Washington which requires a minimum 24+ hour advance notice. The advisory chairperson will be responsible for coordinating meeting time, place and agenda with the appropriate City support staff. City staff will be responsible for properly advertising notice of all meetings. Minutes shall be kept of all meetings in accordance with the public meeting laws of the State of Washington.

Members may resign at any time their personal circumstances change to prevent effective service. Members may be removed from the advisory committee after three consecutive unexcused absences.

Section 13 - Council Relations with City Staff

The City Council serves as the City's policy makers, and the City staff serves as the implementers and/or administrators of the Council's policies.

All written informational material requested by individual Council Members shall be submitted by City staff to the City Administrator who will distribute to the Council member requesting the information as well as any other Council Members who express an interest in receiving a copy of the same information.

When mail of a general nature that is addressed to the Mayor or Council Member is received it shall be copied to all City Council Members with a copy saved to file. Mail addressed to Council Members that is marked personal and/or confidential shall not be opened by City Staff.

Council Members shall not attempt to coerce or influence City staff in the selection of personnel, the awarding of contracts, the selection of consultants, the processing of development applications or the granting of City permits. Nor shall any individual Council Member interfere with the operating rules and practices of any City Department.

No individual Council Member shall direct the City Administrator to initiate any action or prepare any report that is significant in nature, or initiate any significant project or study without the consent of a majority of the Council.

There will be mutual respect from both City Staff and Council Members of their respective roles and responsibilities. This same courtesy and respect will guide all comments and conduct in public meetings.

Section 14- Council Meeting Staffing

The City Administrator shall attend all regular meetings of the Council unless excused. If the City Administrator has an excused absence, a staff person shall be designated to attend in his/her absence. The City Administrator may make recommendations to the Council, may take part in the discussion, but shall have no vote. The City Administrator will ensure that appropriate staff (the recorder) is present to properly record (minutes) the meeting and departmental heads will be present to address issues and questions the Council Members may have with respect to agenda items.

The Public Works Director or his/her designee shall attend all regular meetings of the Council. The Public Works Director shall be prepared to answer questions, make recommendations and participate in discussions as needed.

The City Attorney shall attend all meetings of the Council unless excused, and shall upon request, give an opinion, either written or oral, as needed.

The Community Development Director or his/her designee shall attend all regular meetings of the Council. The Director shall be prepared to answer questions, make recommendations and participate in discussions as needed.

Section 15- Council Member Attendance at Meetings

Excused Absences

Excused absences are defined as follows:

1. Death of an immediate family member
An immediate family member would include spouse, child, parents, siblings, grandparents, father and mother-in-law or daughter or son-in-law.
2. Illness
Illness of either a Council Member or immediate family member, as defined above.
3. Accident, Bad Weather, other circumstances beyond the Council Member's control
4. Absences for Council Business
A Council Member who is absent because of their commitments representing the Council at other meetings or events/activities.
5. Prior Arranged Absences
The Council may, at their discretion, excuse an absence if arrangements are made prior to the absence.

All excused absences must be voted on and approved by a majority of council present.

Unexcused Absences

1. A council position shall become vacant if the Council Member fails to attend three consecutive regular meetings of the council without being excused by the council (Ref. RCW 35A.12.060). The minutes will show the Council Member as having an unexcused absence for each meeting not attended without an excused absence.

Section 16 - Council Representation

If a Council Member appears on behalf of the City before another governmental agency, a community organization, or through the media, for the purpose of commenting on an issue, the Council Member shall state the majority position of the council, if known, on such issues(s). Personal opinions and comments that differ from the council majority may be expressed if the Council Member clarifies that these statements do not represent the Council's position.

Council Members need to have the Mayor and/or other Council Members' concurrence before officially representing the other Council Members' views. And as a matter of courtesy, any letters to the editor, interviews or other communication by a Council Member of a controversial nature that do not reflect the City's majority opinion should be presented to the City Council prior to publication so that the Council Members may be prepared.

Section 17 – Confidentiality

Council Members shall keep confidential all written materials and verbal information, including but not limited to the topic(s) and/or the substance, provided to them during Executive Sessions, to ensure that the City's position is not compromised. Confidentiality also includes information provided to Council members outside of Executive Sessions when the information is considered to be exempt from disclosure under exemptions set forth in the Revised Code of Washington (RCW 42.23.070).

If the Council, in Executive session, has provided direction or consensus to City staff on proposed terms and conditions for any type of issue, all contact with the other party should be done by the designated City staff representative handling the issue. Council Members should obtain the permission of the Mayor and/or City Administrator before discussing the information with anyone other than other Council Members, the City Attorney or City staff designated by the City Administrator. Any Council Member having any contact or discussion needs to make full disclosure to the City Administrator and/or the City Council in a timely manner.

Section 18 - Eating and Drinking at Public Expense

The objective of this policy is to provide clear direction for the reimbursement for City Council business related food and beverage costs incurred by the City Council and/or staff during non-travel periods (Ref. City Personnel Policy for reimbursements for travel related expenses). The policy will provide guidelines by which to determine whether or not expenditures by the City, City Council and/or staff may be allowed when refreshments and other related costs are made available at meetings involving City official and volunteers.

Staff and council members have the responsibility for becoming knowledgeable about authorized expenditures and the documentation requirements. Care should be taken to avoid unnecessary or excessive expenditures, and those not directly and reasonably related to the conduct of City business.

Food and Beverage Cost for City Meetings

Generally, the City **will not** incur costs for refreshments, and other related items, for meetings or functions held in the normal course of business or which are attended solely by City officials. However, when certain meetings or functions are scheduled during one or more meal times and the City Council **has expressly approved** the meeting as such, the City may incur such costs directly or as a reimbursement to employees who have incurred such costs on behalf of the City. Food and beverage costs may only be incurred wherein a municipal function, public purpose, or City program is served or furthered (Ref. AG Opinion dated May 14, 1987 “Eating and Drinking at Public Expense”). Refreshments purchased solely for personal entertainment are not a legitimate City expense.

Food and Beverage Costs for Ceremonies and Celebrations

Reasonable expenses, including food and beverage, associated with commemorating a dedication or an unveiling that is recognized as serving a public purpose are legitimate City expenditures. The public celebrations must be open to the general public. Support of a local “event” or celebration may not take the form of a gratuitous contribution of public funds to a private person, committee or organization. Expenditure of public funds on a publicly sponsored event requires the existence of a recognizable public purpose that relates to the City’s existence, proper authorization from the legislative authority for such public sponsorship, and a reasonable relationship between the amount of the City’s expenditure and the “public” nature of the event.

Reimbursable Expenses Incurred by a City Official at Other Meetings

Meals consumed by a City Official during a meeting or other function where the City Official is conducting City business or representing the City are reimbursable to the official.

Approval Procedures and Claims for Reimbursement

Approval for food and beverage expenses at a council meeting or for ceremonies and/or celebrations must be approved by the City Council in advance of any expenditure. Expenditures

for meal costs incurred by an official and/or employee at a meeting must be pre-authorized by their direct supervisor. (Council members are approved by the Mayor).

A claim for reimbursement shall be submitted as follows:

1. All claims must be submitted on a reimbursement form provided by the City Finance Department
2. The reimbursement form will identify the name of the person who consumed the goods for which reimbursement is requested, a description of the event, ceremony or meeting (including date, location and time) at which the food was consumed, and the public purpose served
3. Any claim for reimbursement must be accompanied by a bona fide vendor's receipt. Payment for table service at a restaurant (the tip) may be included at a rate of 15% of the price of the meal. No reimbursements will be made for liquor.
4. Reimbursements will be made by claims warrant only

Section 19 – Emergent Communications

Occasionally there are important or emergent happenings in the City when Council Members should receive briefings as quickly as possible and not wait until the next council meeting. The City Administrator or designee will contact the Mayor with a draft memo detailing the issue(s). After review approval the memo will be forwarded by email (or telephone) to all council members.

Appendix B – Public Hearing Procedures Script for Quasi-Judicial Issues

The following represents a recommended procedure as a general instruction for the conduct of Quasi-Judicial hearings and may be followed or departed from in the Mayor's discretion. Failure to follow this recommended procedure shall not constitute a *prima facie* failure of Due Process.

Opening

- The Mayor shall open the public hearing by stating the name of the application
- The Mayor shall direct any persons wishing to be heard to sign in at the sign-in table

Rules of Order Presented by the Mayor

- The Mayor shall explain that the public hearing will proceed in an orderly manner and ask that the members of the public respect the process
- The Mayor shall ensure that everyone will be given an opportunity to be heard. The Mayor shall ask that all comments be made standing or at a speaker's rostrum if available. All speakers must first give his or her name and address for the officially recorded transcript of the hearing. The Mayor shall further explain that if there is an appeal the court must make its decision on the basis of what is said at this meeting
- The Mayor shall ascertain if anyone will require special accommodation in order to speak so that arrangements can be made
- In fairness to all in attendance, each person wishing to speak will be given an opportunity to address the Council. Depending on the number of people in attendance the Mayor may limit the initial period of time allowed. If additional time is needed the Mayor may allow additional time after all interested parties have had an opportunity to speak
- There should be no demonstrations (clapping, cheering, booing) during or at the conclusion of anyone's presentation
- This public hearing is the time for presentation of testimony, not an opportunity for debate
- The City Council is interested in promoting an orderly public hearing to give all persons in attendance an opportunity to be heard

Appearance of Fairness and Conflicts of Interest Presented by City Attorney

- The hearing is quasi-judicial in nature, (especially in land use cases) and must comply with the appearance of fairness and conflict of interest rules. Quasi-judicial actions are defined as actions of the Council which determine legal rights, duties, or privileges of specific parties in a hearing. The public hearing must be fair in three respects: form, substance and appearance

- All Council members and the Mayor should give consideration as to whether they have:
 - 1) a demonstrated bias or prejudice for or against any party to the proceedings
 - 2) a direct or indirect monetary interest in the outcome of the proceedings
 - 3) a prejudgment of the issue prior to hearing the facts on the record, or
 - 4) *ex parte* contact with any individual, excluding administrative staff, with regard to an issue prior to the hearing, and whether the individual supports or opposes the project.
 Each Council Member must disclose whether any of the factors listed above are at issue and respond to the question: Do you have an Appearance of Fairness or Conflict of Interest issue or disclosure to make? (*Disclosures or questions of conflict directed to the attorney*).
- And finally, the members in the audience are asked if there are any objections to a Council Member or Mayor's participation in the proceedings. (*Again, refer any affirmative answers to the attorney*).

Order of Speaking – Mayor

- Staff presentation
- Request to staff (City Administrator) if there were any written materials submitted. City Administrator or Attorney to summarize the document
- Comments from applicant
- Comments from proponents
- Comments from opponents
- Comments from any others wishing to speak
- Comments from applicants in response/rebuttal. New material may not be introduced
- Response from Staff to any subjects raised by any of the speakers, or any additional clarifications
- Questions from Council Members to any speaker or staff person who made comment
- The Mayor may ask if anyone in the audience has any comments to clarify an item raised by a Council Member's questions. No new items can be presented nor should the speaker repeat his/her previous testimony. This is an opportunity for clarification

Council Discussion

- The Mayor making certain there is no further testimony closes the public testimony portion of the hearing
- Council discussion is held – Council should consider discussing issues in terms of findings and potential conditions
- Request for any further recommendations or comments from staff
- Mayor calls on the Council members to make a motion (take action) or postpone. If action taken Mayor directs staff to prepare findings and decision

Appendix B-1 Risk Management in the Land Use Context: A Primer on How to Avoid Being Sued

Local government actions related to the development of land, such as planning, zoning, and platting, are a frequent source of litigation. Land use decisions routinely affect, sometimes significantly, the value of land parcels, which tends to generate litigation from property owners seeking to maximize their properties' value.

Sometimes lawsuits cannot be avoided; however, the following information will help you to minimize your risk of having to defend against land use claims. Here are a few concepts that you need to know and follow, along with suggestions for avoiding land use lawsuits:

1. Involve Professional Staff and Consultants.

Guidance from planners, engineers, lawyers, and surveyors should be sought throughout the process. They will make sure you are up to date on industry and professional standards, and current laws. From the time that a land use application is filed to the final decision, the assistance of experts will help in creating a defensible record and a sound decision. The land use process has become too complex and technical to navigate without some professional assistance.

2. Stay Current.

Know the applicable laws and keep local codes and procedures current with appellate court decisions, Growth Management Hearings Board decisions, and state statutes. Promptly inform staff and decision makers of new decisions. Schedule yearly reviews of your land use code to make sure it meets any new requirements.

3. Timeliness and Notice.

Project permit applications are required to be processed within deadlines established by state statutes and local codes. Statutes and codes require that notice is given in a certain manner at certain times and usually that public hearings are held. Make sure all required notices are given and hearings held.

Develop checklists or summaries for the different types of applications you process. The checklists should identify the various deadlines and notices applicable to the particular application.

4. Legislative Hearings vs. Quasi-Judicial Hearings.

Decision-making bodies—boards, councils, and commissions—must understand when they are acting in a legislative role and when they are acting in a quasi-judicial role. The legal standards for what constitutes a valid decision differ depending upon which role applies. Quasi-judicial hearings require legal due process for the applicant. More leeway exists when acting in a legislative capacity. Hence, more lawsuits arise from quasi-judicial hearings than from legislative hearings.

Decisions of general applicability affecting the community at large are usually legislative in nature. The following land use actions are legislative:

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

Adoption of area-wide zoning amendments.

Quasi-judicial land use actions are defined in RCW 42.36.010 as those that “determine the legal rights, duties or privileges of specific parties in a hearing or other contested case proceeding.” The characteristics of matters that are quasi-judicial are the following:

- The decision applies an existing policy or law rather than creating a new one;
- The proceedings seek to reach a fact-based decision between two distinct alternatives;
- The decision has a greater affect on a limited number of specific persons and a lesser affect on the general community at large.

Examples of decisions that are quasi-judicial include subdivisions, preliminary plat approvals, conditional use permits, SEPA appeals, rezones of specific parcels of property, variances, and other types of discretionary zoning permits if a hearing must be held by statute or local ordinance. If a single proceeding combines both legislative and quasi-judicial functions, treat it as a quasi-judicial proceeding.

5. Fairness and Appearance of Fairness.

Government staff and decision makers should avoid making promises to applicants or project opponents. Furthermore, the decision makers and government staff should avoid prejudging applications and must not have a personal interest at stake in the matter. Personal interests include financial gain or ownership, family or social connections, associational or membership ties, and being employed by an applicant or interested party.

Washington is one of a few states that has the Appearance of Fairness Doctrine, which requires decision makers who act in a quasi-judicial role to not only be free from actual bias, but also the appearance of bias. To determine whether a violation of the Appearance of Fairness Doctrine has occurred, the question asked is this: Would a fair-minded person in attendance at this hearing say that everyone was heard who should have been heard, and that the decision maker was impartial and free from outside influences? To avoid violations of the Appearance of Fairness Doctrine, base decisions solely upon the record, allow everyone to be heard who wants to be heard, and give reasonable credit to all information presented, while according the information the weight, or lack thereof, that it deserves.

6. No *Ex Parte* Contacts in Quasi-Judicial Proceedings.

Ex parte contacts are those between a decision maker and one side in a controversy for which that decision maker will issue a ruling. Quasi-judicial decision makers are prohibited by RCW 42.36.060 from making *ex parte* contact with either side in a case. *Ex parte* contacts always should be avoided. If such contact occurs, however, it may be cured by publicly disclosing the substance of the *ex parte* contact, placing it into the record, and providing opportunity for rebuttal by opposing sides.

7. Follow Written Hearing Procedures.

Proper procedures are important to avoid due process violations, and written procedures are more likely to be followed than unwritten ones. Written procedures make everyone aware of the process in advance. Procedures, for example, may detail the order of the hearing, rules of respect and decorum, and urge those with common views to choose a spokesperson.

8. Base Decisions on the Record.

Quasi-judicial land use decisions must be based on and supported by the “record.” The record consists of testimony at the hearing and all documents submitted at the hearing, and those submitted outside the hearing but within a set timeframe. You should preserve quasi-judicial hearing testimony by either a tape recording or court reporter. The documents are typically letters making arguments, maps, staff reports, and drawings, which are numbered and admitted as official exhibits and entered into the record. Only hearing testimony and documents officially submitted into the record should be used to render a decision. Make sure tape recordings are audible and that all speakers, including the decision makers, state their names before speaking.

9. Consider All Relevant Facts in the Record and Apply Them to the Law.

Quasi-judicial decision making requires applying the law to the facts and coming to logically supportable decisions. However, not all facts are equal and it is the duty of decision makers to weigh facts and determine their probative value. A staff report is a good starting point because it should identify all relevant facts available at a given point in time. Neighborhood opposition to a project, standing alone without reference to facts relevant to the decision, is not a legitimate basis for denial of a land use application. Likewise, unsubstantiated opinions have little value. Quasi-judicial hearings are not popularity contests, but forums for gathering relevant facts that bear upon the decision criteria stated in state law and local codes.

10. Create a Written Statement of Findings.

A clear, written decision applying facts to the applicable law will help avoid lawsuits. The written finding should demonstrate that open, considered deliberation occurred, not a *pro forma* decision of a predetermined outcome. The written decision must be more than just an approval of the minutes of the hearings. It is appropriate to request staff to draft a final written decision and bring it to the next meeting for review and approval.

11. Identify Potential “Problem” Projects Early.

Recognizing those land use projects that are potential “problems,” such as an unclassified use, a novel or controversial development, or a contentious developer, early in the process may be helpful for avoiding liability and lawsuits. When you or your staff identify a potentially problematic project, it is crucial to seek guidance from professionals such as lawyers, planners, and engineers.

Prepared by Michael B. Tierney, Esq. The information provided herein is intended as a general overview and is not intended to guide decisions or provide legal advice in any particular instance. Application of the information in this article to specific situations should always be accompanied by advice from professionals in the land use field.

APPENDIX C CITY COUNCIL PUBLIC HEARING -

Legislative

TITLE: _____

Time Set For: _____

"I would like to open the public hearing at _____"

Staff/Consultant/Attorney Presentation

Public Comment Period

"Please state your name for the record and try to keep your comments to _____ minutes"

"Is there any more public comment? This is an opportunity to add new information not addressed in previous testimony. If none: "I am closing the public hearing at _____"

Additional Council/Staff Discussion

Response from staff to clarify questions raised during the public hearing. Questions from council to public or staff to clarify questions raised during the hearing. Mayor makes certain there is no further testimony.

CLOSE PUBLIC HEARING

Council Discussion (Council can ask Mayor to see clarification from members of the audience or staff if an issue needs clarification).

Potential Action