



**SPECIAL CITY COUNCIL MEETING
TUESDAY, APRIL 27, 2021
CITY HALL
22710 E. COUNTRY VISTA DRIVE
6:00 P.M.**

HELD REMOTELY

PURSUANT TO GOVERNOR INSLEE'S ORDER 20-25-12, ISSUED JANUARY 11, 2021, LOCAL GOVERNMENTS IN PHASE 2 MUST ALLOW PERSON(S) TO ATTEND PUBLIC MEETINGS REMOTELY. PROVIDED, HOWEVER, THE PROCLAMATION FURTHER ALLOWS IN-PERSON MEETINGS UNDER LIMITED CONDITIONS IN ADDITION TO REMOTE PUBLIC MEETINGS. AT THE PRESENT TIME, DUE TO THE CONDITIONS REQUIRED TO HOLD IN-PERSON MEETINGS, THE CITY OF LIBERTY LAKE WILL CONTINUE TO HOLD ALL PUBLIC MEETINGS REMOTELY.

Link to join the meeting:

<https://us02web.zoom.us/j/89005339920?pwd=eHpnQWRZbjgzakZJaFdPR1ZjQ0x4dz09>

Meeting ID: 890 0533 9920

Passcode: 281342

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

- 1. INVOCATION**
- 2. PLEDGE OF ALLEGIANCE**
- 3. CALL TO ORDER**
- 4. ROLL CALL**
- 5. AGENDA APPROVAL**
- 6. WORKSHOP DISCUSSION – Role Clarity, Tom Brubaker, Attorney, Lighthouse Law Group, PLLC**
 - City Government - Checks and Balances
 - Mayor and Council Authority
 - City Attorney Representation
 - City Council Meetings
 - Open Public Meetings Act and Public Records Act
 - Ethics in Government
- 7. ADJOURNMENT**

The public is invited to attend. Parking and meeting rooms are accessible for persons with disabilities. Contact the City at 755-6700 with 24-hours advance notice for special accommodations.



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Agenda

- City Government Checks and Balances
 - Mayor and Council Authority
 - City Attorney Representation
- City Council Meetings
- Open Public Meetings Act and Public Records Act
- Ethics in Government

Questions!

Ask at any time.

Feel free to interrupt!

City Government - Checks & Balances

- “The federal government in miniature.”
 - Legislative branch—city council
 - Executive branch—mayor
 - Judicial branch—Washington (and federal) courts
- Each branch is independently elected
 - And that independence requires respect, collaboration, and cooperation

City Government - Checks & Balances

Code cities have all powers possible, except where limited by statute.

- Make and enforce laws-criminal and civil
- Health, safety & welfare regulations (land use, building codes, etc.)
- Buying, leasing, selling real property, including eminent domain
- Social, cultural, recreational services
- Utility operation
- Street design, construction, operation, and maintenance
- “[A]ll the powers possible for a city or town to have under the Constitution, ... not specifically denied by law.” RCW 35A.11.020

City Government - Checks & Balances

Generally speaking ... The council sets policy and the Mayor executes policy.

- Council sets policy through its various authorizations ~~and~~ think big picture
 - Creates laws (ordinances)
 - Establishes budgets
 - Authorizes projects and agreements
- Mayor is CEO—runs day-to-day city business—the details
 - Enforces laws (statutes, ordinances)
 - Administers budgets (authorizes expenditures)
 - Executes and manages contracts
 - Hires and fires staff

Legislative (City Council) Powers (RCW 35A.11.020)

- Defines staff function, powers, and duties
 - Salaries, working conditions, civil service, merit, pension
 - Subject to other laws (e.g., police, firefighters)
- Adopts & enforces ordinances
 - Criminal fines and/or imprisonment; civil penalties
- And, “by way of illustration and not in limitation,” power includes:
 - Ownership, purchase, sale, maintenance, improvement, use of public ways and real property of all kinds
 - Collective bargaining
 - Social, cultural, recreational, services, including utilities
 - Taxation (except where preempted by state or federal law)
- Also authority given to any other class of municipality or to all municipalities of the state.

Mayor's Duty and Authority (RCW 35A.12.100)

- Chief executive and administrator
 - In charge of all departments and employees
 - Designates assistants and department heads
- Makes sure that all laws and ordinances are “faithfully enforced”
- Maintains law and order
- Supervises administration of city government and all city interests.
- Ensures that all contracts made for city are faithfully kept and performed
- May institute legal proceedings, but only if majority vote of full council approves
- Presides over all council meetings
- Reports on city finances
- Prepares budget for council consideration

Quick Poll 1

You are a councilmember. You have heard repeated stories that your city's code enforcement officer "really doesn't care" about your city or doing his job well. People have seen him parked in his city car napping or smoking, both of which are prohibited. He is known to be rude to property owners, but at the same time regularly "badmouths" the city.

You think his boss, the city's planning and engineering director, should fire the employee. What can you do?

Quick Poll 1

- a. Direct the mayor to fire the employee
- b. Direct the planning and engineering director to fire the employee
- c. Ask the mayor to review the employee's performance
- d. Fire the employee yourself

City Government - Checks & Balances

Hiring, firing, disciplining staff: Mayor

- Mayor has “the power of appointment and removal of all appointive officers and employees....” RCW 35A.12.090
 - Power can be delegated to city department heads or directors.
 - But Council has optional power of confirmation over staff positions .
- Council-manager: Manager has *exclusive authority* to hire/fire city staff
 - Councilmembers individually or collectively, cannot direct the city manager’s (or the manager’s subordinates) appointment or removal of any staff.
 - “*Except for the purpose of inquiry*” councilmembers, individually or collectively, can only deal with administration of city exclusively through the manager, and they cannot “give orders to any subordinate of the city manager.” RCW 35A.13.12

City Government - Checks & Balances

- A word about elected officials...
 - Cannot be fired; can only be recalled
 - BUT, must be removed if three consecutive unexcused council meetings
 - Unique employment position —Discipline? Investigation over violations of discrimination policies or other forms of office behavior?
 - Setting salaries and benefits—cannot “feather” own nest

City Government - Checks & Balances

Your Mayor claims that:

- she is in control of the budget,
- she will determine what goes into the proposed budget, and
- council cannot pass the final budget without her approval.

Are the mayor's assertions correct?

City Government - Checks & Balances

A word about budgets...

- Budget is perhaps the council's most powerful policy measure
 - Determines where city's limited resources will be placed
 - Better parks? Improved streets? More police?
 - Each budget sets a course and direction for future appropriations
 - Budget establishes broad "funds" --street, utility, general fund, etc.
- Mayor can move "individual items"(money) around within any fund without council approval, unless council limits that authority by ordinance. RCW 35A.33.120
- Only council can move money from one fund to another (by supermajority vote)

A Word About the City Attorney....

- A complicated attorney/client relationship
- Attorney works for the organization-the municipal corporation
- Attorney advises city council, mayor, and staff, but always through the lens of the municipal corporation
- Attorney does not represent:
 - Individual councilmembers
 - Councilmembers in their personal capacity
 - Staff members in their personal capacity
 - Mayor in her/his personal capacity
 - But serves at the will of the Mayor!
- Client confidentiality

Council Meetings

City Council Meetings

- Who “owns” the meeting?
 - City council does - that’s why they’re called “council” meetings!
- Regular meetings set by council, must occur at least once a month
- Special meetings set by mayor or any three members of the council
 - Require at least 24 hours notice to each councilmember (can be waived) and to media that have requested notice of special meetings
 - Limited only to items on the special meeting agenda —no additions!

City Council Meetings

- Mayor presides (RCW 35A.12.110)
 - In mayor-council form, if mayor is away,
 - Mayor Pro Tempore presides - if council has designated who will be Mayor Pro Tem (RCW.35A.12.110)
 - If no Mayor Pro Tem, a member of council selected by majority of councilmembers
 - Mayor Pro Tem also retains all rights of a councilmember

City Council Meetings

- Duties of the mayor at meetings....
 - Mayor is facilitator—the “conduit” through which the regular order is maintained.
 - Mayor does not vote, except in case of a tie
 - Except “the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money.” (RCW 35A.12.100)
 - Mayor approves ordinances by signature
 - If vetoed, Mayor tenders “written objections” along with veto
 - Then ordinance is set for reconsideration to pass, majority plus one
 - If no signature, ordinance deemed approved after ten days

City Council Meetings

- **Maintaining order among council members:**
 - It is the council's meeting, so council sets its own rules of conduct
 - **Agendas usually driven by administration/staff —but council has final say**
 - Establish Rules of Procedure or By-laws by motion or resolution
 - **Establish committees**
 - **Election process for council president, committee chairs**
 - **Meeting times**
 - **Workshops**
 - **Agenda order**
 - **Absences**
 - **Mayor Pro Tem**
 - **Public comment rules**
 - Affirm, by signature, after each election(?)

City Council Meetings

- Maintain decorum and formality
 - Avoid becoming too relaxed or informal —“Mr. Smith,” not “Jim”
 - Maintain respect, even when disagreeing
- Brigadier General Henry Martyn Robert’s Rules
 - Focus on democratic participation --fairness
 - Everyone has a say;
 - Each member has a right to speak before speaking a second time
 - Minority or dissenting opinions protected
- “Bob’s Rules”

Quick Poll 2

Public attendance and speech—maintaining order:

True or False?

As long as a speaker stays within the time allotted, that person can speak about anything he or she wants during the “public comment” portion of your council meeting.

City Council Meetings

- Public comment portion of meeting
 - *A limited* public forum —Council determines rules for public comment
 - Establish clear written rules regarding topics allowed and time to speak
 - Have mayor read written statement explaining these rules
 - Enforce those rules equally

Quick Poll 3

An irate, vocal, and somewhat threatening person steps to the podium during public comment to protest the way he was treated during a traffic stop. He screams, call out councilmembers by name, calls them crooks, and repeatedly uses the "F" word even though a cub scout troop is present.

During public comment, the council allows up to 3 minutes for each speaker. This person is only 2 minutes into his irate ramble.

Can he be silenced and evicted from council chambers?

Yes/No

Quick Poll 3B

Later in the meeting, he occasionally shouts, calling the council “Liars” and “Cheats,” with more curse words, and, during a discussion on a comprehensive plan update, he strides up to the dais, demanding the police chief be fired immediately and the mayor resign. He won’t sit down and he won’t stop talking.

Now can he be removed from chambers?

Yes/No

City Council Meetings

“Citizens have an enormous first amendment interest in directing speech about public issues to those who govern their city.”

White v. City of Norway, 900 F.2d 1421, 1425th (9th Cir. 1990).

“The city that silences a critic will injure itself as much as it injures the critic, for the gadfly's task is to stir into life the massive beast of the city, to ‘rouse each and every one of you, to persuade and reproach you all day long.’”

Dowd v. City of Los Angeles, 2013 WL 4039043 (2013). (From a federal court decision, citing *Fate's Dialogues*)

City Council Meetings

- Actual Disruption
 - Physical combat
 - “Fighting words” that threaten combat
 - Speaking beyond allowed time limit
 - Comments unduly repetitious
 - Extended discussion of irrelevancies
- Must be disrupted to the point where council business *can no longer be conducted*
 - Temporary disruption not enough
 - Three strikes approach
 - Remove from meeting, not arrest

Quick Poll 4

Your council wants to hold a retreat offsite at a conference in another city. You have a number of critical issues you want to discuss. You want free, uninhibited, and open discussion at the retreat, and in order to create the right atmosphere, you want a “closed door” retreat.

Can you make it a closeddoor retreat?

Can you combine this retreat with a regular council meeting?

Open Public Meetings

- All council meetings must be open to the public
 - Regular meetings
 - Special meetings
 - Workshops
 - Retreats
 - Council committees, commissions, etc.
- Exceptions: Social gatherings if city business not discussed
- Exceptions: Council committees If committee does not ...
 - Act on behalf of council (advisory only)
 - Does not take testimony or accept public comment
 - Does not conduct hearings
- Consult with your city attorney

Open Public Meetings

- **Executive Sessions- Limited Reasons**
 - Sale, purchase, or lease of real property—value only!
 - Evaluation of charges or complaints of public officer or employee
 - Employee subject of charge can remove from executive session
 - Evaluation of qualifications of applicant for public employment or review performance of public employee
 - Wages, salaries, benefits must be in open public meeting
 - Evaluation of a candidate for public office
 - Discussion of enforcement actions, litigation, or pending litigation if city is or is likely to become a party—city attorney must attend
 - Cannot take “Final Action” during executive session

Quasi-judicial actions

The council as judge- Quasi-judicial actions

- Not legislative policymakers
- Decision typically affects specifically identifiable parties and specifically identifiable properties
 - **Not “area-wide”**
- Not subject to OPMA!
- Appearance of Fairness doctrine
 - **Hearing must not only be fair, but must “appear” to be fair....**
 - **Personal interest**
 - **Prejudgment of issue**
 - **Partiality**

Public Records Act

It's not as hard as you think ... Everything is a record!

- Documents, notes, marginalia, posts, photos, electronic documents, emails, texts—you name it, they are all records!
- Do not mix anything slightly related to city business with your personal phone, personal computer, social networks, or web pages
- And don't mix up city business with your campaign resources
- Exemptions are limited and few and far between
- **Assume everything you type, write, scribble, text, ... whatever ...**

Is a RECORD

Ethics in City Government

Code of Ethics for Municipal Officers—Chapter 42.23 RCW

- Prohibits transaction of private business that conflicts with the “proper performance” of duties
- Rule adopted by Thomas Jefferson when he was president of the Senate:

“Where private interests of a member are concerned in a bill or question, he is to withdraw.”

Ethics in City Government

Interest in contracts:

- No direct or indirect beneficial interest in any contract made by, through, or under the supervision of a municipal officer
 - **Phrase, “under the supervision” broadly interpreted**
- May not accept, directly or indirectly, any gratuity, reward, compensation in connection with the contract

Ethics in City Government

Remote Interests in contracts excepted:

- Non-salaried officer of nonprofit corporation
- Employee of contracting party if employee's wages or salary are fixed compensation
- Landlord or tenant of the contracting party
- Owns less than 1% of the shares of the contracting organization
- But if interest is remote, still cannot influence or attempt to influence other officers to enter into contract

Quick Poll 5

Your council has authorized a budget expenditure to remodel council chambers. An audio-video company that specializes in and understands the unique demands of public meetings and that has remodeled a number of other cities' council chambers has offered to take the councilmembers to a site in Denver, all expenses paid, to demonstrate how well their system works.

Can you accept?

Yes/No

Quick Poll 6

The planning department has received an application to remodel a commercial building in your downtown. The applicant intends to open a trendy doughnut shop. At a plan review meeting with staff, she brings in a dozen doughnuts.

Should staff eat the doughnuts? (They're really good!)

Yes/No

Ethics in City Government

Prohibited Acts

- Cannot use your position to secure special privileges or exemptions for yourself or “others.”
- Cannot, directly or indirectly, give or receive any compensation, gift, reward, or gratuity.
 - No minimum on value of gift
- Cannot accept employment or engage in business that might require or induce you to disclose or acquire confidential information
- May not disclose or use confidential information for personal gain or benefit

Ethics in City Government

Penalties

- Contract is void (but “quantummeruit” exception?)
- \$500 penalty (beware of multiple violations)
- Removal from office

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