LOCAL GOVERNMENT

The Basics

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LOCAL GOVERNMENT BASICS

10 Essentials for City Officials

1. Home Rule 4
2. Public Meetings 7
3. Property Taxes 11
4. Public Records 13
5. Budgeting Basics 14
6. Gift Limits 17
7. Code Enforcement 18
8. Political Activity 19
9. Water Rights 20
10. Land Use 22

Fundamentals of Home Rule

The League of Oregon Cities was first established in 1925 to protect against the erosion of local "home rule" by the state Legislature. The League has fought to protect home rule since that time. But what, exactly, is "home rule," and why does it matter?

In Oregon, home rule forms the legal basis for city governments to act. Home rule is thus an important legal concept with real-world implications for a city's ability to serve the needs of its citizens. The following article briefly explains the origins of home rule in Oregon, how home rule impacts city government authority, and the continuing fight between city and state government over the scope of local authority.

CITIES DERIVE THEIR EXISTENCE FROM THE STATES

The United States of America is a "federal republic," meaning that government authority is divided between the federal government and the states. The United States Constitution grants limited powers to the federal government and reserves the remaining powers to the state governments. But what about local governments, such as cities and counties?

Interestingly, the United States Constitution makes no mention of local governments. Instead, it places all government authority not granted to the federal government with the states. Thus, the courts have uniformly concluded that cities derive their authority and existence from state governments and lack any inherent authority. In fact, the Supreme Court of the United States has stated that cities are simply "convenient agencies"[1] of their states, and that states may abolish or reorganize cities at any time.

DILLON'S RULE

Under the United States Constitution, cities derive their authority from the states. For that reason, judges and legal scholars took the view that city governments could only act in areas expressly authorized by a state legislature. That principle is often called "Dillon's Rule,"[2] and is still followed in many states.

1 *Hunter v. City of Pittsburgh, 207 US 161, 178-79 (1907).*

2 Dillon's Rule is named for John F. Dillon, an Iowa Supreme Court Justice and federal judge. *See 1 John. F. Dillon, The Law of Municipal Corporations, § 9(b), at 93 (2d ed 1873).*

MORE INFORMATION ON HOME RULE

For a more detailed examination of home rule in Oregon, please see **"The Origins, Evolution, and Future of Municipal Home Rule in Oregon"** (June 2017), available at https://bit.ly/2D0buNX.

In a Dillon's Rule state, local governments lack authority to act unless they can show how a state law allows them to take an action, such as levying property taxes, maintaining a fire department, or operating a parks system.

The Dillon's Rule model allows a state legislature to closely control local government structure, the methods of financing local government activities, local procedures, and local government authority to address local problems.

DILLON'S RULE IN OREGON

In the late 1800s, the Oregon Supreme Court formally endorsed the Dillon's Rule model of state-local relations.[3] Under Dillon's Rule, Oregon's cities were not able to effectively respond to local problems, as no local action could be undertaken without permission from the state Legislature, which only met for short biennial sessions.

THE SHIFT TOWARDS HOME RULE

In the early twentieth century, a wave of political populism began to sweep the country. As a part of that political movement, cities and political reformers in Oregon began to push for a "home rule" amendment to the Oregon Constitution.

Frustrated by the special interests that dominated the legislature and by the time it took to address local problems, a group of Oregonians led by William Simon U'Ren sought to amend the Oregon Constitution and vest in the voters the authority over local affairs through the adoption of home rule charters. In U'Ren's view, such cities would exist independently from the Legislature and would derive their authority from the charter, not from the state.

3 *City of Corvallis v. Carlile, 10 Or 139 (1882).*

In 1906, consistent with a wave of home rule reform sweeping the nation, the voters of Oregon adopted a constitutional amendment that granted the people the right to draft and amend municipal charters. That provision states:

> "The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the state of Oregon[.]"[4]

At the same election, the voters of Oregon "reserved" initiative and referendum powers "to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district."[5]

Note that the home rule amendments do not use the term "home rule," nor do they specifically confer substantive lawmaking authority. Rather, the amendments prevent the legislature from enacting or amending municipal charters, and free cities from the burden of seeking approval from the state before amending their charter. What that means, in practice, is that cities—and their voters—now possess substantial lawmaking authority independent of the state, although the precise relationship between cities and the state has evolved over the last 100-plus years, primarily through judicial interpretation of the home rule amendments. One of the most significant aspects of that relationship is the ability of the legislature to preempt certain municipal policy decisions.

HOME RULE CHARTERS

For a city to become a home rule city, its residents must vote to adopt a home rule charter. By doing so, a community vests all possible legal authority in its city government. A city charter operates much like a state constitution in apportioning authorities to various officials and setting out the system of government for that community, whether it be a commission, mayor-council, council-manager, or strong mayor form of government. Today, all 241 cities in Oregon have home rule charters.

Once adopted, a home rule charter vests in the city the authority to do all things necessary to address matters of local concern without legislative authorization. The League's model charter, based on the council-manager form of government, was written to provide a city with as much authority as permitted under the Oregon Constitution.

Oregon is a home rule state, which gives voters the authority to establish their own form of local government and empowers that government to enact substantive policies. Unlike a Dillon's Rule state, home rule authority allows cities to act as policy innovators and quickly address social problems, especially when faced with inaction from the state and federal government.

4 Or Const, Art XI, § 2.
5 Or Const, Art IV, § 1(5).

"The legal voters of every city and town are hereby granted power to enact and amend their municipal charter."
– Oregon Constitution

HOME RULE INCLUDES THE POWERS TO:

- Regulate for protection of public health, safety, morals & welfare;
- To license;
- To tax; and
- To incur debt.

Home rule is the right to local self-government, without express or implied legislative authorization.

PREEMPTION

The following list highlights some of the areas in which the state has preempted local governments from acting. Please note that the list is not comprehensive. For a comprehensive list of preemptions on local authority, please see the Legal Guide to Oregon's Statutory Preemptions of Home Rule (November 2017), available at www.goo.gl/RsyPnn.

Taxing

- Cities may not impose or collect a business license tax from licensed real estate brokers.

(continued on page 6)

In a home rule city, the community vests all possible legal authority in its city government.

Fundamentals of Home Rule

All **241 cities** in Oregon have home rule charters

- The state has the exclusive right to tax tobacco products.
- The state has the exclusive right to tax alcoholic beverages.

General Governance

- Cities must hold elections in compliance with Oregon election law.
- Public officials, including city officials, must comply with the Oregon Ethics Code.
- City government must comply with Oregon's public records and meetings law.

Land Use

- Cities are required to comply with statewide land use and development goals.
- Cities may not prohibit certain types of housing.

Personnel

- Cities must offer PERS coverage to police and firefighters.
- State minimum wage laws preempt contrary city ordinances or charter provisions.
- State sick leave requirements preempt contrary city ordinances or charter provisions.
- State law restricts the use of credit score reports for hiring purposes.

Regulatory Authority

- State preemption of regulations on vending machines that dispense tobacco or e-cigarette systems.
- State preemption of local laws concerning various liquor uses and consumption.
- State building code preempts local ordinances.
- Preemption of local ordinances that makes a shooting range a nuisance or trespass.
- Preemption of local regulations on cell phone use in vehicles. ■

ONLINE RESOURCES

LOC-TV: HOME RULE

Learn more about home rule in Oregon by viewing the free LOC-TV episode on the League's YouTube channel: **https://bit.ly/343uya4**. The episode provides a comprehensive overview of home rule topics including:

- Where do local governments get their legal authority?
- What is home rule and where does it come from?
- What is preemption and the legal standard by which we evaluate whether legislation is preemptive?

Public Meetings:

What Every Elected Official Needs to Know

INTRODUCTION

To ensure that the public is aware of the deliberations and decisions of governing bodies, as well as the information that forms the basis of those decisions, Oregon law contains a policy of open decision-making at the various levels of government.[1]

The key requirements of the Oregon Public Meetings Law (OPML) include:

- Conducting meetings that are open to the public—unless an executive session is authorized;
- Giving proper notice of meetings; and
- Taking minutes or another record of meetings.

Further, the law imposes other requirements regarding location, voting and accessibility to persons with disabilities.

Please note that this article is not a substitute for legal advice, nor is it comprehensive. The OPML is quite complicated and public officials are encouraged to speak with their legal counsel for case-by-case advice.

ENTITIES SUBJECT TO THE PUBLIC MEETINGS LAW

Understanding which entities are subject to the OPML is critical for ensuring compliance with the provisions of the law. In short, the OPML applies to any (1) governing body of a public body, (2) when that governing body holds a meeting for which a quorum is required to make a decision or deliberate toward a decision on any matter. ORS 192.610(5); ORS 192.630(1).

The OPML applies to meetings of a "governing body of a public body." A public body is the state, any regional council, a county, a city, a district, or any other municipal or public corporation. A "public body" also includes a board, department, commission, council, bureau, committee, subcommittee, or advisory group of any of the entities in the previous sentence. If two or more members of any public body have "the authority to make decisions for or recommendations to a public body on public body on policy or administration," they are a "governing body" for purposes of the OPML.

> "A quorum may be subject to the public meetings law even if it does not engage in a formal 'meeting'."

MEETINGS SUBJECT TO THE PUBLIC MEETINGS LAW

Not every action that a governing body takes, of course, is subject to the OPML. The law defines a "meeting" as the convening of any of the "governing bodies" subject to the law "for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter." Thus, the definition of a meeting has three elements: (1) the convening of a governing body; (2) for which a quorum is required; (3) to make a decision or deliberate toward a decision on any matter. The first of those elements was addressed in the previous section.

The term "quorum" is not defined in the OPML. For cities, quorum requirements are often set by charter, bylaws, council rules, or ordinance. A gathering of less than a quorum of a

(continued on page 8)

1 ORS 192.160 establishes Oregon's policy of open decision-making through public meetings:

"The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly."

Public Meetings

An **executive session** is defined as "any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters."

governing body of a public body is not a "meeting" under the OPML.[2]

Finally, staff meetings are typically not covered by the OPML, as they are usually held without a quorum requirement. A staff meeting called by a single official is not subject to the law because the staff do not make decisions for or recommendations to a "governing body." Importantly, however, if a quorum of a governing body, such as a five-member commission, meets with staff to deliberate on matters of "policy or administration," the meeting is within the scope of the OPML.

REQUIREMENTS OF THE LAW

The last two sections covered which entities are subject to the law, and what meetings of those entities trigger the OPML. This section addresses the substantive requirements of the OPML, including notice, space and location, accessibility, public attendance, control of meetings, voting, and minutes and recordkeeping.

2 In *Handy v. Lane County*, 274 Or App 644, 664-65 (2015), the Oregon Court of Appeals held that a series of discussions among a quorum of a governing body of a public body, even without a contemporaneous gathering of that quorum—a so-called "serial meeting"—could give rise to a violation of the prohibition set out in ORS 192.630(2). In other words, even in the absence of a formal "meeting" under ORS 192.630(1), a governing body of a public body could violate the OPML through a series of discussions among members of the governing body that added up to a quorum. On review, the Oregon Supreme Court held that the evidence in the case failed to show that a quorum of county commissioners did deliberate towards a decision, meaning there was not violation of the OPML, and thus the court declined to address the "serial meetings" issue raised by the Court of Appeals. *See Handy v. Lane County*, 360 Or 605 (2016). Recently, in *TriMet v. Amalgamated Transit Union Local 757*, 362 Or 484 (2018), the Oregon Supreme Court held that ORS 192.630(2)—which states that a "quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter"—is broader than the requirement in ORS 192.630(1). In other words, a quorum of a governing body may be subject to the public meetings law even if it does not engage in a formal "meeting."

Notice

The OPML requires that notice be provided of the time and place of public meetings, including regular, special and emergency meetings as defined in ORS 192.640. For regular meetings, notice must be reasonably calculated to provide actual notice to the persons and the media that have stated in writing that they wish to be notified of every meeting. Special notice requirements apply to executive sessions.

Space, Location, and Accessibility

For any meeting, the public body should consider the probable public attendance and should meet where there is sufficient room to accommodate that attendance. In the event of an unexpectedly high turnout, the public body should do its best to accommodate the greater number of people.

- **Geographic Location**

  The OPML states that meetings of a governing body of a public body must be held within the geographic boundaries of the area over which the public body has jurisdiction, at its administrative headquarters, or at "the other nearest practical location." In the case of an actual emergency necessitating immediate action, however, a governing body may hold an emergency meeting at a different location than one described in ORS 192.630(4).

- **Nondiscriminatory Site**

  Governing bodies are prohibited from holding meetings at any place where discrimination based on race, color, creed, sex, sexual orientation, national origin, age or disability is practiced. A governing body may hold a meeting at a location that is also used by a restricted-membership organization if the use of the location by such an organization is not its primary use.

- **Accessibility to Persons with Disabilities**

  The OPML imposes two requirements relating to accessibility to persons with disabilities (*see* ORS 192.630(5)(a)). First, meetings subject to the OPML must be held in places accessible to individuals with mobility and other impairments. Second, the public body must make a good-faith effort to provide an interpreter at the request of deaf or hard-of-hearing persons.

Voting

All official actions by a governing body of a public body must be taken by public vote. The vote of each member must be recorded unless the governing body has 26 or more members. Even then, any member of the governing body may request that the votes of each member be recorded. The governing body may take its vote through a voice vote or through written ballots, but ballots must identify each member voting and the vote must be announced. Secret ballots are prohibited. State law preempts any local charter or ordinance that permits voting through secret ballots.

Recorded or Written Minutes

The OPML requires that the governing body of a public body provide for sound, video or digital recording, or written minutes, of its public meetings. The record of the meeting—in whatever format—must include at least the following information:

- The members present;
- All motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition;
- The results of all votes and, except for governing bodies consisting of more than 25 members unless requested by a member of the governing body, the vote of each member by name;
- The substance of any discussion on any matter; and
- Subject to the Oregon Public Records Law, ORS 192.410 to 192.505, a reference to any document discussed at the meeting.[3]

Written minutes need not be a verbatim transcript and sound or video recordings need not contain a full recording of the meeting. Rather, the record must provide "a true reflection of the matters discussed at the meeting and the views of the participants." The record must be made available to the public "within a reasonable time after the meeting."

3 Note that reference to a document in meeting minutes does not change the status of the document under public records law. ORS 192.650(3).

ONLINE RESOURCES

LOC-TV: PUBLIC VS. PRIVATE MEETINGS

Do you know what qualifies as a public meeting? Confused about what's required under Oregon law? This training video answers those questions and others to help you ensure compliance with Oregon public meetings law. https://bit.ly/37qCFPN

LOC-TV: HOW TO DO EXECUTIVE SESSIONS RIGHT

This LOC-TV episode covers the basic guidelines for holding private meetings as a public body, known as executive sessions. Laws outlining approved topics, notice requirements, media attendance and procedural requirements are discussed, along with consequences and available resources. https://bit.ly/2s36A0t

EXECUTIVE SESSIONS

Governing bodies are permitted to meet in executive (closed) sessions in certain circumstances (*see* ORS 192.660). An "executive session" is defined as "any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters."

Executive sessions are not the same thing as meetings that are exempt from the OPML. Indeed, an executive session is a type of public meeting and must conform to all applicable provisions of the OPML. Importantly, the authority to go into executive session does not relieve a governing body of its duty to comply with other requirements of the OPML.

Permissible Purposes

A governing body is permitted to hold an open meeting even when the law permits it to hold an executive session, but a governing body may only hold an executive session in certain

(continued on page 10)

Public Meetings

circumstances. ORS 192.660 lists the circumstances in which a governing body may hold an executive session. Those purposes include:

- Employment of public officers, employees and agents;
- Discipline of public officers and employees;
- Performance evaluations of public officers and employees;
- Labor negotiation consultations;
- Real property transactions;
- Discussion of public records exempt from disclosure; and
- Discussions with legal counsel.

Final Decision Prohibition

The OPML provides: "No executive session may be held for the purpose of taking any final action or making any final decision." Although a governing body may reach a final consensus in an executive session, the purpose of the final-decision prohibition is to allow the public to know of the result of any such consensus. A formal vote in a public session satisfies the requirement, even if the vote merely confirms the consensus reached in executive session.

Method of Convening an Executive Session

A governing body is permitted to hold a public meeting consisting of only an executive session. The notice requirements for such a meeting are the same as those for any other meeting (*see* ORS 192.640). In addition, the notice must cite to the statutory authority for the executive session.

Alternatively, an executive session may be called during a regular, special, or emergency meeting for which notice has already been given in accordance with ORS 192.640. The person presiding over the meeting must announce the statutory authority for the executive session before going into the executive session.

CONCLUSION

The OPML is an important, nuanced law. A single article cannot fully describe all of its provisions or how it applies in various factual circumstances. For more detail on the OPML, please see the Oregon Attorney General's Public Records and Meetings Manual (2014), available at www.goo.gl/ikzw5B. ■

ONLINE RESOURCES

GUIDE TO EXECUTIVE SESSIONS (2017)

A comprehensive review of where, when and how cities may conduct executive sessions, complete with model forms and policies.

Available at: https://bit.ly/35lvQNG.

HANDLING DISRUPTIVE PEOPLE IN PUBLIC MEETINGS (2017)

A legal guide to help cities know their options for dealing with disruptive behavior. The guide covers when the public has a right to speak at public meetings, constitutional speech protections, and issues involved in removing someone from a council meeting.

Available at: https://bit.ly/2XvVVaa.

MODEL RULES OF PROCEDURE FOR COUNCIL MEETINGS (2017)

A guide providing cities with a starting point in creating their rules of procedure, where required by the city charter, or where a council so desires.

Available at: https://bit.ly/2Owbqe7.

FAQ ON NOTICE REQUIREMENTS FOR PUBLIC MEETINGS (2017)

Answers to common questions about the notice requirements associated with public meetings.

Available at: https://bit.ly/2D1Xwv1.

Property Tax Basics

Oregon's current property tax system was shaped by Measures 5 and 50, two constitutional amendments passed in the 1990s. Prior to Measures 5 and 50, Oregon jurisdictions used a levy-based system for assessing property taxes. Put simply, each taxing district (city, county, etc.) imposed the levy in the amount needed to cover the taxing district's budget, which was based on community service demands. County assessors estimated the real market values of all property in the state. The levy for each taxing district was then divided by the total real market value in the district to arrive at a district tax rate. The taxes each district imposed equaled its tax rate, multiplied by its real market value. Generally, levies for each district were constitutionally limited to an annual growth rate of 6 percent, and levies that would increase by more than 6 percent required voter approval. The levy system was dramatically altered with the passage of Measure 5 in 1990.

MEASURE 5: TAX LIMITS & COMPRESSION

In 1990, Oregon's voters amended the state constitution by approving Ballot Measure 5, which set limits on the amount of tax that a taxing jurisdiction can impose on the real market value (RMV) of property. For example, education districts could levy no more than $5 per $1,000 of RMV, and general government districts (including cities and counties) could levy no more than $10 per $1,000 of RMV. The caps apply only to operating tax levies, not bonds. If property tax rates exceed the limits, the taxes must be reduced until they meet the limits imposed by Measure 5. Reducing the property tax rate to meet Measure 5 limits is commonly called "compression," and results in millions of dollars of lost revenue for taxing districts every year.

MEASURE 50: PERMANENT RATES, ASSESSED VALUE & GROWTH LIMITS

In 1997, the voters of Oregon again decided to profoundly alter the property tax system by approving the passage of Ballot Measure 50.

First, Measure 50 imposed a permanent operating tax rate limit on all existing taxing districts. The permanent rate for each taxing district was primarily determined by combining the levies that existed locally when Measure 50 was passed. Neither a taxing district nor the voters can alter Measure 50 permanent rates—they remain at 1997 levels in perpetuity.

Reducing the property tax rate to meet Measure 5 limits is commonly called **"compression,"** and results in millions of dollars of lost revenue for taxing districts every year.

Second, Measure 50 also changed the concept of assessed value to which the tax rates are applied. Assessed value is no longer equal to the real market value of a property. Instead, the amount of tax is based on the property's "assessed value" as defined by Measure 50. Measure 50 stated that a property's assessed value is calculated by reducing the property's real market value in the 1995-96 tax year by 10 percent. That method of calculating assessed value codified inequities between comparable properties. Prior to Measure 50, the real market value of properties within a county was determined across a six-year reappraisal cycle. When Measure 50 passed, some properties had been recently assessed, while other properties had not been assessed for four or five years.

Third, Measure 50 limited the annual growth rate of taxable property to 3 percent of assessed value—well below the average rate of inflation. By setting assessed values at 90 percent of 1995-96 market levels and capping the annual rate of growth, Measure 50 permanently codified imbalances in assessed values. As a result, similarly valued properties may pay dramatically different property tax amounts.

For new properties or those that undergo a significant change, such as remodeling, new construction, rezoning or subdivision, the assessed value is determined according to Oregon Revised Statutes 308.149 to 308.166, known as the changed property

(continued on page 12)

Property Taxes

Neither a taxing district nor the voters can alter Measure 50 permanent rates – they remain at 1997 levels in perpetuity.

ratio (CPR) statutes. The new assessed value is determined by applying the ratio of the assessed value to the market value of all existing property within the same class (residential, commercial, etc.) in either the city or the county to the improved or changed property. In most of the state, CPR is calculated on a county-wide basis. In Multnomah County, cities can elect to calculate CPR on a city-wide basis, provided the city passes an ordinance or resolution as required by law.

THE IMPACTS OF MEASURES 5 & 50

Measures 5 and 50 have caused significant revenue challenges for taxing authorities in Oregon. Following the passage of Measure 50, statewide property tax revenue immediately fell by $51.4 million, due to the changing of the property tax system to one based on assessed values rather than one based on market values. Since 1997, inflation has regularly exceeded the 3 percent limit set out in Measure 50, particularly for city expenses like employee healthcare and pension costs. Thus, cities have seen a growing disparity between property tax revenue relative to costs, even as property values continue to rise.

For a more detailed look at the effects of Measure 5 and 50 over time, please see the League's Primer on Measures 5 and 50, available here: www.goo.gl/ykuFiw.

THE EFFECTS OF COMPRESSION

To determine a property's tax obligation each year, a county assessor must determine the property's assessed value (as required by Measure 50) and the property's real market value (as required by Measure 5). When a property's assessed taxes exceed the Measure 5 limits, the tax obligation is compressed to the Measure 5 limits. The difference between the assessed value and the compressed limit is forever lost to the taxing district—typically, millions of dollars every year across the state. In fiscal year 2016-17, for example, more than 65 percent of Oregon's cities were negatively affected by compression, representing $31.4 million in lost property tax revenue.

The League continues to seek reforms to Oregon's property tax system that is fair for property owners, effective for cities, and does not inhibit economic growth. ■

ONLINE RESOURCES

CITY PROPERTY TAX REPORT (2016)

Statistical information regarding property taxes for cities, counties, school districts and special districts. The report includes data on tax revenues received, assessed and real market values, city tax rates, compression losses and property tax exemptions.

Available at: https://bit.ly/2QBqpGr.

Five Things to Know About Public Records

1. WHAT ARE PUBLIC RECORDS?

State law defines a public record as: "[A]ny writing that contains information relating to the conduct of the public's business * * * prepared, owned, used or retained by a public body regardless of physical form or characteristics."[1] The term "writing" is defined broadly and includes any "handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings." When determining whether a record is public, the question is whether the record relates to the business of the public, not the format of the record. This often means that emails, text messages and social media posts—even those created, delivered and stored on a personal device—could be considered a public record. If a record has a relationship to a city's business, then it's a public record.

2. DUTIES OF A CITY

Cities have the duty to make available a written procedure for making public records requests. The procedure must include the name of at least one city contact to whom requests may be sent, and the amounts of and manner of calculating fees that the city charges for responding to public records requests.

Once received, a city must acknowledge receipt of the public records request or provide a copy of the requested record within five business days.

Within 10 business days of the date it was required to acknowledge the request, the city must either complete its response to the request, or provide a written statement that it is still processing the request, along with an estimated completion date. These timeframes do not apply if compliance would be impracticable.[2] However, a city must still complete the request as soon as practicable and without unreasonable delay.

3. DISCLOSURE OF PUBLIC RECORDS

The public has the right to inspect any public record in a city's possession. A city may withhold certain public records from disclosure if they are exempt by law. Cities must segregate exempt records from nonexempt records and disclose all nonexempt material. The primary list of public records exemptions may be found under ORS 192.345 and 192.355, though exemptions are scattered throughout both state and federal law. There are two primary types of exemptions: conditional and unconditional. Conditional exemptions—those found in ORS 192.345—require a city to consider the public's interest in disclosure. Unconditional exemptions either require their own separate consideration or none at all. Remember, when in doubt, Oregon law favors disclosure.

4. FEES FOR RESPONDING TO PUBLIC RECORDS REQUESTS

A city may assess reasonable fees to get reimbursed for the actual costs incurred while responding to a public records request. The city may assess a fee for the time spent by city officials and staff researching the records, providing redactions, and the city attorney's time spent reviewing the records and redacting exempt materials. If the city wishes to charge a fee greater than $25, the city must notify the requester in writing of the estimated amount of the fee, and the requester must confirm in writing that it wishes to proceed. The city may request prepayment. If the actual cost incurred by the city is less than the amount paid, the city must promptly refund any overpayment.[3]

5. APPEALS AND CONSEQUENCES TO THE CITY

A person who is denied access to a public record may appeal the city's denial. The appeal may be made to the district attorney in the county in which the city is located, if the denial was by the city. If the district attorney denies any part of a petition, the requester may seek review in the circuit court for the county in which the city is located, or the Marion County Circuit Court. If the denial was made by an elected official, the appeal may be made by petitioning the circuit court for the county in which the elected official is located or the Marion County Circuit Court. If the requester prevails in full, the city is required to compensate the requester for the cost of litigation and trial. If the requester prevails only in part, an award of costs and attorney's fees is discretionary.

Additional guidance is available on the League's website and in the Oregon Attorney General's Public Records and Meetings Manual available online at: https://goo.gl/PKazDW.

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1 Generally public records law is covered by ORS 192.

2 Reasons where compliance would be impracticable include staffing, performance of other necessary services, or the volume of other simultaneous public records requests.

3 Oregon Attorney General's Public Records and Meetings Manual (2014), Public Records Chapter, page 17.

Budgeting 101

A city's adopted budget is one of the most important and informative documents city officials will use. This budget is prepared for each fiscal period and serves as a financial plan. Cities in Oregon operate within a fiscal year that begins July 1 and concludes the following June 30, or some cities will use a biennial budget, which covers a 24-month period beginning July 1 of the first fiscal year and ending on June 30 of the second fiscal year.

The adopted budget is a legal document that establishes the authorization to receive and spend money, and limits how much money can be spent for a specific activity or program. It presents the estimated costs of expenditures (goods or services the city plans to purchase in the coming fiscal year) and other budget requirements (contingency for unanticipated expenses) that must be planned for, but may not actually be spent. It also presents the anticipated and actual revenues that will be available to pay for those expenditures.

Preparing a budget allows a city to look at its needs in light of the funds available to meet those needs. In Oregon, all local governments must plan a balanced budget, meaning that the resources and requirements are equal. A city cannot plan to purchase more items or services than it has money to pay for them.

A CITY'S BUDGET PROCESS

Appoint a Budget Officer

The budget officer—who is either appointed by the city council or defined in the city charter—prepares the proposed budget in a format that meets the requirements set out in state statutes. The budget officer develops the budget calendar, which maps out all the steps that must be followed for the legal adoption of the city budget. A budget calendar is not required by law, but is highly recommended.

Appoint Electors to the Budget Committee

The budget committee is an advisory group comprised of the city council and an equal number of appointed members. The appointed members of the budget committee must be electors of the city. Budget committee members are appointed for staggered three-year terms, and cannot be employees, officers or agents of the city.

THE BUDGET PROCESS

1. Appoint a budget officer
2. Appoint electors to the budget committee
3. Budget officer prepares a proposed budget
4. Public notice of budget committee meeting
5. Budget committee meets
6. Budget committee approves the budget
7. Budget summary and notice of budget hearing are published
8. Hold budget hearing
9. Adopt budget, make appropriations, impose taxes, categorize taxes
10. Certify taxes
11. Post-adoption budget changes

Source: Local Budgeting Manual 150-504-420, found under Forms & Publications at www.oregon.gov/DOR.

Budget Officer Prepares a Proposed Budget

After the budget calendar is set, the budget officer begins to develop the estimates of resources and requirements for the coming year or biennial cycle.

Every city budget will have at least one fund—the general fund—which accounts for daily operations. In practice, a

city budget will have a number of funds, each designed to account for a specific purpose. A budget should include enough different types of funds to clearly show what services and programs a local government is providing and how it is paying for expenditures. However, it is advisable to not have too many funds, as this makes the budget harder to read and understand.

There are seven types of funds used in most city budgets:

General Fund – records expenditures needed to run the daily operations of the local government.

Special Revenue Fund – accounts for money that must be used for a specific purpose.

Capital Project Fund – records the money and expenditures used to build or acquire capital facilities, such as land, buildings or infrastructure.

Debt Service Fund – records the repayment of general obligation and revenue bonds and other financing obligations.

Trust and Agency Fund – accounts for money that is held in trust for a specific purpose as defined in a trust agreement or when the government is acting as a custodian for the benefit of a group.

Reserve Fund – functions as a savings account to pay for any service, project, property or equipment that the city can legally perform or acquire in the future.

Enterprise Fund – records the resources and expenditures of acquiring, operating and maintaining a self-supporting facility or service—such as a city water or wastewater utility.

Oregon budget law requires that each year a city's budget provides a financial history of each fund. The financial history must include:

- The actual revenues and expenditures for the prior two years;
- The budgeted revenues and expenditures for the current year;
- The estimated balanced budget as proposed by the budget officer for the coming year which includes columns for the budget approved by the budget committee; and
- The final budget adopted by the governing body.

The budget also includes a column for the descriptions of expenditures and resources.

THE BUDGET MESSAGE

The budget message gives the public and the budget committee information that will help them understand the proposed budget. It is required by statute to contain a brief description of the financial policies reflected in a proposed budget and, in connection with the financial policies, explain the important features of the budget. The budget message must also explain proposed changes from the prior year's budget and any major changes in financial policies.

Public Notice of the Budget Meeting

The budget committee must hold at least one meeting for the purpose of receiving the budget message and the budget document, and to provide the public with an opportunity to ask questions about and comment on the budget.

The city must give public notice for the budget meeting(s) either by printing notice two times in a newspaper of general circulation, or once in the newspaper and posting it on the city's website. If the budget committee does not invite the public to comment during the first meeting, the committee must provide the opportunity for public comment in at least one subsequent meeting. The notice of the meeting(s) must tell the public at which meeting comments and questions will be taken.

Budget Committee Meets

The budget message is prepared in writing so it can become part of the budget committee's records. It is delivered at the first meeting of the budget committee by the budget officer, the chief executive officer or the governing body chair.

A quorum, or more than one-half of the committee's membership, must be present in order for a budget committee to conduct an official meeting. Any action taken by the committee first requires the affirmative vote of the majority of the membership.

(continued on page 16)

Budgeting

Budget Committee Approves the Budget

One of the budget committee's most important functions is to listen to comments and questions from interested citizens and consider their input while deliberating on the budget. The budget committee can revise the proposed budget to reflect changes it wants to make in the local government's fiscal policy provided that the revisions still produce a balanced budget. When the committee is satisfied, it approves the budget.

When approving the budget, the budget committee must also approve a property tax rate or the tax amounts that will be submitted to the county assessor. The budget committee should make a motion to approve the property tax so that the action is documented in the committee meeting minutes.

ONLINE RESOURCES

OREGON DEPARTMENT OF REVENUE RESOURCES

LOCAL BUDGETING MANUAL

An introduction to the requirements of Local Budget Law, including information on biennial budgets.

Available at http://goo.gl/gGdnwk.

LOCAL BUDGETING IN OREGON

A supplement to the *Local Budgeting Manual*, covering the requirements of Oregon's Local Budget Law.

Available at http://goo.gl/h5ptkS.

LOCAL BUDGET LAW WEBPAGE

A webpage dedicated to helping local governments prepare and adopt their budgets. The page contains forms, glossary of terms, sample budgets and information on free training sessions.

Available at http://goo.gl/JCkgSE.

Upon approval of the budget by the budget committee, the budget officer completes the budget column labeled "approved by budget committee," noting any changes from the original proposed budget.

Budget Summary and Notice of Budget Hearing are Published

A summary of the approved budget, which includes a narrative description of prominent changes to the budget from year to year, is published in the newspaper with the notice of a public hearing to adopt the budget five to 30 days before the budget hearing date.

Hold Budget Hearing

The city council must conduct a budget hearing by June 30 to receive the budget committee's approved budget, conduct deliberations, and consider any additional public comments. The council can make any adjustments it deems necessary (with some restrictions) to the approved budget before it is adopted by June 30. The budget hearing and the resolutions or ordinances necessary to adopt the budget and impose taxes can be conducted at the same public meeting.

Adopt Budget, Make Appropriations, Impose Taxes, Categorize Taxes

The council may adopt the budget at any time after the budget hearing so long as it is adopted by June 30. It is not a requirement that the budget be adopted at the hearing.

To adopt the budget, the city council enacts a resolution or ordinance which provides the legal authority to:

- Establish or dissolve funds;
- Make appropriations for expenditures;
- Adopt a budget; impose and categorize taxes; and
- Perform all other legal actions pertaining to budgeting and authorizing tax levies.

All enactment statements can be combined into one resolution (or ordinance), which must be signed by the mayor before submission to the county assessor's office.

Certify Taxes

Any property taxes must be certified to the county assessor annually, even if the city adopts a biennium budget. By July 15 of each year, a city must submit two copies of the resolution (or

ordinance) to the county tax assessor. In addition, the notice of property tax certification (form LB-50) and successful ballot measures for local option taxes or permanent rate limits must be submitted.

In addition to the county tax assessor's copies, a copy of the resolutions required to receive shared revenue must be submitted to the Oregon Department of Administrative Services by July 31. Finally, a copy of the published adopted budget document, including the publication and tax certification forms, must be submitted to the county clerk's office by September 30.

Post-Adoption Budget Changes

While it is possible for changes to be made to an adopted budget once the fiscal year begins, this can only happen under specific circumstances. Two such examples are council-approved resolution transfers of funds and supplemental budgets that make changes to adopted expenditure appropriations and estimated resources. These are actions that must be taken before more money is spent beyond what is appropriated in the adopted budget. Any changes made to the adopted budget require that the budget remain in balance after the change. ■

What You Need to Know About Gift Limitations

THE BASICS

During a calendar year, a public official, candidate, or relative or member of the household of the public official or candidate may not:

- Solicit or receive
- Directly or indirectly
- Any **gifts** with an aggregate value above **$50**
- From any single source
- Reasonably known to have a **legislative or administrative interest.**

A GIFT IS...

- Something of economic value
- Without cost, at a discount, or as forgiven debt
- Not available to the general public on the same terms.
- Examples:
  - Meals
  - Lodging
  - Event Tickets

LEGISLATIVE OR ADMINISTRATIVE INTEREST MEANS...

- Economic interest
- Distinct from that of the public
- In a matter subject to the decision or vote of a public official acting in that capacity.

THE FOLLOWING ARE NOT CONSIDERED "GIFTS":

- Gifts from relatives or members of the household
- Unsolicited token of appreciation with a resale value less than $25
- Publications and subscriptions related to official duties
- Campaign contributions
- Waiver or discount of certain registration expenses or materials at a continuing education event to satisfy a professional licensing requirement
- Entertainment that is incidental to the main purpose of the event
- Received as part of the usual and customary practice of one's private business or employment and unrelated to holding public office
- Offers of lawful benefits to public officials offered by the public entity the public official represents.

WHAT TO ASK YOURSELF BEFORE ACCEPTING A GIFT

- **Is it a "gift?"** A gift is something of economic value not offered to others who aren't public officials (relatives or household members) on the same terms and conditions.
- **Exceptions:** Do any of the exceptions apply?
- **Source:** Does the gift giver have a legislative or administrative interest in my decisions or votes?
- **Value:** If so, does the value of the gift, along with any other gift received from that source this calendar year, exceed $50?

For more information please contact the Oregon Government Ethics Commission – **www.oregon.gov/OGEC**.

Successful Code Enforcement

Six Tips to Consider

Code enforcement can be a tricky job. Finding the right balance between ensuring a city's codes are properly followed and providing good customer service to a city's constituents is no easy task.

A successful code enforcement officer excels in these six areas:

1. They know their code. Successful code enforcement officers are experts on their city's codes. They excel at knowing what the code regulates, and what it does not. The best code enforcement officers can easily point to pertinent sections of their city's code when questioned by superiors and members of the public.

2. They review their code annually. Code enforcement officers work with their city's codes perhaps more than any other city employee. It is often the code enforcement officer who finds the code's flaws or the proverbial loophole. Successful code enforcement officers are the ones who annually review their city's code so that, when necessary, appropriate amendments can be submitted to their city council.

3. They believe in interdepartmental cooperation. An exemplary code enforcement officer works cooperatively with employees from various city departments. Code enforcement officers regularly stumble upon problem properties that necessitate the involvement of numerous city departments. Knowing which employees in the various departments need to be looped into resolving the problems at a property is a unique skill possessed by successful code enforcement officers.

4. They engage in successful community outreach. A good code enforcement officer not only knows her city's code, she also educates property owners and community members about the code's requirements. Code enforcement officers with high rates of success are those who frequent neighborhood association meetings, engage with the chamber of commerce, and have regular contact with key stakeholders in the community. Making sure the community knows the code as well as she does is the mark of a successful code enforcement officer.

5. They directly engage with citizens who are in violation of the city code. Notifying property owners that they are in violation of the city's code is never a fun task. While it can be easier to try and deal with code violations via written notices, emails and phone calls, successful code enforcement officers know that sometimes face-to-face contact is the most effective way to remedy a violation. Meeting with a person whose property is in violation of the city code allows the code enforcement officer the opportunity to fully explain the violation, listen to the reasons behind the violation, and engage with the property owner in how to successfully and most expeditiously achieve compliance.

6. They enforce the city's code consistently and equally. Successful code enforcement officers are fair code enforcement officers. A fair code enforcement officer is one that enforces the city's code equally against all property owners, regardless of their position in the community or the location of the property. ■

ASK LOC

Q: Does the state impose restrictions on political campaigning by public employees?

A. Each election season, the League is asked to clarify the restrictions on political campaigning by public employees. ORS 260.432 generally prohibits public employees from using their work time to support or oppose measures, candidates, recalls, petitions or political committees. Furthermore, elected officials cannot direct their employees to engage in political activity.

Who is a public employee?

A public employee is any person employed by the state of Oregon, a county, a city or a special district. Examples of public employees include: full-time city employees; part-time city employees; city volunteers that receive no compensation for their service; and appointed board or commission members when they are acting in their official capacity.

Elected officials are not public employees. The statutes prohibiting public employees from supporting or opposing measures, candidates, recalls, petitions and political committees do not apply to elected officials. Elected city mayors, councilpersons and auditors are not public employees.

Contractors are also not public employees. However, contractors cannot be directed to engage in political activity as part of the contractual service they are providing a city.

When are public employees "on the job?"

An employee is "on the job" when he or she is performing work for the city in an official capacity, regardless of when and where the work is performed. For example, if a city's parks director is required to attend a chamber of commerce event in her official capacity, the parks director is prohibited from asking event attendees to support a local ballot measure that would raise money for the city to build a new swimming pool.

Some common activities that are always considered to be performed in an official capacity include:

- Posting material to an official city website;
- Drafting or distributing an official city publication;
- Appearing at an event as the city's representative.

How does a public employee engage in political campaigning during her personal time when everyone in the community identifies her as a public employee?

Some public employees are in high profile positions that make them regularly known in their communities. And in small communities, public employees are known by all residents as working for the city. In these instances, it can be hard for members of the public to distinguish the times when a public employee is speaking on behalf of the city as opposed to speaking on behalf of him or herself. Similarly, a public employee who wishes to engage in political campaigning during his or her own private time should make it clear to all that he or she is acting in their personal capacity and is not working for or representing the city.

Can public employees express their own personal political views while on the job?

Yes. Public employees can express their own personal political views while at work. Employees can display political stickers on their personal vehicles and wear political buttons on their clothing (providing such an action doesn't violate the city's uniform or personnel policies).

Also, cities should note that public employee unions can have designated bulletin boards in city buildings to post information. The content of union bulletin boards is determined through a collective bargaining process and is not subject to ORS 260.432.

Conclusion

Understanding and knowing when and how public employees can engage in political campaigning can be confusing. To assist public employees and elected officials in understanding and complying with ORS 260.432 the League has created a document entitled "FAQ about Restrictions on Political Campaigning by Public Employees." If city employees or leaders have questions about ORS 260.432, they are encouraged to consult with their city attorney for additional guidance.

Oregon Water Rights Basics

BY RICHARD M. GLICK

Securing a safe and reliable water supply is a priority concern for every Oregon community. Most cities in Oregon operate their own water systems, while others are served by various forms of water districts or contracts with other cities. Municipal and industrial water use constitutes just a fraction of the total amount of water withdrawn from streams or pumped from aquifers in comparison to irrigated agriculture, but efforts to acquire or expand municipal water supplies attract a lot of attention and sometimes controversy. The availability of new water rights is shrinking, while regulatory requirements expand.

Oregon water law, as in other Western states, follows the rule of Prior Appropriation, often described as "first in time is first in right." Prior to enactment of the state's water code in 1909, the common law was that whoever first diverts water out of a stream for a beneficial use can prevent later comers from interfering with that use. That is, the prior appropriator has a legal right to withdraw the full amount used under the original claim, even if it means junior appropriators are denied water. There is no sharing of shortages under the Wild West rule of prior appropriation.

WATER RIGHTS ADMINISTRATIVE PROCESS

New water rights follow a three-step process. First, an application is filed with the Oregon Water Resources Department (OWRD), and the date of the application establishes the priority date. That's important because the entire water right process can take considerable time to complete. Second, if the OWRD finds that water is available for appropriation, and withdrawal would not "impair or be detrimental to the public interest," then it issues a permit. The permit allows development of water works and initial use. Third, when construction is complete, the permittee files a Claim of Beneficial Use with OWRD that documents how the water is being used, which may differ from the rate of diversion or volume of water specified in the permit. The OWRD then issues a certificate, which is conclusive evidence of a fully vested water right.

As long as the certificate holder continues to use the water in accordance with the certificate, the right continues in perpetuity. Generally, certificated water rights may be forfeited for five consecutive years of non-use. However, municipal water rights are the exception and cannot be lost for non-use.

WATER RIGHTS ADMINISTRATIVE PROCESS

1. Application filed with OWRD
2. If water is available, OWRD issues a permit
3. Once construction is complete, a Claim of Beneficial Use is filed with OWRD by the permittee

That's straightforward enough, what could possibly go wrong? Water rights permitting is a very public process. When the OWRD issues a proposed final order to issue a permit, the public has the right to file a protest, which could set off a trial-like "contested case" hearing process. For example, a protestant may claim that the new appropriation would deprive fish of needed flows or interfere with other water rights. Any dissatisfied party to the contested case is entitled to review by the Oregon Court of Appeals. From there, a party may petition the Oregon Supreme Court, but the court can decline to hear the case.

WATER RIGHT TRANSFERS

As the water system is developed, sometimes the permit holder finds that a change in permit conditions, such as the point of diversion, is necessary. That can be accomplished through a permit amendment. After the certificate is issued, however, the process is a bit more complicated. In that case, a "transfer" application must be filed, and the test is whether other water right holders may be "injured" by the change. An example is a change in point of diversion higher up in the watershed, which could mean withdrawals of water above someone else's diversion. Like proposed final orders for permits, proposed transfers are also subject to protest and hearings.

MUNICIPAL EXTENSIONS OF TIME

The time allowed for full development of municipal water rights has become a contentious issue. Generally, a new permit will include a date to commence and complete construction, usually within the first year. That date can be extended for five years for good cause. The problem is that cities must plan for long-term growth. The goal of most cities is to lock in a supply that will meet anticipated demand decades down the road. A city would then develop a system in increments when it was confident the demand would be there, along with the ratepayers to carry the debt service. This reality has created tension between the legal requirement of prompt development and responsible municipal planning.

For decades, the OWRD had simply issued successive five-year municipal extensions to avoid this problem. That practice was disallowed by the courts in 2004, and in 2005 the Legislature enacted special laws pertaining to municipal water right extensions. Under that statute, new municipal water permits would extend the initial development period to 20 years, with the possibility of additional extensions of time. Following a 2013 court decision, water right permits that have not been fully developed must go through a special process that includes the potential for limits on withdrawals under the permit to protect fish flows.

ALTERNATIVE APPROACHES TO WATER SUPPLIES

Acquiring new community water supplies is a challenge calling for creative solutions. Most Oregon streams are over-appropriated, meaning that there is no water available for future appropriations. Even where water is available, conditions imposed by the OWRD in new permits to protect fish flows can result in curtailment during a significant part of the year. Also, such water rights would be the junior-most in the stream and subject to senior rights.

An alternative used by some municipalities is to purchase existing water rights from farmers or other cities. Others pay farmers to improve irrigation efficiency, for example to install sprinklers to replace flood irrigation, or pipe to replace open canals. No doubt other innovative approaches to municipal water supply will emerge to meet the challenge.

There is no new water in the world, and competition for this scarce resource will only increase, especially as the effects of climate change are better understood. The League of Oregon Cities, working with other stakeholders, is working hard to ensure that the Legislature and the courts understand the imperative and support public water supplies. ■

Mr. Glick is a partner with the law firm of Davis Wright Tremaine LLP.

Resources for City Officials

The League has a large online library of publications, guides, FAQs and models available to assist public officials in carrying out their duties. All of these are available at **www.orcities.org/resources/reference/reference-library.**

- Guide to Executive Sessions
- Guide to Incorporation
- Guide to Local Government Regulation of Firearms in Oregon
- Guide to Local Regulation of Marijuana in Oregon
- Guide to Recruiting a City Administrator
- Guide to Recruiting a City Attorney
- Legal Guide to Collecting Transient Lodging Taxes in Oregon
- Telecommunications Toolkit
- Model Charter for Cities
- Model Department of Revenue Marijuana Tax Collection Agreement
- Model Policy for Public Contracting & Purchasing
- Model Resolution on Trade Promotion, Fact-Finding Missions & Economic Development Activities
- Model Rules of Procedure for Council Meetings
- Legal Guide to Handling Disruptive People in Public Places
- Measures 5 & 50: A Primer
- The Origins, Evolution & Future of Municipal Home Rule in Oregon
- Understanding Oregon's Unfunded Mandate Law
- FAQ on Emergency Procurements
- FAQ on Garrity Warnings
- FAQ on Initiatives & Referendums
- FAQ on Loudermill Rights
- FAQ on Notice Requirements for Public Meetings
- FAQ on Oaths of Office
- FAQ on Public Record Fees
- FAQ on President's Immigration Orders
- FAQ on Quasi-Judicial vs. Legislative Hearings
- FAQ on Restrictions on Political Campaigning by Public Employees
- FAQ on Right-of-Way Vacations
- FAQ on Surplus Property
- 2017 Legislative Bill Summary

A City's Role in the Land Use Process

BY EMILY JEROME, DEPUTY CITY ATTORNEY, CITY OF EUGENE

Oregon is known for its strict regulation of land use, with literally hundreds of state statutes and rules on whether, how and when a city may allow land to be developed. State laws also govern how a city must notify and engage its residents when the city is considering a proposed change to its land use regulations, or considering a landowner's application for a land use approval. Complying with these state laws takes time, methodical decision-making and staff expertise.

STATEWIDE GOALS & CITY PROCEDURES

Oregon's land use laws relate to 19 "Statewide Planning Goals" that address all aspects of land use planning, including: Citizen Involvement (Goal 1), Natural Resources (Goal 5), Economic Development (Goal 9), Housing (Goal 10), Public Facilities (Goal 11), Transportation (Goal 12), and Urbanization (Goal 14). State law requires every city in Oregon to have a state-approved comprehensive plan to implement the Statewide Planning Goals and to serve as a high-level planning document for the city. Each city's comprehensive plan must include local policies and a land use diagram that are implemented through the city's zoning map and land use code.

The zoning map and land use code are a city's primary land use documents. The map assigns a land use zone to every parcel of land inside the city limits. The code sets out development standards for each zone, including requirements and limits for things like building height, property line setbacks, landscaping and parking spaces. The code also lists the land uses allowed in each zone. For each zone, the code specifies which of the allowed uses are permitted "outright" and which require a more intense approval process. To establish an outright permitted use, a landowner needs only to obtain a building permit, processed by city staff to make sure that applicable development standards are met. To obtain city approval of other uses, the landowner must submit the specified land use application (such as a subdivision or conditional use permit) and demonstrate how the development proposal meets criteria set out in the code.

A city's land use code sets out the procedures it uses to consider land use applications. To a great extent, these procedures are prescribed by state law, though city procedures often exceed state requirements. Each review process includes mailed notices to surrounding property owners and an opportunity for interested persons to provide written testimony. For certain kinds of applications, a public hearing is required. Many city codes include several different procedural paths with varying notice and hearing requirements. For most land use applications, the city's final decision must be made within 120 days of an application's submittal.

CITY ROLES & DECISION-MAKING

When it comes to land use, city officials play two different roles. Sometimes city officials act like the Legislature, considering the adoption of changes to the land use code that apply city-wide or within an entire zone. This role is referred to as "legislative decision-making." In other cases, city officials act like the judiciary, reviewing a landowner's land use application, holding hearings, considering testimony, and applying code criteria to decide whether the city must approve or deny the proposed development. This is referred to as "quasi-judicial decision-making." There are different rules for city officials, depending upon which role is being played.

When acting in a legislative role, city officials are considering a change in city policy that will be generally applicable. City officials may exercise broad discretion when considering whether to vote for or against the proposed change. In fact, the officials may decide to simply abandon the idea without voting at all. City officials may talk with residents about a legislative proposal and may do their own research about it. They are bound only by the general ethics laws that apply to all city actions.

When considering a land use application in their quasi-judicial role, city officials are bound by additional laws. To ensure a fair process, city officials should not form an unchangeable opinion about an application until they have received all testimony and evidence. Also, city officials should not read or talk about the pending application outside of the formal hearing and review process. If such an "ex parte" communication does occur, the city official should alert the planner so that remedial steps can be taken. The city's decision on a land use application must be based on written findings addressing the application's consistency with the approval criteria from the code, and no other considerations. The applicable criteria are those that were in place at the time the application was submitted. ■

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