Manual of City Governance Policies, Procedures and Guidelines

Resolution No. 2015-07

Adopted June 23, 2015

A Comprehensive Collection of
Governance Principles, Policies, Procedures,
Standards of Conduct, Meeting Rules
and References to Applicable Law

Introduction

The Bainbridge Island Manual of City Governance gathers standards for Bainbridge Island governance practices into a single document. It is a comprehensive collection of policies, meeting rules, coordination procedures, administrative references, public outreach guidelines and procedures. Included, by reference, are relevant provisions of applicable state and local law. Also included are principles to guide the Council/Manager form of government.

This manual can be a valuable resource for Bainbridge Island, the City's citizens, the City Council and City management as we continue to work together for effective and efficient local government. The City Council and City management should be familiar with the contents of this manual and keep it close at hand.

This manual (as adopted by Resolution) is a legislative act and is intended to remain in force except to the extent that any portion may be subsequently be amended or rescinded by act of Council.

Webmaster's Note: This document contains embedded hyperlinks. To go directly from the Table of Contents to a specific section, roll your curser over the page number and click.

RESOLUTION NO. 2015-07

A RESOLUTION OF THE CITY OF BAINBRIDGE ISLAND
ADOPTING A MANUAL OF CITY GOVERNANCE
POLICIES, PROCEDURES AND GUIDELINES
FOR THE COUNCIL-MANAGER FORM OF GOVERNMENT.

WHEREAS, the City Council desires that city government be transparent and accountable to the public; and

WHEREAS, the City Council seeks to govern in a manner that is responsive to the community, in collaboration with City management, and in a business-like and professional manner; and

WHEREAS, written principles, policies and procedures best assure an atmosphere conducive to principled, accountable and transparent governance,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. There is hereby adopted by reference, "City of Bainbridge Island Manual Of City Governance Policies, Procedures and Guidelines" dated June 23, 2015 which is attached hereto as Exhibit "A".

PASSED by the City Council of the City of Bainbridge Island, Washington at the regular meeting of the City Council on the 23rd day of June, 2015.

APPROVED by the Mayor of the City of Bainbridge Island, Washington on the 23rd day of June, 2015.

Anne S. Blair

Anne S. Blair, Mayor

ATTEST/AUTHENTICATE:

Rosalind D. Lassoff

Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK: April 30, 2015
PASSED BY THE CITY COUNCIL: June 23, 2015
RESOLUTION NUMBER: 2015-07

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Article 1: USE OF THIS MANUAL AND ITS RULES

1.1 Purpose

This manual, and its governance policies and rules of procedure, are designed to provide guidance for the Council and City Administration. They are not to be considered restrictions or expansions of Council authority. These rules have been prepared from review of many statutes, ordinances, court cases and other sources but they are not intended to be an amendment or substitute for those statutes, ordinances, court decisions or other authority.

1.2 Waiver, Amendment, or Suspension of Portions of this Manual

Failure of the Council, acting in an open public meeting, to follow any of these rules shall be considered a Council decision to waive such rule. No notice of such waiver need be given. Amendments of all or any part of these rules may be made by resolution or temporarily suspended by motion until changed, provided there is no conflict with any superior statute.

Article 2: PRINCIPLES

It is hereby the policy of the City to establish the principles stated in this Article 1 as core values of City governance:

2.1 Values

2.1.1 City Leaders Listen to the Community
City leaders listen to the community in a way that represents the community's interests and goals.

2.1.2 Collaboration is Valued
Council and staff should use their best efforts to collaborate in every endeavor, seeking consensus as far as possible.

2.1.3 City Leaders Lead and Reason Together
Council members should, individually and collectively, demonstrate the ability to lead and reason together.

2.1.4 The City Exemplifies Professionalism in City Management
City leaders exhibit respect for the professionalism and ethical conduct of the City Manager and staff.

1.1.5 Sustainability

Leaders strive to achieve sustainable outcomes in City policies and administration, with sustainable bottom lines for the community, environment, and for city finances, and the local economy.

2.2 Relationship between Council, City Manager, Staff, and Public

2.2.1 Council Oversees City Organization But Does Not Interfere With Management

Council establishes budgetary authority for departments and positions, and may determine the duties and compensation of each, but does not interfere with the City Manager's management of City employees.

2.2.2 Council and City Manager Roles and Responsibilities Differentiated

Leaders adhere to the separate and distinct policy and management roles of Council and City Manager. Administrative policy and complaints are handled by the City Manager and Department Heads; legislative policy is established by Council.

2.2.3 Performance-Driven Management

Council reviews the City Manager's performance annually. The City Manager is responsible for performance reviews of subordinates.

2.2.4 City Attorney Is Legal Counsel to the City and Its Officials Collectively

The City Attorney is hired by the City Manager and represents the City and in that capacity provides legal advice to the Council, City Manager, and staff to the extent their interests coincide with the City's.

2.2.5 Staff Provides Adequate Information for Council Policy-Setting

Information is sufficient for effective decisions.

2.2.6 Council Will Not Request Unnecessary Information

In recognition of the limitations of staff time and resources, the Council will not request unnecessary information.

2.2.7 Public Documents Ensure Open And Transparent Government

The Council and Administration will adhere to laws on public access to documents.

2.2.8 Communications to the Public are Essential

The City Manager shall be responsible for the City communications function, but controversial communications shall be promptly copied to Council.

2.3 Functioning of City Council

2.3.1 Importance of Open Public Meetings

The City shall comply with the Open Public Meetings Act under Washington law.

2.3.2 There is a Council-Selected Mayor

The Council-selected Mayor presides at Business Meetings of the Council.

2.3.3 The Mayor Also Embodies Other Leadership Roles
The Mayor serves as: the City's ceremonial head; the main liaison for the Council with the City Manager; a team leader; a goal-setter; an organizer who helps stabilize Council relationships; a champion of the City.

2.3.4 Citizen Volunteers Play an Important Role
For citizen advisory committees, boards, and commissions, the Mayor shares the role of seeking and interviewing volunteers, and appoints citizens to these committees, boards, and commissions subject to Council confirmation.

2.3.5 The Role of Deputy Mayor is Rotated
Council members take turns serving as Deputy Mayor, presiding at meetings, and coordinating with City Manager when Mayor is unavailable or absent.

2.3.6 Service on Regional Bodies is Shared Among Council Members
Council selects individual Council liaison roles based on the desire, qualifications, and skills of interested Council members.

2.3.7 Representatives of City Act in Accordance with City Policies
It is a duty of staff and Council who represent the City to advocate positions that are consistent with City policies, projects, and plans.

2.3.8 Councilors Serve in Liaison Roles to Community Organizations
Council approves liaison duties to community organizations for arts, human services, business community, tourism organizations, etc., based on desire and qualifications.

2.3.9 Councilmembers Have Opportunity to be Leaders and Innovators
One or more Council members may "sponsor" an ordinance or resolution.

2.3.10 Council is Mindful of Limited Resources
Council expense reimbursement is limited to budget and requires receipts. There are other limits on types and amounts of reimbursements.

2.3.11 Council Authorizes Certain Grant Applications Before Submittal
If a grant would require material matching dollars or impact policy, the Administration will seek Council approval prior to applying. The administration will bring grant opportunities it becomes aware of to the full Council. The Council may also initiate the process of pursuing a grant.

2.3.12 Fewer Standing Committees
Because staff time and resources are limited, the Council will use Study Sessions of the whole Council rather than numerous Standing Committees. The Council will consider utilizing a Standing Committee only if needed to provide ongoing oversight in a prescribed area, as described in Section 3.1.2 below.

2.4 Efficiency and Effectiveness of Council Decision-Making

2.4.1 Council Makes Effective Use of Time

Council differentiates among four types of public meetings: (1) goal-setting retreats (sometimes called "advances"); (2) Study Sessions; (3) Business Meetings; (4) single-issue workshops; (5) public communications meetings and forums.

2.4.2 Provide More Effective Opportunity for Public Interaction

Communication with public is more interactive in Study Sessions than in Business Meetings. Typically, public comments on any topic relating to City business will be taken at the outset of Business Meetings, whereas in Study Sessions public comments are taken in the course of consideration of each matter under study at the meeting. Each public comment should usually be limited to three minutes. Councilmembers may also receive public comments via email or other written communications.

2.4.3 Council's Business Meetings Will Be Efficient and Businesslike

The information exchange, review, deliberation and vetting of issues during the prior Study Session enables Council business meetings to be expeditious.

2.4.4 Effective Decision Making Requires Finality

Rules shall limit the prerogative to reconsider a Council decision; effective decision making results in finality and "moving on".

2.4.5 Council Dialog Calls For "Sticking to the Point"

The Presiding Officer's role, especially at the business meeting, is to keep Council business focused and expeditious.

2.4.6 Council Meeting Agendas Are Set by a Team

Agendas for Council meetings are generally developed and refined by the Council and Administration at Study Sessions, and are then arranged by the City Manager and City Clerk in consultation with the Mayor, Deputy Mayor, or both, who provide final approval prior to being publicly posted. Items for draft meeting agendas are submitted to the City Clerk, Mayor, and City Manager, and after team review are finalized by the Mayor, Deputy Mayor, or both, for public notice and distribution.

2.5 Functioning of City Manager and Staff

2.5.1 ICMA Standards are Respected

City leaders respect the ICMA standards and model documents (e.g. ICMA Code of Ethics and the City Manager's employment terms/conditions).

2.5.2 Council-Manager Governance Depends on a Strong City Manager Role

The City Manager prepares the proposed budget; administers code and policy; appoints and removes city employees; serves as the City's chief executive officer.

2.5.3 Regular and Understandable Financial Reporting

The City's regular financial reports enable the Council and community to understand the City's financial condition, and are in harmony with accounting standards for governmental organizations, applicable law, and municipal best practices, taking into account brevity, cogency, salience, and clarity.

2.5.4 Council and Administration are Mindful of Risk Management

There will be periodic reviews of risk management with WCIA (Washington Cities Insurance Authority). The Council empowers the City Manager with a dollar authority level to settle minor claims.

2.5.5 Public Information is Enhanced by Audio, Video, Website & Notes

There is a full audio recording on the city website for each Council meeting. Video and local radio may be used for Business Meetings and bi-weekly Study Sessions. Minutes of meetings are concise and are approved and posted online in as timely a manner as possible.

Article 3: DEFINED TERMS AND BASIC RULES

3.1 Types of Governing Bodies, and Advisory or Supporting Groups

3.1.1 City Council (or "Council")

The Council consists of 7 officials, each elected to four-year terms. The terms are staggered with 3 or 4 terms expiring at the end of even-numbered years. Individual Council members do not have governing power as individuals, but only when meeting as a Council, when a quorum (4 or more) is present. A special-purpose meeting of the Council when a quorum is present is sometimes referred to as a meeting of the Committee of the Whole.

3.1.2 Council Standing Committee

A Council Standing Committee consists of Councilmembers (not more than three, approved by the full Council for a calendar-year term), with staff support appointed by the City Manager. The Council may, but is not required to, establish one or more Standing Committees. A Standing Committee is a body with no established expiration date, and which has jurisdiction over a Council-prescribed ongoing policy area, such as finance. The purpose of a standing committee is to perform oversight functions in the prescribed area, and to develop and recommend actions in that area to the Council.

3.1.3 Council Ad Hoc Committee

An Ad Hoc Committee is a temporary committee established by Council to investigate and advise Council on a specific policy or issue for future Council action, or to develop a legislative or policy proposal for Council on a particular topic. The Council determines the purpose of an Ad Hoc Committee at the time of establishing it. The Council may appoint up to three Councilmembers to an Ad Hoc Committee, and, if applicable, one or more citizens or subject matter experts who are not city employees. Furthermore, each Ad Hoc Committee shall include the City Manager (or his or her designee) and any City staff that the City Manager chooses to assign to the Committee. An Ad Hoc Committee shall be dissolved upon completion of the Council-assigned task.

3.1.4 Citizen Board, Citizen Committee, or Citizen Commission

As defined by ordinance or resolution, a citizen board, committee, or commission is generally a standing (rather than temporary) body with prescribed authority to perform

a recurring advisory or decision-making role on behalf of the City as a municipal corporation. The list of such bodies, as that list may be amended from time to time, is found in Exhibit B. Procedures and rules that apply to such bodies are described in Article 6: Citizen Committees, Boards And Commissions.

3.1.5 Citizen Advisory Committee

A Citizen Advisory Committee consists of a group of citizens, established and appointed by the Council or by the City Manager, which is tasked with the responsibility of advising the appointing body or Manager regarding some activity or pending decision of City government. Such a committee is normally formed on an ad hoc temporary basis to advise either the Council or City Manager (or a Council standing or ad hoc committee) on a particular topic relating to city legislation, policy, or practices, or the means to carry out a proposed project or city activity. The list of such bodies, as that list may be amended from time to time, is found in Exhibit B.

3.1.6 Steering Group

The City Manager or the Council may establish a Steering Group to perform a temporary ad hoc task or project prescribed by the Council or the City Manager – such as organizing one or more forms of citizen engagement on a public issue, or providing direction and oversight for the implementation of a City project or program.

3.1.7 Small Task Group

The Council may, from time to time, create, and appoint members to a small task group for the purpose of examining issues and making recommendations important to the City but not requiring the more formalized process of a larger task force, which may require a steering committee. The small task group may consist of one or more Councilmembers, one or more citizens or experts familiar with the issue or project, and the City Manager (or designee). In all cases, the instrument appointing a task force shall set forth a clear task assignment and provide for dissolution of the group upon completion of the task.

3.1.8 Multi-Agency or Regional Task Group

When a major regional effort involves key agencies outside of City government but vital to a project's coordination, the Council may create by motion, legislative directive, or intergovernmental agreement, an appropriately named multi-agency or regional task group (and may create a Steering Group to guide the task group effort). Membership shall consist of one to three Councilmembers and may include the City Manager (or designee), typically one representative from each partner agency, and, if applicable, representation from any private consultant or non-profit agency with a key interest or resource vital to the issue or project.

3.1.9 Scalable Public Process Planning System

For public issues of high interest or high impact or those that require a lengthy public process, a Public Process Steering Group may be formed. For issues that are less controversial, have less far-reaching impacts, or are suited to a shorter process, an Ad Hoc Committee or Task Force may be more appropriate. The purpose of the committee, task force, or steering group is to strategize and facilitate appropriate public process for a particular community subject or issue. See Exhibit C for more details on the use of this Scalable Public Process Planning System.

A Public Process Steering Group typically consists of one to three Councilmembers, the City Manager (or designee), and the City's Communications Coordinator. The Councilmember(s) shall be appointed by the Mayor and confirmed by Council. The City Manager shall appoint additional staff as needed to provide technical support, and may appoint one or more citizens to provide community input. Representatives of outside agencies may also be included where appropriate. These appointments shall identify the task(s) of the Steering Group. The group shall be dissolved when the task is completed. A similar approach may be taken in assembling an Ad Hoc Committee or Task Force, except that the group make-up may be smaller and simpler, and it may have one or just a few meetings, or even "meet" by email.

The committee, task force, or steering group shall serve as a collection point for information and activity pertaining to the task or issue assigned and shall advise on the design for public processes. Public process activities may incorporate a range of tools such as press releases, newspaper columns, Q & A's, fact sheets, presentations to community organizations, focus groups, neighborhood meetings, ward meetings, and public forums, as described in the City's public participation guidelines. The Council Liaison will inform the Council of the group's activity at Council meetings (when appropriate).

3.1.10 Nonprofit Service Agency

A nonprofit organization may perform a function for the City as defined by contract with the City or as prescribed by ordinance. An example of such a nonprofit entity designated by ordinance is the Bainbridge Island Arts and Humanities Council (for oversight of the Cultural Element of the Comprehensive Plan).

3.2 City Officials and Adjudicators

3.2.1 Mayor

See the definition and duties stated in Section 5.3.

3.2.2 Deputy Mayor

See the definition and duties stated in Section 5.4.

3.2.3 Presiding Officer

The term Presiding Officer means the Councilmember who is to chair, or is in fact chairing, a Council meeting. Unless otherwise stated in the meeting agenda, the Presiding Officer shall be the Mayor unless the Mayor is absent, in which case the Presiding Officer shall be the Deputy Mayor (or, in the absence of both, the Councilmember who is elected by the quorum to preside at the meeting).

3.2.4 City Manager

See the definition and duties stated Article 7: City Administration.

3.2.5 Appointive Officers

The City's Appointive Officers consist of the City Manager and those persons (who may or may not be City employees) who occupy any of the appointive offices stated in Section 2.08.030 of the COBI Code.

3.2.6 Council Liaison

With Council approval, a Councilmember may serve for a calendar year as the Council's Liaison (i.e. representative), to an organization. A Liaison is responsible for facilitating communication, collaboration and coordination with the designated organization, and with regular reporting and accountability to the Council. There are typically Councilmember Liaisons to four types of organizations:

- *A county-wide or regional policy or governing body or intergovernmental organization (such as the Kitsap Regional Coordinating Council)*
- *A community organization (such as an arts, business, or social service organization)*
- *A governing or inter-agency board functioning in the city (such as the Parks Board or the Intergovernmental Working Group – IGWG); and*
- *A citizen board, commission, or committee of the City, whether or not the charter calls for an ex officio Council member (such as the Utility Advisory Committee or Lodging Tax Advisory Committee)*

3.2.7 Hearing Examiner

The City regulates and adjudicates land use matters using a Hearing Examiner system set forth in BIMC 2.14.030. The Hearing Examiner is appointed by the City Manager and confirmed by Council. Under BIMC 2.14.030, the Hearing Examiner is "responsible for conducting hearings on and adjudicating quasi-judicial cases involving a variety of complex land use and regulatory compliance issues, and other issues which the city council may designate to the hearing examiner by ordinance or resolution." The Hearing Examiner has the authority to adopt rules and procedures for proceedings before the Hearing Examiner. Additionally, many of the procedures for hearing various matters and appeals before the Hearing Examiner are found in BIMC 2.16.

3.3 Types of Meetings of Council

3.3.1 Regular Meeting

A Regular Meeting of the Council is a meeting convened on a regular series of dates (and at a time) stated in City ordinance. At a Regular Meeting, the Council may conduct any business stated on the agenda that is publicly posted prior to the meeting, or the Council may approve additions or deletions to the agenda at the meeting.

3.3.2 Special Meeting

A special meeting is a Council meeting called at a date or time other than the time prescribed by ordinance for a Regular Meeting. At a special meeting, the Council may conduct any business stated on the agenda that is publicly posted prior to the meeting, or the Council may approve deletions or additional items for discussion (but not additional action items) to the agenda at the meeting.

3.3.3 Business Meeting

A business meeting is a regular or special meeting of the Council that is primarily for the purpose of voting on the City's business, generally in the form of motions, resolutions or ordinances. A business meeting typically includes a public comment period for a limited period of time stated in advance on the agenda, during which a

member of the public may address the Council on any matter of public concern (whether or not on the agenda).

3.3.4 Study Session

A study session is a regular or special meeting of the Council that is generally held in a more informal manner or setting than a business meeting, and where the purposes may be, for example, (i) to study, deliberate, or review one or more topics or emerging issues for potential action at a future date, (ii) to vet the status of matters that are intended to be presented on the agenda of an ensuing business meeting unless exceptional circumstances apply, (iii) to engage in public comment or dialog, or (iv) to participate in presentations with City staff or other subject matter experts. In general, final votes are not taken at a study session, but there are commonly procedural votes on the disposition of various matters. Any regular or special Council meeting may be adjourned to a Study Session.

3.3.5 Workshop

A study session on a single topic or subject is sometimes referred to as a workshop.

3.3.6 Public Hearing on Ordinance

A formal public hearing may be required by statute or City ordinance as a portion of the prescribed public process for the Council's adoption of the City budget, the City's Capital Facilities Plan, and certain other legislative actions. In such a case, a public hearing is conducted according to certain formal public hearing rules prescribed by law. The public hearing typically occurs during a publicly noticed portion of a regular or special meeting of Council, where the time of the hearing has been stated in the prior public notice.

3.3.7 Public Hearing on Quasi-Judicial matter

Certain Council reviews and actions that are akin to a judicial decision affecting a particular party or a particular set of one or more properties require that the Council conduct a formal public hearing of a "quasi-judicial" kind. Such a hearing is typically conducted by Council during a prescribed portion of a regular or special meeting, and is performed in such a manner as to establish a clear record of proceedings, facts presented, and the decision process according to judicial standards. A detailed discussion of quasi-judicial hearings can be found in Section 9.14.

3.3.8 Retreat

A retreat (sometimes referred to as an "advance") is generally a Special Meeting called for the purpose of very informal discussion dealing with goals, objectives, and guidelines for future activity of the organization. At a retreat, the Council may, for example, develop goals and objectives for its own organization for the year, consider priorities for the Council work plan, or set goals for the City Manager which may be elements of an annual performance evaluation in accordance with the employment agreement. Although a detailed listing of the City's activity plan for a coming year may result from informal consensus, formal adoption should be made in a regular Council meeting by motion or resolution.

3.4 Types of Public Participation in Government

3.4.1 Public Comment Period at Business Meetings

At Council Business Meetings, the agenda shall generally include a period of time known as the Public Comment Period. Within that time period, any member of the public may be recognized by the Presiding Officer and may address the full Council on any public issue – whether or not on the agenda. Unless Council determines otherwise, the Public Comment Period at a Business Meeting is reserved for comments by the public rather than responses from Council or Administration. For further guidelines, see Sections 5.6 (Respect and Decorum) and 9.12 (Procedures for Public Comment at Business Meetings).

3.4.2 Interactive Dialog with the Public at Study Sessions

At Council Study Sessions, the Presiding Officer shall determine the manner in which public comments and dialog are to be invited, depending on the nature of the Study Session and the amount of time available. In general, the Presiding Officer may allow more flexibility in accommodating comments and dialog on agenda matters under discussion than is generally allowed at a Business Meeting, and the Presiding Officer may allow responses and interactive dialog with Councilmembers, the Administration, and other presenters.

3.4.3 Other Meetings with the Public Outside of City Hall

The Council may organize other meetings with the public in various forums outside of City Hall – in various settings such as public forums, neighborhood meetings, presentations to community organizations, ward meetings, town halls, and so on. In such settings, the meeting shall ideally include one or more Council members and one or more members of the Administration.

3.4.4 Public Forum

When major public policy development warrants, and after adequate preparation of issues and alternatives, a steering group (see Sections 3.1.6 to 3.1.9) may conduct ***larger citizen forums*** *to help develop a public consensus on the issues. The general procedure would be to provide basic information, to explore alternatives and options and to receive verbal and written public comments. The Steering Group shall summarize the conclusions and recommendations of such* ***forums*** *for presentation to the City Council prior to the customary City Council deliberations (i.e., agenda actions, public hearings, etc.) which could normally result in final action. The procedures are further illustrated in Exhibit A-4 (1) attached.*

3.4.5 Neighborhood or Ward Meetings

Neighborhood or ward meetings may be scheduled as part of a larger public process as designed by an Ad Hoc Committee, Steering Group, or Task Force (see Sections 3.1.6 to 3.1.9), however, any member of the Council may convene a citizens' neighborhood meeting or series of meetings for the purpose of providing a general forum on City matters. Such meetings shall, when convened, provide information pertaining to specific issues as well as an opportunity for citizens to ask questions or express views on any subject. The Councilmember may request that the City Manager or his or her designee attend these meetings to answer questions on administrative matters. Because such meetings typically involve three or fewer Council members and are therefore not

official Council meetings, Councilmembers who attend shall report issues or conclusions to the Council as such meetings occur. At any such meeting, a Councilmember should avoid discussion or comments that pertain to current or potential lawsuits or other quasi-judicial proceedings that might later come before the Council. Councilmembers should exercise care to avoid claiming to speak for the City or Council on any issue on which the Councilmember is not expressly authorized to speak for the Council.

3.4.6 Additional Avenues for Public Participation

Public process activities may also incorporate a range of tools such as press releases, newspaper columns, fact sheets, Q&A's, etc. as described in the City's documents and guidelines pertaining to public participation in various projects and processes.

3.4.7 Committees and Other Citizen Participation Opportunities

For descriptions of other potential participation opportunities for citizens relating to City governance, see Sections 3.1.3 to 3.1.9.

3.5 Types of Governing Actions

3.5.1 Motion

An adopted motion is a form of action taken by the Council to direct that a specific course of action be taken or executed on behalf of the municipality. A motion is similar to a resolution, but is generally much shorter and worded in a more informal manner than a resolution. A motion, once approved and entered into the record, is the administrative equivalent of a resolution in those instances where a resolution is not required by law, and where such motion is not in conflict with existing State or Federal statutes, City ordinances, or resolutions.

3.5.2 Resolution

An adopted resolution is an administrative act which is less formal than an ordinance and is a statement of legislative policy or direction concerning matters of special or temporary character. Council action shall be taken by resolution when required by law or in those instances where an expression of legislative policy that is more lengthy or more meticulously worded than a motion is desired. While resolutions are often just a statement of policy, a resolution may have the force of law (e.g., a resolution setting permit fees, or a resolution declaring certain City property to be surplus).

3.5.3 Ordinance

An enacted Ordinance is a local law (legislative act) prescribing general rules of conduct. Council action shall be taken by ordinance when required by law, or where prescribed conduct may be enforced by penalty. An ordinance is a legislative act within its sphere as much as an act of the State Legislature. The general guiding principle is that actions relating to subjects of a permanent and general character are usually regarded as legislative and should be addressed through an ordinance, and those providing for subjects of a temporary and special character are regarded as administrative and should be addressed through a resolution. (See Durocher v. King County, 80 Wn.2d 139, 153, 492P2d 547 (1972).

3.5.4 Comprehensive Plan Amendment

Such an amendment is a legislative act in which the Council amends all or part of the Comprehensive Plan after the Planning Commission has deliberated, held public hearings and made recommendation(s) to the Council. The Council likewise holds a public hearing before passage.

3.5.5 Budget Adoption or Amendment

Legislative acts adopting or amending the budget document for the City on an annual or biennial basis. Although the budget is a maximum spending plan, it must be managed by the City Manager to operate within actual revenue received for each fund.

3.5.6 Capital Facilities Plan (CFP) Adoption or Amendment

The CFP is a 6-year plan which is a companion to the budgeting process and which establishes priorities for construction or replacement of capital facilities of the City.

3.5.7 Quasi-Judicial Ruling

Such a ruling is similar to a "judicial act" taken by an agency or authority that is not constituted as a "court" of law. A quasi-judicial ruling is an administrative ruling made by the Council, Hearing Examiner, or Planning Commission where the process and facts to be heard and judged are prescribed by regulatory laws or ordinances and as such, and are appealable to a higher authority or court of law.

3.5.8 Best Practices

Best Practices, as used in this manual, means methods of conducting certain activities of local government which have become widely accepted standards for a given local government activity. Best practices are often imported as a result of professional networking or from another similar agency that discovered a way to "do it better".

Article 4: STANDARDS OF CONDUCT

4.1 Sources and References

In this Article, the following references are frequently cited as sources of law or explanations of applicable law and standards of conduct:

- "KTT": Association of Washington Cities (AWC) and Municipal Research & Services Center of Washington (MRSC): "Knowing the Territory: Basic Legal Guidelines for Washington City, County and Special Purpose District Officials" (Nov. 2009)
- "CMH": AWC and MRSC: "Councilmember's Handbook" (Dec. 2009)
- "RCW": Revised Code of Washington
- "COBI Code" (or "BIMC"): Codified Ordinances of the City of Bainbridge Island (or Bainbridge Island Municipal Code)

4.2 Standards of Conduct for Officials under Washington Law

A summary of various Washington state statutes and case law that impose duties and standards of conduct on a city's elected and non-elected officials is found in the AWC/MRSC handbook called "Knowing the Territory" (referred to herein as "KTT"). For a summary of ethical standards of conduct under City ordinance, see, for example, Section 4.9 and the sections which follow it.

4.3 Oath of Office

A Council member, when sworn into office by the City's Municipal Court Judge, swears that "I will…":

- comply with the constitution and laws of the United States and the State of Washington, and
- …to the best of my judgment, skill, and ability, truly, faithfully, diligently, and impartially perform the duties of the office … as such duties are prescribed by law."

The City Manager, Department Heads and certain other City employees in key positions are likewise considered city officials and, when hired or promoted to officer status, are likewise sworn in with a similar oath that calls for compliance with those constitutions and laws.

4.4 Public Trust and Fiduciary Duty

"Courts have held public office to be synonymous with public trust and that a public officer's relationship with the public is that of a fiduciary." KTT (pp 6-7). Public trust is a guiding concept in state statutes relating to avoidance of conflict of interest in contracting (RCW 42.23), and in the Open Public Meetings Act (RCW 42.30).

The people themselves, in a 1972 ballot initiative relating to public campaign law, declared trust to be the public policy of the State of Washington, stating in part: "That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty and fairness in their dealings" and "That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interests."

4.5 Stewardship of Public Funds

The state law imposes the highest of duties on public officials who are custodians of public funds, such as treasurers. (KTT, p. 7). By analogy, there are provisions of law that impose other high standards for public funds on City officials generally, such as: (i) the State Constitution's prohibition against making gifts to an individual or a for-profit or nonprofit corporation or association (KTT p. 22-24); (ii) the state law prohibitions against using public facilities or property for political campaign purposes (RCW 42.17.130); and state law requirements for bidding of public works projects (RCW 35.22.620) (MRSC, "Bidding Book for Washington Counties") and for the giving of notice when seeking suppliers for other major purchases (e.g. RCW 39.80).

4.6 Conflicts of Interest under State Law

As the state Supreme Court has ruled, a Councilmember may not vote on a matter where he or she would be especially benefitted. And, with some exceptions noted below, Washington law forbids a city

official from having a financial interest in a City contract, regardless of whether or not s/he votes on the matter. (KTT, p.9).

Furthermore, the public campaign laws require public elected officials (in addition to candidates) to make financial disclosures at least annually (through the Washington Public Disclosure Commission (PDC)) so that the public can be informed about potential conflicts. These annual disclosures are in addition to those required by COBI's Ethics Code (see below).

4.6.1 State Code of Ethics

The RCW 42.23 includes a Code of Ethics for state and local officials that generally prohibits (with some specified exceptions) four types of conduct by a City official:

(a) using one's City official position to obtain special privileges for oneself or others;

(b) giving or receiving a gift in connection with a City matter;

(c) accepting employment or engaging in a business that would require disclosing confidential information gained as a City official; and

(d) disclosing confidential information gained as a City official, or using such confidential information for personal gain.

Legal advice should be sought on such questions as:

(a) Is a very small gift, such as a coffee, small enough as to be "de minimus" and therefore not intended to be prohibited?

(b) Should a gift from an out of town dignitary be handed over from an official to the city as a whole?

(c) Under what circumstances can an official accept expense-paid travel to a meeting or a fact-finding visit?

4.6.2 Prohibition Against Private Interest in a Public Contract

(a) The RCW 42.23 also broadly prohibits the following conflicts of interest regarding a city contract (including, among other things, employment contracts):

"No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through, or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein ..."

(b) This prohibition applies even if the official doesn't vote on or otherwise approve the contract that presents a conflict. (KTT, p. 11-13)

(c) Unlike the COBI Ethics Code (which applies to both financial interests and other personal interests), this State conflict of interest standard prohibits only financial conflicts.

(d) There are exceptions to the prohibition, and there is a qualified set of exceptions for certain "remote interests". (KTT, p. 11-13)

4.6.3 Limitations on Holding Multiple Offices

There are state law prohibitions against an official appointing himself or herself to a second office or employment with the city ("dual office holding"), and there are certain combinations of public office that are considered to be incompatible and therefore not eligible to be held concurrently. (KTT, p. 16-18)

4.6.4 "Appearance of Fairness" Doctrine under State Law

(a) The Appearance of Fairness doctrine applies only in those instances when a Councilmember is a decision-maker in a "quasi-judicial" matter (e.g. a spot rezoning, or a long-form plat development approval). It doesn't apply to a Councilmember's various legislative and policy decision-making. (KTT, p. 19-21)

(b) As stated in the RCW 42.36, the "appearance of fairness" requires that the Councilmember not engage in "ex parte" communications with a party interested in the outcome of the quasi-judicial matter.

(c) See Section 9.14 for a further discussion of the Appearance of Fairness Doctrine as applied to quasi-judicial hearings that are conducted by the Council.

4.7 Open Public Meetings under Washington Law

The Open Public Meetings Act is summarized in the KTT, and is also described in greater detail in the MRSC publication, "The Open Public Meetings Act – How it Applies to Washington Cities, Towns, and Counties, Report No. 60 (May 2008).

4.7.1 All Deliberations and Actions Must Be At Noticed Public Meeetings

As stated in RCW 42.30 (Open Public Meetings Act or "OPMA"), all meetings of city governing bodies (i.e., where a quorum or more of Council members, or members of some other "governing body" of the City, assemble to discuss or otherwise act on City business) must be open and public.

4.7.2 Applies to Sub-Agencies of the City

The OPMA applies to a "subagency" of the City, which may mean that a City board, commission, or similar entity created by or pursuant to state or local legislation is subject to elements of the OPMA, such as the Planning Commission. RCW 42.30.020(2) states that a "governing body" to which the OPMA applies includes a committee of the Council or other governing body "when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment." The OPMA does not apply to court proceedings, quasi-judicial proceedings (such as Civil Service Commission hearings), or collective

bargaining and related labor relations meetings. It does not apply to purely social meetings where city business is not discussed.

4.7.3 Two Kinds of Meetings: "Regular" and "Special"

A "regular" meeting is one with regular dates, times, and locations set by ordinance, resolution or rule. Any business may be conducted at a regular meeting, but RCW 35A.12.160 states that "every city shall establish a procedure for notifying the public of upcoming hearings and the *preliminary agenda* for the forthcoming Council meeting."

A "special" meeting is a meeting other than a "regular" meeting, which may be called by the Presiding Officer (e.g. the Council's Mayor) or a majority of Council members. The notice of a special meeting must be posted at least 24 hours prior to the meeting, and must state the items of business on the agenda. Unless an exception applies, the Council may not add to the agenda of a special meeting without giving 24 hours notice of the added item.

4.7.4 Open to the "Public"

Under RCW 42.30.050, all persons must be permitted to attend a public meeting except unruly persons. Attendance may not be conditioned upon registration or similar requirements. The Act does not prohibit a requirement that persons identify themselves prior to testifying at hearings. In cases of disorderly conduct, disorderly persons may be expelled, and if that is insufficient to restore order, the meeting place may be cleared or relocated. However, non-offending members of the news media may not be excluded.

4.7.5 Executive Sessions

An "executive session" is a portion of a public meeting that is conducted on a topic that is permitted by law to be discussed by a governing body or sub-agency in a non-public setting. As further provided by the RCW 42.30.110 in greater detail, an executive session may, in general, be conducted to discuss matters such as the following:

(a) Real estate acquisition, lease or site selection; or deliberations on the price at which to offer real estate for sale or lease;

(b) Negotiations on publicly bid contracts;

(c) Evaluation of complaints or charges brought against a public officer or employee;

(d) Evaluation of qualifications of an applicant for public employment or to review the performance of a public employee;

(e) Evaluation of the qualifications of a candidate for appointment to elective office; or

(f) To discuss with the City's legal counsel City enforcement actions or litigation or potential litigation.

Council members shall not disclose confidential information learned or confidential documents provided during an executive session unless waived by the full Council.

4.7.6 Unintended Meetings; Electronic Meetings

An unintended meeting may occur in violation of the OPMA if, without the requisite public notice, a quorum or more of a public body or sub-agency meets for an in-person or telephonic discussion, or conducts an interactive discussion of city business through email, social media, or other electronic communication. (See 4.8.2 below for more discussion of email, social media, and other electronic communications).

4.8 Open Government and Public Records

As a result of a statewide ballot in 1972, strong public protections were put in place relating to (1) political campaign disclosure; (2) disclosure of lobbying; (3) disclosure of the financial interests of a candidate or elected official; and (4) openness of public records. The topic of open access to public records is summarized in pages 36-41 of the KTT, and in greater detail in the MRSC electronic publication: "Public Records Act for Washington Cities, Counties and Special Purpose Districts" (available at http://mrsc.org/).

4.8.1 Purpose of the Public Disclosure Law

"The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. [The law] ... shall be liberally construed . . . to promote this public policy." (See, RCW 42.56.030)

It is hereby the policy of the City that elected and other city officials shall do nothing to hinder the City's obligation to possess, retain and store public records. Under RCW 42.56.010(2), a "public record ... includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Furthermore, and under RCW 42.56.010(3), a writing means "handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents, including existing data compilations from which information may be obtained or translated."

4.8.2 Emails, Text Messages, Social Media, and Other Electronic Records

Under the state law definitions (above), an email, text message, or an entry on a website, blog, twitter, or a social media internet site) is a "writing", and it is likewise a "public record" if it meets the definition above.

Additional regulations have been adopted which further elaborate on the legal duty of a city to store and archive not only public records of traditional hard-copy kinds but also electronic public records. (See Chapter 434-662 of the Washington Administrative Code (WAC))

In recognition of the legal duty and desire to maintain open and transparent government, and to support the City's duty to accessibly store and archive electronic public records, it is the policy of the City that in the case of each public record, Council members shall conform to the following practices:

(a) Policies on Email Platforms

(i) Councilmembers not use any private, public, or proprietary email service other than the City's email system for the sending or receiving emails that meet the definition of public record. Council members shall take all reasonable steps to ensure that each email that is a public record sent or received by him or her is sent or received on the City-maintained email system utilizing the individual's email address at bainbridgewa.gov or another email address provided by the City,

(ii) If a Councilmember receives an email that is a public record at an email address other than an address provided by the City, the Councilmember shall promptly forward that email to the Councilmember's email address at bainbridgewa.gov or another email address provided by the City, and advise the email sender that any and all emails pertaining to City matters are to be sent to the Councilmember at the City-provided email address;

(b) Policies on Text Messages

Council members shall promptly forward any text message that is a public record to the member's email address at bainbridgewa.gov or another email address provided by the City; or in the alternative take a screen shot of the text message and promptly forward the screen shot to the member's email address at bainbridgewa.gov or another email address provided by the City;

(c) Policies on Electronic Communications and Compliance With Open Public Meetings Law

(i) Any electronic communication sent by a Councilmember that is a public record as defined above shall not be sent or copied to more than two other Councilmembers. Councilmembers shall not engage in any discussion of City business through email, social media, blog comments, or any other electronic forum or medium with more than two other Councilmembers.

(ii) Any Councilmember who receives an electronic communication that is a public record that has been received by two other Councilmembers shall not forward the communication to any other Councilmember.

(d) Policies on The Use of Personal Accounts and Devices to Conduct City Government

(i) The City shall provide a personal computer and mobile phone to any Councilmember who desires a City-issued device for use in conducting City government.

(ii) In the alternative, a Councilmember may use a personal device to conduct City government, provided that the Councilmember complies with all the policies stated in this Manual.

(iii) Any Councilmember who uses any personal email account or personal electronic device (such as a computer, mobile phone, or tablet) to create or receive information relating to the conduct of City government, or the performance of any function of City government, shall use best efforts to save all such public records in a labeled, designated folder or other location in the account or on the device. The Councilmember shall, upon request of the City Attorney, and in any event prior to leaving office as a Councilmember, transfer all public records from his or her personal account or device to the City. The Councilmember shall not delete any public records from any account or device until all such public records have been transferred to the City. Once the transfer has been completed, and so long as there is no pending request relating to the public records, the Councilmember may delete the transferred records from the account or device.

(iv) If a Councilmember chooses to use a personal account or device to conduct City government, the Councilmember consents to the City or its agent searching the account or device to locate and copy all public records, subject to reasonable safeguards to protect the privacy of information that is not a public record, if a court finds that a search is necessary.

4.8.3 Duty to Act in the Interests of the City

- No elected person shall use his or her position, or the knowledge gained therefrom, in such a manner that a conflict arises between the interests of the City of Bainbridge Island and his or her personal interests, or the interests of other organizations.

- ***Each elected person has a duty to place the interests of the City of Bainbridge Island foremost*** in any dealings with the City, and has a continuing responsibility to comply with the requirements of this policy.

- If an elected official has a financial interest a proposed transaction with the City; or has a financial interest in any organization involved in the transaction; or has an immediate family member with a financial interest in such transaction; or holds a position of trustee, director, officer or employee of any organization involved in the transaction; then he or she must make full disclosure of such an interest before any discussion or negotiation of such transaction, shall abstain participating in any Council discussion of such matter, and shall abstain from any vote on such matter.

4.9 Duties to Act Consistently with City Policy When Representing City Elsewhere

Both elected City officials and non-elected City officials are frequently called upon to participate in policy bodies and decision-making forums at the county and regional level. It is hereby the policy of the City that, whenever any City official (whether elected or staff) is directly or indirectly representing the City on a policy making or decision-making body at the county or regional level, it shall be the

duty of that individual to act in a manner consistent with the interests of the City, as embodied in City policy, budget, capital facilities plan or other action of Council or directive of the City Manager.

3.11 Role of City Attorney

The City Attorney's ultimate client is the City itself – a municipal corporation. The City Attorney's relationship to the local government is similar in a number of respects to that of an attorney who represents a corporation. In that capacity, the City Attorney provides legal advice to the City Council, the City Manager, the Department Directors, and City staff. (See KTT (footnote 39).)

The City Attorney may represent the City in actions brought by or against the City or against City officials in their official capacity. However, other attorneys may be hired to handle specific cases because of the nature of the case, because the City Attorney has a conflict or other reason he or she cannot become involved, or due to limited resources of the City Attorney's office. In rare cases, the City Attorney may have a conflict and not be in a position to advise both the City Council and the City Manager. (See MRSC "Knowing the Territory.")

In those rare cases where either the City Council or the City Manager perceive such a conflict, the City Attorney should be consulted directly in order for him or her to make a decision about whether it is possible for the City Attorney to adequately represent the City in that situation. If the City Attorney determines that he or she cannot do so, then it is the responsibility of the City Attorney to secure alternate legal assistance.[1]

The City Manager cannot prohibit the Council from having access to the City Attorney's advice. For reasons of efficiency or cost effectiveness, the City Manager may decide that certain legal questions should be channeled to the City Attorney through the City Manager, to ensure that questions are clearly worded and communications back to Council are consistent. (See MRSC "Councilmember Handbook" (Dec. 2009; p.12).)

The Council can determine as a policy matter whether the City shall obtain legal advice from an on-staff City Attorney or by reliance on a law firm, but the Council may not direct the appointment of an individual to the position of City Attorney – that being the role of the City Manager. (See MRSC "Code City Handbook" (June 2009; p. 51))

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[1] There are two scenarios in which a city council has the implied authority to hire outside counsel. One, if the council hires counsel to represent it, and it prevails on the substantive issue to the benefit of the city, a court may direct the town to pay the reasonable fees and costs of outside counsel. *State v. Volkmer*, 73 Wn. App. 89, 95 (1994) (citing *City of Tukwila v. Todd*, 17 Wn. App. 401, 563 P.2d 223 (1977)). Two, if extraordinary circumstances exist a court may determine that a contract with outside counsel is both appropriate and necessary. *State v. Volkmer*, 73 Wn. App. 89, 95 (1994) (citing *Wiley v. Seattle*, 7 Wn. 576, 579, 35 P. 415 (1894)). Extraordinary circumstances may exist where there is a vacancy in the office of city attorney; or where the city attorney is ill, disqualified, absent, or unavailable; or where the legal official of the corporation refuses to appear and perform the necessary services; or where he has, or represents, adverse interests. *City of Tukwila v. Todd*, 17 Wn. App. 401, 406, 563 P.2d 223 (1977) (citing McQuillin, The Law of Municipal Corporations §29.12 at 262-63 (3d ed. 1966)).

4.10 Process for Officials to Question the Legality of City Actions

City officials, including elected officials, may be indemnified by the City (or by insurance purchased by the City) for actions taken by an official within the scope of his or her duties. An official should therefore take care to act within the scope of his or her duties, and not cause City or personal liability by virtue of individual actions taken in the absence of legal advice.

An unfounded assertion by a City official that the City is acting in violation of law can cause undue risk and liability to the City, and may therefore constitute a breach of that official's duty to the City. Therefore, it is hereby the policy of the City that the following steps shall be followed if a City official questions the lawfulness of the conduct (or proposed conduct) of the City, or of any of its officials or staff.

1. Consult the City Attorney and fully describe the facts and issues which raise a question of illegality.

2. If the advice of the City Attorney does not resolve the concern, consult the City Manager.

3. If steps "1" and "2" do not resolve the concern, the official may request an executive session of the full Council, if the matter rises to the level of presenting a risk of litigation.

4. Prior to completing steps "1" through "3", it is a violation of the Official's duty to the City to assert in public the opinion that the City is in violation of law.

4.11 Conduct of Officials with Regard to Litigation Against City

It is hereby the policy of the City that, once an individual or organization has filed a legal proceeding against the City, no City Council member shall engage in discussions or other communications with such individual (or the officers or directors of the organization) about the subject of the lawsuit without first disclosing the intent to do so to the Council, either in public or in executive session. It is also hereby the policy of the City that its conflict of interest rules shall apply to elected officials with regard to individuals or organizations threatening or pursuing a lawsuit against the City.

4.12 Prohibition Against Making Gifts of Public Funds

Article 7, section 1 (Amendment 14) of the Washington State Constitution requires that taxes and other public funds be spent only for public purposes. *See also State ex rel. Collier v. Yelle*, 9 Wn.2d 317, 324-26, 115 P.2d 373 (1941); AGO 1988 No. 21.

Article 11, section 15 further provides as follows:

> The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

Article 8, section 7 of the constitution states:

> No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation,

except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

A city may contract with private organizations to provide services to the public if those are services that the city is authorized to provide. The private organization provides the services in question as an agent or contractor for the city. For instance, a city, having authority to provide recreational programs for its residents, may do so by contracting with a youth agency or senior citizens' organization to operate recreational programs for those groups, under appropriate city supervision. The contract should be carefully drawn, however, so that the program or project remains the city's own operation and is not an unlawfully broad delegation of city authority, or grant of city funds, to a private agency. Payments should be made pursuant to vouchers reflecting the satisfactory performance of services, as provided in Chapter 42.24 of the RCW. (KTT p. 22-24).

4.13 Duty to Avoid Interfering with City Manager's Role with Staff

Neither the Council nor any Councilmember shall interfere with the authority of the City Manager to appoint and remove any and all department heads, officers, and employees of the City (except Councilmembers), subject to the provisions of applicable law, rule, or civil service regulation. Nor shall the Council or any Councilmember give orders to any subordinate of the City Manager. (See RCW 35A.13.120).

4.14 Duty to Bargain in Good Faith with Collective Bargaining Representatives

Unions have a significant presence in Washington cities. Most city employees have the right to organize under state law and have joined state-wide unions or formed local associations. The city must negotiate labor contracts with these unions over wages, hours and working conditions.

In particular, most police ... departments are unionized. Except for very small cities, police ... unions have access to interest arbitration when an impasse in bargaining occurs. This can create a unique dynamic in police ... negotiations, given the potential for an outside arbitrator to make decisions regarding wages, benefits and contract language. (Councilmember's Handbook, p.13, available at http://www.awcnet.org/Portals/0/Documents/publications/CouncilmemberHandbook11.pdf)

Certain City employees are represented by the International Association of Machinists (IAM) and police officers are represented by the Police Guild.

It is the policy of the City that it shall be the responsibility of the Council to set policy for collective bargaining, and the responsibility of the City Manager to engage in such collective bargaining.

4.15 Immunity and Indemnification of Officials For Individual Actions in Good Faith

An appointed or elected official or member of the governing body of a public agency is immune from civil liability for damages for any discretionary decision or failure to make a discretionary decision within his or her official capacity, but liability shall remain on the public agency for the tortious conduct of its officials or members of the governing body. (See RCW 4.24.070(1))

It is important to note that an official's immunity applies solely to actions taken in good faith in the course of performing within the scope of the official's duties.

The City is insured through the Washington Cities Insurance Authority (WCIA). WCIA provides broad coverage for damage claims and/or lawsuits brought against the City and its officials. If a damage claim involves a covered claim against a City official, then WCIA will retain legal counsel to defend the City official and will generally pay any resulting judgment or settlement amount. Please note WCIA coverage is only available if the situation is the result of a City official acting within the scope of her or his official duties and (if the matter is) not otherwise excluded from coverage through WCIA's compact with the City (i.e., hazardous waste claims are generally excluded from WCIA coverage).

Additionally, in the event that a damage claim or lawsuit is brought against a City official that is related to the performance or failure to perform his or her official duties and the matter is not covered through WCIA, BIMC 2.68 provides that the City shall provide legal representation to defend the City official and shall indemnify the City official for the payment of the claim (if warranted) or any resulting judgment. The City will not indemnify and defend a City official acting outside the scope of his or her official duties, or if the claim or lawsuit is based upon a dishonest, fraudulent, criminal or malicious act.

Article 5: CITY COUNCIL – THE ELECTED GOVERNING BODY

5.1 Council Meeting - Time and Location

Regular Meetings of the Council in the form of Business Meetings and Study Sessions shall be held on the dates and times as adopted by Council ordinance, unless cancelled or postponed in accordance with applicable State or local procedures. Special meetings may be called by the Mayor or by four Councilmembers.

5.2 Council Meetings – Open to the Public

All meetings of the Council and of any Committees thereof shall be open to the public, except as provided for in RCW 42.30.110 or RCW 42.30.140.

5.3 Mayor – Election – Chair to be Mayor – Duties ("Mayor")

Biennially at the first meeting of the new Council the members thereof shall choose a chair from among their number. The chair of the Council shall have the title of Mayor and shall preside at meetings of the Council. In addition to the powers conferred upon him or her as Mayor, he or she shall continue to have all the rights, privileges, and immunities of a member of the Council. The Mayor shall be recognized as the head of the city for ceremonial purposes. He or she shall have no regular administrative duties, but in time of public danger or emergency, if so authorized by ordinance, shall take command of the police, maintain law, and enforce order. (See RCW 35A.13.030.)

5.4 Deputy Mayor or Mayor Pro Tempore ("Mayor Pro Tem")

Biennially at the first meeting of a new Council, or periodically, the members thereof, by majority vote, may designate one of their number as deputy mayor or mayor for such period as the Council may specify, to serve in the absence or temporary disability of the Mayor; or, in lieu thereof, the Council may, as the need may arise, appoint any qualified person to serve as Mayor Pro Tem in the absence or temporary disability of the Mayor. (See RCW 35A.13.035,)

Meetings of the Council shall be presided over by the Mayor, if present, or otherwise by the Deputy Mayor or Mayor Pro Tem if one has been appointed, or (in the absence of both of them) by a member of the Council selected by a majority of the Councilmembers at such meeting. Serving as Presiding Officer of the meeting shall not in any way abridge the right of the Presiding Officer to vote on matters coming before the Council at such meeting.

In the event of the extended excused absence, disability or resignation of a Councilmember, the remaining members by majority vote may appoint a Councilmember pro tempore to serve during the absence or disability.

5.5 Quorum

As provided under State law, at all meetings of the Council, four Councilmembers shall constitute a quorum for the transaction of business. A lesser number may adjourn from time to time, provided that written notice of the adjournment is posted on the exterior Council Chamber doors (pursuant to RCW 42.30.090).

5.6 Respect and Decorum

It is the duty of the Presiding Officer and Councilmembers to maintain dignity and respect for their offices, City staff, and the public. While the Council is in session, the Councilmembers shall preserve civility, order and decorum. No member of the public shall, by conversation or otherwise, delay, disrupt or interrupt the proceedings of the Council, nor disparage any person while speaking. Councilmembers and the public shall obey the proper orders of the Presiding Officer of the meeting.

5.6.1 Orderly Behavior and Civility in Remarks

Any person disrupting the business of the Council, either while addressing the Council or attending the proceedings, shall be asked to leave, or be removed from the meeting. Continued disruptions may result in a recess, forced removal, or adjournment as described elsewhere in this manual.

5.6.2 Permission Required to Address the Council

Persons other than Councilmembers and Administration shall be permitted to address the Council only upon recognition and introduction by the Presiding Officer of the meeting.

5.7 Telephonic or Video Participation from a Remote Location

Requests by a Councilmember to participate and vote by telephonic or audio-visual connection shall be granted by the Presiding Officer provided technical capability exists and adequate notice is given.

5.8 Attendance; Excused Absences

A Councilmember may forfeit his or her office by failing to attend three consecutive regular meetings without being excused by the Council. Members of the Council may be so excused by complying with this section. The member shall contact the Mayor, Deputy Mayor, or Mayor Pro Tem prior to the meeting and state the reason for his or her inability to attend the meeting. If the member is unable to contact the Mayor, Deputy Mayor, or Mayor Pro Tem, the member shall contact the City Manager or City Clerk, who shall convey the message to the Presiding Officer. Near the beginning of the Council meeting, the Presiding Officer shall inform the Council of the member's absence, state the reason for such absence, and inquire if there is any objection to excusing the member. If there is any objection, the Presiding Officer shall call for a motion to excuse the member. This motion shall be non-debatable. In such a case, the outcome of the vote shall determine whether the member shall be considered excused. (See RCW 35A.12.060.)

5.9 Filling Council Vacancies

If a vacancy occurs, the Council will follow the procedures provided in RCW 35A.12.050 in order to fill the vacancy with the most qualified person available until an election can be held. The Council will publish a notice of the vacancy, the procedure, and distribute the application form for soliciting candidates. The Council will draw up an application, which contains relevant information to answer set questions posed by the Council. The application forms will be used in conjunction with an interview of each candidate to aid the Council's selection of the new Councilmember.

5.10 Continuity of Government Act

In the event that the executive head of the City is unavailable by reason of enemy attack to exercise the powers and discharge the duties of the office, the provisions of RCW 42.14.050 shall apply. The same policy shall be applied in the case of a natural or man-made disaster.

Article 6: Citizen Committees, Boards And Commissions

6.1 Approval of Appointees

6.1.1 Citizens on Standing Governing Bodies

All members of standing citizen committees, citizen boards, and citizen commissions which are, or which may hereafter be, required by State law or City ordinance or resolution, shall be appointed by the Mayor with confirmation by the Council.

6.1.2 Citizens on Temporary Governing Bodies

Any citizen members of any other committees – such as Ad Hoc Committees, Citizen Advisory Committees or Steering Committees – shall be appointed and approved in the manner described in Section 3.1 (Types of Governing Bodies, and Advisory or Supporting Groups) of this Manual. With regard to any appointments that would normally be subject to Council approval, the Council may choose to waive confirmation in the instrument creating said committee or group.

6.1.3 Removal

Members of any committee, board, or commission which has been appointed by the Council or the Mayor and confirmed by the Council, may be removed without cause by a majority vote of the Council unless otherwise provided for in the Code, ordinance, or resolution that authorized creation of the committee, board, or commission.

6.2 Establishment and Review of Citizen Governing Bodies That Are Temporary

Council-established governing bodies that are intended to be temporary -- such as Ad Hoc Committees or Citizen Advisory Committees – shall be commissioned for a time certain and provided with a clear task description and term (i.e. a "sunset" provision). Such temporary committees shall be subject to review whenever a new Council is seated following elections, so as to determine whether the committee and its functions continue to be appropriate and necessary.

Other special ad hoc committees and Council liaisons for a particular purpose may be appointed by the Mayor, with confirmation of Council, for a time certain along with a clear task description and "sunset" provision.

Citizen Committees, Commissions, and Boards; liaisons; and citizen advisory or taskforce groups should be given an opportunity to make a recommendation, when appropriate, on proposed ordinances, resolutions, and motions within their area of responsibility or interest, before action is taken by the Council. The appropriate spokesperson may present the recommendation(s) during discussion of that business item on a Council agenda.

To the extent that the City Attorney has determined that a citizen committee, commission, or board is a "governing body" that is subject to the State open meetings laws, no such body shall take votes for final action outside of a noticed open public meeting.

6.3 Relations with Boards, Commissions and Citizen Advisory Groups

Boards, commissions, and citizen advisory bodies of the City shall provide the City with minutes, or a summary report of all meetings. Communications from such boards, commissions, and advisory bodies shall be acknowledged by the Council. Any member of the Council may also bring such communication to the Presiding Officer's attention under the agenda item "Committee, Board, and Liaison Reports." Should any member of the Council determine that such communication be officially answered by the Council, the Presiding Officer shall place the matter on the agenda under New Business for the current meeting or any subsequent meeting.

Article 7: CITY ADMINISTRATION

7.1 City Manager

The City Manager is the chief administrative officer of the City. The City Manager is appointed by and directly accountable to the Council for the execution of the Council's legislative policy directives, and for the administration and management of City departments. The powers and duties of the City Manager are defined by State law and a variety of City ordinances. Such duties may be expanded or

clarified by job description, resolution, or Council directive (motion). Balanced with the City Manager's accountability to the Council for policy execution is the need for the Council to allow the City Manager freedom to perform those duties and responsibilities in his or her day-to-day management. The City Manager appoints and removes City employees and may delegate such powers to department heads, provided, that nothing herein shall be construed to prohibit the Council, while in open session, from fully and freely discussing with the City Manager, anything pertaining to appointments and removals of City officers and employees and City affairs. (See RCW 35A.13.)

7.2 Role of the City Manager

The City Manager shall attend all meetings of the City Council, unless excused by the Presiding Officer or Council. The City Manager may recommend for adoption by the Council such measures as he or she may deem necessary or expedient, prepare and submit to the Council such reports or proposals as may be required by the body or as the City Manager deems advisable to submit; keep the Council fully advised as to the business and finances of the City; and when appropriate, shall take part in the Council's discussion on all matters concerning the welfare of the City. In the event that the City Manager is unable to attend a Council meeting, the City Manager shall appoint a key staff member to attend the meeting as the representative of City Administration.

During Council meetings, the Presiding Officer should rely on the City Manager to introduce the administrative participation on agenda items and should offer opportunity for comment or recommendation of the City Manager before final vote on important matters.

7.3 Informal Communications Encouraged

Members of the Council are encouraged to interact informally and casually with City staff for the purpose of gathering information, obtaining progress reports on policies and programs, or providing information to staff relevant to their Council office. Such informal contacts can serve to promote better understanding of specific City functions and problems. However, Councilmembers should be careful, in such interaction, to avoid giving direction or advice to members of City staff, which may conflict with the City Manager's directives. City staff should provide their supervisor with the same information shared with the Councilmember.

7.4 City Manager – Interference by Councilmembers

As provided by RCW 35A.13.120, neither the Council, nor any of its committees or members, shall direct the appointment of any person to, or his or her removal from, office by the City Manager or any of his or her subordinates. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager and neither the Council nor any committee or member thereof shall give orders to any subordinate of the City Manager, either publicly or privately. The provisions of this section do not prohibit the Council, while in open session, from fully and freely discussing with the city manager anything pertaining to appointments and removals of city officers and employees and city affairs.

7.5 Complaints to Councilmembers

When performance complaints are made by citizens about staff actions or non-action directly to an individual Councilmember or in a Council or committee meeting, the Council or Councilmember should then refer the matter directly to the City Manager for review and, if appropriate, action. The

individual Councilmember or the Council may request to be informed by the Administration of the action or response made to the complainant.

7.6 Administrative Complaints - "Best Practice"

Although citizens' direct access to elected officials is to be encouraged to help develop public policy, City Councilmembers should not develop a "personal intervention" pattern in minor calls for service or administrative appeals which may actually delay a timely customer service response. The best policy is to get the citizen into direct contact with the appropriate department or the City Manager, unless an unsatisfactory result has occurred. In that case, refer to Section 7.5 above.

7.7 City Clerk - Minutes - Public Information Access

The City Clerk shall adhere to the requirements of Washington law, and shall be the ex-officio Clerk-of-the-Council. The City Clerk shall keep minutes as required by law, and shall perform such other duties in the meeting as may be required by the Council, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Clerk shall appoint a replacement to act as Clerk-of-the-Council. The Clerk-of-the-Council shall keep minutes which identify the general discussion of the issue and complete detail of the official action or consensus reached, if any. The City Clerk shall make an audio recording of the proceedings of all public hearings, regular business meetings, study sessions and workshops, and quasi-judicial proceedings. The Clerk shall keep, and make available, an agenda and date for each recording, which will facilitate location of the recorded proceedings. The audio recordings shall be posted publicly on the City website, ideally within 48 hours after the meeting.

7.8 The Three Touch Rule

Decision-makers and citizens at all levels of the City should have adequate time to thoughtfully consider the issues prior to final decisions. The Council and Administration should abide by the "Three Touch Rule" whenever possible (unless an exception applies). The following procedural guidelines are designed to avoid "surprises" to the Council, citizens, and administrative personnel.

Any pending request or proposal for adopting or changing public policy, ordinances, resolutions, or directives that will require a decision of the City Council or Administration should normally "***touch***" (through oral or written communication, or any combination thereof) the decision makers at least ***three separate times***. Quasi-judicial matters and any subject discussed in executive sessions are excluded from application of the "Three Touch Rule."

The hands of Decision-makers should not be unnecessarily encumbered. Unexpected circumstances may arise such that observance of the "Three Touch Rule" is impractical. However, when unusual circumstances arise which justify a "first discussion" decision, the persons requesting the expedited decision should also explain the need for expedited timing. The Three Touch Rule excludes staff reports and other general communications not requiring a future Council decision.

7.9 City Staff – Attendance at Meetings

Attendance at meetings by City staff shall be at the discretion of the City Manager. It is the intent of the Council that the City Manager schedule adequate administrative support for the business at hand but also to protect the productive capability of department heads. When sound system or other monitoring capabilities exist, the City Manager may allow personnel to utilize time in their offices or other areas while waiting for the item of business for which appearance before the Council is required.

7.10 Administrative Presentations and Briefings

In order to enhance public understanding of complex issues being presented, City Administration is encouraged to include the use of visual communication tools whenever possible, such as:

- Overhead projection summaries or PowerPoint bullet points;
- Flow charts or box diagrams to illustrate complex organizations, sequences or systems;
- Bullet point or summary handouts for the public and the press, when appropriate;
- Slide projector or video-cam clips to show actual situations or settings;
- Large maps to help pinpoint specific locations or parcels;
- Use of color to highlight important elements;
- White board for illustration; and/or
- Configuring the room/display so as to allow the public to follow and understand issues.

Article 8: PREPARATION FOR COUNCIL MEETINGS

8.1 Council Meeting Agendas

Agenda preparation shall have 3 stages: a **preliminary** stage, a **proposed** stage and a final **Council agenda** stage.

The City Clerk, under the direction of the City Manager, and in consultation with the Mayor, Deputy Mayor, or Mayor Pro Tem, shall arrange a list of proposed matters deemed ready for Council consideration according to the "3 touch" rule (Article 7.8) and shall prepare a **"preliminary agenda"** for the next Council meeting. When the **"preliminary agenda"** has been reviewed by the Mayor or other Presiding Officer, he or she shall have the option of adding (or deleting) any item from such agenda.

When the Mayor executes approval of the preliminary agenda it shall then become the **"proposed agenda."** Copies of the "proposed agenda" shall be posted on the City website at least 24 hours prior to the Council meeting and shall be subject to the notice provisions stated in the City Code.

Upon convening a Council meeting and before any other business, the Council shall accept or modify the agenda by motion. The agenda shall then be officially the "Council agenda" for that meeting.

Requests for presentations to be scheduled on the formal agenda imply that the presentation is an official business consideration of the City. The Presiding Officer shall have the authority to rule on whether or not a graphic presentation, video, or other audio-visual presentation by non-City personnel is appropriate to be presented at the meeting.

The Presiding Officer, a majority of Councilmembers present, or the City Manager may propose a new item for the agenda at a meeting when extraordinary circumstances require, or for the purpose of information touches, excepting that items for action may not be added to a Special Meeting agenda.

8.2 Consent Agenda

The City Clerk or City Manager, in consultation with the Mayor or other Presiding Officer, may place matters on the consent agenda that:

- have been previously discussed by the Council; or
- based on the information delivered to members of the Council by Administration, can be reviewed by a Councilmember without further explanation;
- are so routine, technical, or "housekeeping" in nature, that passage without discussion is likely; or
- are otherwise deemed in the best interest of the City.

8.3 Study Session Agendas

The City Clerk, under the direction of the City Manager and in consultation with the Mayor, Deputy Mayor, or other Presiding Officer, shall arrange a preliminary study session agenda worksheet for the meeting. Councilmembers may request items to be placed on the agenda by contacting the City Clerk.

The Study Session worksheet shall, for each item, contain the following elements:

- Subject: The project designation or descriptive name for the item. The person requesting the item should use the same title in any subsequent business.

- Discussion Leader: The person who will introduce the item and lead the discussion as in 8.3.1 below.

- Activity: A brief description and time estimate of the discussion necessary for the Council to speak to the question posed in the "Goal" column.

- Goal: The reasonable outcome contemplated, whether a final action, advancement to a future agenda, just a "touch," according to the 3 touch rule, or for general information.

When the **"preliminary study session agenda"** has been reviewed by the Presiding Officer for the Study Session, he or she shall have the option of deleting any item from such agenda until the next Council meeting when the full Council may vote on whether to re-introduce the item on the agenda or for a subsequent Council meeting. When the Mayor has approved the preliminary study session agenda, it shall then become the "proposed study session agenda." The proposed agenda shall be published on the City website not less than 24 hours prior to the Study Session.

Upon convening the Study Session and before any other business, the Council shall accept or modify the agenda by motion. The agenda shall then officially be the **"Council study session agenda"** for that meeting.

8.4 Study Session Procedure

During a Council Study Session or Workshop, the discussion leader introduced by the Presiding Officer should:

- Introduce the subject and give background information;
- Identify the discussion goal;

- Act as facilitator to keep the discussion focused toward the goal; and
- Alert the Presiding Officer when it is appropriate to call for consensus or a motion.

The Presiding Officer shall retain the option of assuming the function of the discussion leader at any time in order to keep the discussion properly focused. The City Clerk shall keep notes of the discussion subjects with special attention to Council consensus or administrative direction which may need more formal action in a later meeting (i.e. agenda, future budget changes, etc).

8.5 Process for Preparing Legislation or Policies for Adoption

8.5.1 Draft Documents

Prior to consideration or final passage of all Ordinances, Resolutions, or pre-written Motions, draft documents or proposals shall be designated as drafts and shall contain the date of revision and the name of the author. Proposed Ordinances and Resolutions shall be accompanied by a "bullet" summary for possible later publication.

- "Proposed Drafts" shall contain the date, name of the group or individual originating or sponsoring the proposal, prior to the first presentation to the City Council.
- "Council Drafts" shall be documents or proposals which have been presented in open public session and held over by the City Council for further consideration or revision.

8.5.2 Preparation of Ordinances.

The procedures for ordinances are as follows:

(a) Proposing an Ordinance

A Councilmember may, in open session, request of the Presiding Officer that the Council consider enacting an ordinance. The Council then may assign the development of the proposed ordinance to the Administration, an Ad Hoc Committee, an Advisory Committee or the Council for consideration. The committee or Administration shall report its findings to the Council. The City Manager, the City Attorney, or any of the citizen boards, committees, or commissions may propose that Council consider an ordinance or resolution.

(b) Sponsorship Encouraged

When a Councilmember wishes to assume sponsorship or advocacy of an ordinance or resolution, he or she should so announce, make the initial motion, provide an introduction and advocate the measure before the Council.

(c) Two (2) Readings

Although State law requires only one reading in most cases, all City ordinances shall normally have two (2) separate readings at separate Council meetings. At each reading, the title of the ordinance and a simplified summary or title of the ordinance shall be read prior to a vote. Not later than the date of the meeting at which the reading occurs, the

full text of the draft ordinance shall be posted on the City website. A printed copy of the ordinance shall be made available by the City upon request by a member of the public.

(d) Waiver

The provision requiring two (2) separate readings of an ordinance may be waived at any meeting when the Council determines that the ordinance is simple, non-controversial, or administrative in nature or that the interests of the City are best served by one reading.

(e) Motion failure

If a motion to "continue an ordinance to a second reading" fails, the ordinance shall be considered lost, unless a subsequent motion directs its revision and resubmission to second reading.

(f) Repealer.

Any ordinance repealing any portion of the Municipal Code shall also repeal the respective portions of the original ordinance(s). Ordinances repealing earlier ordinances shall not apply to acts, incidents, transactions or decisions occurring before such repeal.

8.5.3 Preparation of Resolutions

A resolution may be put to its final passage on the same day on which it was introduced. However, the Council may invoke the two (2) reading procedure, described in Section 8.5.2(c) above, to facilitate public understanding and opportunity to comment on the resolution. The title of each resolution and a simple text summary, if available, shall be read prior to its passage. Not later than the date of the meeting at which the reading occurs, the full text of the draft resolution shall be posted on the City website. A printed copy of a resolution shall be made available upon request by a member of the public.

8.6 Council Packets

Councilmembers shall personally pick up their agenda packets from their individual mailboxes, provided by the City Clerk, unless otherwise arranged by the member or further directed by Council. Councilmembers and affected staff should read the agenda material and ask clarification questions prior to the Council meeting, when possible.

Article 9: Rules Of Order For Council Meetings

9.1 Parliamentary Procedure

Rules of order not specified by statute, ordinance, or this Manual shall be governed by Robert's Rules of Order (http://www.robertsrules.com/). A simplified summary of some of the most frequently used motions under Robert's Rules is shown in **Error! Reference source not found.**.

9.2 Motions and Discussion

All items of business placed before the Council that require the expenditure of Council or Administration resources or changes in land use shall be in the form of an affirmative motion. Affirmative motions are preferred to prevent "approval by default" of a failed negative motion.

9.3 Voting

The votes during all meetings of the Council shall be transacted as follows:

- Unless otherwise provided by statute, ordinance, or resolution, all votes shall be taken by voice, except that at the request of any Councilmember, a roll call vote shall be taken and recorded by the City Clerk. The order of the roll call vote shall be determined by the Presiding Officer.

- In case of a tie vote on any proposal, the motion shall be considered lost.

- Every member who was in the Council chamber when the question was put, shall give his or her vote unless the Council, for special reasons, shall excuse the member by motion. If any Councilmember refuses to vote "aye" or "nay" (for example, due to a conflict of interest), the result shall be determined in accordance with Robert's Rules, which generally means that it shall be as if the individual who abstained from voting was not present for the vote.

9.4 Reconsideration

Any action of the Council, (including without limitation a final action on applications for legislative changes in land use status), shall be subject to a motion to reconsider, *except for*:

- any action previously reconsidered,
- motions to adjourn or motions to suspend the rules, or
- a vote electing to office one who is present and does not decline.

A motion for reconsideration can be made only by a member of the prevailing side on the original action. A motion to reconsider must be made no later than the next regular Council Business Meeting. A motion to reconsider is debatable only if the action being reconsidered is debatable. Upon passage of a motion to reconsider, the subject matter is returned to the table immediately or at the next regular Council meeting (as determined by the wording of the motion to reconsider) for any action the Council deems advisable. Any motion for reconsideration of a matter which was the subject of a required public hearing or which is a quasi-judicial matter may not be discussed or acted upon unless and until the parties or their attorneys and the persons testifying have been given at least five (5) business days advance notice of such discussion or action.

9.5 Dissents and Protests

Any Councilmember shall have the right to express dissent from or protest, orally or in writing, against any Motion, Resolution, or Ordinance of the Council, and have the reason therefore entered or retained in the minutes.

9.6 Complaints and Suggestions to Council

When citizen complaints or suggestions, not on the agenda, are brought before the Council at a meeting, the Presiding Officer may, if circumstances warrant it, attempt to direct the citizen matter to an appropriate channel for resolution. In such a case, the Presiding Officer shall, in consultation with the City Manager, first determine whether the issue is legislative or administrative in nature and then:

- If legislative, and a complaint is about the language or intent of legislative acts or suggestions for changes to such acts, and if the Council finds such complaint suggests a change to an ordinance or resolution of the City, the Presiding Officer may refer the matter to Administration, or the Council for study and recommendation.

- If administrative, and a complaint regarding administrative staff performance, execution of legislative policy or administrative policy within the authority of the City Manager, the Presiding Officer should then refer the complaint directly to the City Manager for review, if said complaint has not been so reviewed. The Council may direct that the City Manager brief the Council when the City Manager's response is made.

9.7 Prior Permission Required for Certain Elaborate Presentations

No overhead projection, photographs, motion pictures, or video that require the use of flood lights or similar continuous artificial illumination, shall be used by the public at City Council meetings without the prior consent of the Presiding Officer or the City Manager.

9.8 Conduct of Business Meetings

The Presiding Officer may, during a Council meeting, rearrange items on the agenda to conduct the Council's business more expeditiously. Business Meetings of the Council may generally include many or most of the following agenda elements (which need not occur in the order stated below). Council may, by motion, formally approve a "Sample Order of Business," which, if adopted, shall be appended to accompany the published body of this manual as information. Such "Sample Order of Business" shall serve as a guideline, subject to change by motion of the City Council, in accordance with the procedures described in Article 8.1 and this article.

Examples of Business Meeting agenda elements include:

- **Executive Session**

  The Council may hold an executive session during a regular or special meeting. Before convening in executive session, the Presiding Officer shall publicly announce the purpose for excluding the public from the meeting place and the time when the executive session shall be concluded. If the Council wishes to adjourn or take action at the close of a meeting from executive session, that fact will be announced. The announced time limit for executive sessions may be extended by announcement of the Presiding Officer made to those waiting in the nearest public area. No final action may be taken in executive session. (See RCW 42.30.110.) Councilmembers shall not disclose any confidential oral and written information provided during executive sessions or otherwise obtained in the course of their duties in order to protect the best interests of the City. (See RCW 42.23.070(4), Article II(C) of the City's Code of Ethics.)

- **Summary Reports**

Short summary reports may be presented near the end of the meeting. Short summary reports may, for example, be presented by the Presiding Officer, the City Manager, or the chair of an Ad Hoc Committee or Steering Group.

- **Public Comment Period or Public Hearing**

The routine public comment period at a Business Meeting is conducted as described in Section 9.12 below. By contrast, a public hearing is governed by different rules of procedure than a public comment period, and may either be (a) a quasi-judicial review of a land-use matter, or (b) an opportunity for public comments to be heard and recorded on a legislative matter. Special opportunities for public comment apply to a public hearing (see Section 9.13 below), and special rules and procedures apply to a quasi-judicial hearing (see Section 9.14 below).

- **Consent Agenda**

The proper Council motion on the consent agenda is as follows: *"I move adoption of the consent agenda".* This motion shall have the effect of moving to adopt all items on the consent agenda. Any member of the Council shall have the right to remove ("pull") any item from the consent agenda. Therefore, prior to the vote on the motion to adopt the consent agenda, the Presiding Officer shall inquire if any Councilmember wishes an item to be "pulled" from the consent agenda. If any matter is pulled, the Presiding Officer shall entertain discussion and a motion on any pulled item after the vote on the passage of the unpulled items of the consent agenda.

- **Discussion of Matters for Future Meetings**

The purpose of such a discussion is to offer Council members (an opportunity) to express preferences regarding the setting of the agenda for a future Council meeting, subject to the prerogatives of the agenda-setting process described in Section 8.1.

- **Other Common Agenda Elements**

The agenda of a Business Meeting may also include other elements such as: Unfinished Business; Ordinance Reading; and New Business.

9.9 Conduct of Study Sessions and Workshops

Regular or Special Meetings of the Council, or portions thereof, may be designated as Study Sessions. The definition and the basic rules for Study Sessions are stated in Section 3.4.4 and for a Workshop in Section 3.3.5.

A Study Session may consist of any or all of the following elements:

(a) Public Comment Period
In general, because a Study Session is more informal and more interactive than a Business Meeting, the Presiding Officer may have greater latitude to seek public comment on a particular issue being discussed. Therefore, the Presiding Officer may invite public comment and dialog from time to time during the Study Session. In

general, public comment shall be sought solely or primarily on matters on the Study Session agenda.

(b) Vetting of Agenda Items:
This element of a Study Session involves a vetting and review of agenda items that are expected to appear for Council action on the agenda of the next ensuing Council Business Meeting. This element of the Study Session may include: review of clarity and completeness of issues presented; discussion of the merits of the proposal; and a procedural vote to determine whether the agenda item shall be advanced to an ensuing Business Meeting of the Council.

(c) Study of Emerging Issues
This element of the Study Session involves emerging issues that are not initially expected to appear for action at the next Council Business Meeting, and it may include: (i) staff or third-party presentations; (ii) Council and Administration study, discussion and analysis; and/or (iii) interactive public comments and Council responses to comments.

(d) First Touch and Second Touch Updates
The agenda may provide time for short updates by the City Manager, staff, Councilmembers, or a member of an Ad Hoc Committee or Steering Group.

(e) Referral to Committee, Steering Group or Further Public Process
At a Study Session, the Council may choose to refer an issue to an Ad Hoc Committee or Steering Group, or schedule a Public Forum, before the issue returns to a future agenda.

9.10 Workshops

The purpose of a Workshop (i.e., a single-topic Study Session) is to allow Councilmembers to do concentrated preliminary work with Administration or the public on a single subject (i.e., budget, complex legislation, or reports, etc.). Workshops shall be in a less formal setting, but shall not discourage public observation. Public comment is not normally allowed at Workshops although the Council may allow, or request, participation in the same manner as other Council Study Sessions.

9.11 Adjournment Due to Emergency or Disruption

In the event of emergency, such as a fire, threatened violence, or inability to maintain order, the Presiding Officer shall declare the meeting adjourned or continued and Councilmembers shall immediately leave the meeting area.

9.12 Procedures for Public Comment at Business Meetings

9.12.1 In General

The City Council desires to allow a maximum opportunity for public comment at various public forums and meetings. However, at a Business Meeting, the business of the City must proceed in an orderly, timely manner, and in that setting, the open Public Comment period is generally limited in overall time on the agenda (e.g. 30 minutes), and is further limited in the amount of time per speaker (3 minutes, or such lesser time determined by the Presiding Officer

if a large number of individuals wish to speak). At any time the Presiding Officer in his or her sole discretion, may set such further limitations as are necessary to progress through the agenda and to prevent disruption of other necessary business.

The City will utilize a sign-in procedure for public comments, but, if time permits, the Presiding Officer may also invite comments from individuals who failed to sign in. The Presiding Officer may require a member of the public to state their name, address, and the subject of their comments.

These rules are intended to promote an orderly system of holding a public meeting, to give persons opportunity to be heard and to create an environment in which no individuals are embarrassed or uncomfortable by exercising their right of free speech.

9.12.2 Subjects – Whether or Not on the Current Agenda

Public comments received during the public comment period may be on any public topic, whether or not on the agenda, but a comment on the subject that is covered by a public hearing at that meeting must be made during the period of the public hearing.

9.12.3 Use of Microphones

Comments shall be made directly into the microphone, as it is necessary for the public record and for the audience to hear all proceedings. No comments shall be made from any other location.

9.12.4 Civility

The Presiding Officer is responsible for maintaining order and civility among those addressing the Council. There will be no demonstrations during, or at the conclusion of, any person's presentation. Any disruptive behavior, as determined by the Presiding Officer, shall be cause for removal from the meeting room.

9.12.5 Council May Overrule the Presiding Officer

Any ruling by the Presiding Officer relative to the conduct of the public comment period may be overruled by a vote of a majority of Councilmembers present.

9.13 Public Hearings – In General

9.13.1 Sign in Procedure

Prior to the start of the public hearing, the Presiding Officer may require that all persons wishing to be heard sign in with the Clerk, giving their names and addresses, the agenda item, and whether they wish to speak as proponent, opponent, or otherwise. Any person who fails to sign in shall not be permitted to speak until all those who signed in have done so. At any public hearing, persons who have signed in and wish to be heard shall be given an opportunity to be heard.

9.13.2 Time Limits

The Presiding Officer shall be authorized to establish speaker time limits and otherwise control presentations to avoid repetition. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groupings, (i.e., proponents, opponents, adjacent owners, vested interests, etc.).

9.13.3 Other Rules

The rules applicable to a Public Comment period under Sections 9.12.3, 9.12.4, and 9.12.5 shall likewise apply to legislative public hearings.

9.14 Council Quasi-Judicial Hearings

Quasi-judicial hearings and actions of the Council are those proceedings which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions or hearings do not include the hearings pertaining to legislative actions adopting, amending, or revising a general governmental policy or ordinance, or a comprehensive, community, or neighborhood plan or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance."

9.14.1 Appearance of Fairness Doctrine Applies to Quasi-Judicial Actions

If a proceeding is quasi-judicial, the "appearance of fairness doctrine" under Washington state law is generally applicable. See RCW 42.36.010 and Section 4.6.4 of this Manual. If a proceeding contains both legislative and adjudicative functions, it is recommended that the appearance of fairness doctrine rules be followed by the Council.

9.14.2 Obligations of Councilmembers in Quasi-Judicial Proceeding

In the event of a quasi-judicial proceeding of the Council, a Council member should immediately disclose any interests that may appear to constitute a conflict of interest. Councilmembers should recognize that 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 a Councilmember's business associate, or a member of the Councilmember's immediate family. It could involve *ex parte communications* (that is, communications with one party to the quasi-judicial matter without notice to or argument from the other party). Or it could involve ownership of property in the vicinity, business dealings with the proponents or opponents before or after the hearing, business dealings of the Councilmember's employer with the proponents or opponents, announced predisposition, and the like. Prior to any quasi-judicial hearing, each Councilmember should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If the answer is in the affirmative, no matter how remote, the Councilmember should disclose such fact to the City Attorney.

Anyone seeking to disqualify a Councilmember from participating in a decision on the basis of a violation of the Appearance of Fairness Doctrine must raise the challenge as soon as the basis for disqualification is made known, or reasonably should have been made known, prior to the issuance of the decision. Upon failure to do so, the Doctrine may not be relied upon to

invalidate the decision. The party seeking to disqualify the Councilmember shall state, with specificity, the basis for disqualification.

In the case of the Council sitting as a quasi-judicial body, the Presiding Officer shall have authority to request a Councilmember to excuse him or herself on the basis of an Appearance of Fairness violation. Further, if two Councilmembers believe that an Appearance of Fairness violation exists, such individuals may move to request a Councilmember to excuse him or herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the Presiding Officer or other Councilmembers shall give due regard to the opinion of the City Attorney.

9.14.3 Avoid Ex Parte Communications with Quasi-Judicial Parties

During the pendency of any quasi-judicial proceeding, no Councilmember may engage in ***ex parte*** communications with proponents or opponents about a proposal involved in the pending proceeding, unless the Councilmember: (1) places on the record the substance of such oral or written communications concerning the decision or action; and (2) provided that a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication shall be made at each hearing where action is taken or considered on the subject. Under RCW 42.36.060(2), this does not prohibit correspondence between a citizen and his or her elected official, if the correspondence is made a part of the record, when it pertains to the subject matter of a quasi-judicial proceeding.