

# Creating Balance Between Elected Officials and Staff



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**This presentation is not legal advice. If you need legal advice, contact an attorney.**

# *Introduction*

Creating balance in our town and city governments is all about relationships, roles, and how people interact to get the city's business done. These roles and relationships are between people who are

- Elected
- Appointed
- Employed
- Volunteers.

## **LIABILITY**

All of these people create liability for your city or town. The Errors and Omissions part of the policy deals with things like

- Civil rights
- Employment issues
- Discrimination
- Law enforcement liability
- Land use.

The elected officials, appointed officials, employees and volunteers are covered under the policy for the decisions that they make. These decisions include

- Malfeasance
- Misfeasance
- Nonfeasance.

In other words, these people are covered for the decisions they make. An important point to remember is always follow legal counsel advice—never make a decision knowing it is wrong.

You should get legal advice and opinion on tricky matters such as employment practices, ordinances, actions of eminent domain, licenses and permits and zoning requirements and variances.

You are the eyes and the ears of the city. When you are aware of an unsafe or dangerous situation, the city is "on notice" that it has a problem. Take care of this through proper channels if possible. Report the situation to the mayor or directly to staff if the mayor is not available.

# *Open Public Meetings*

The Open Public Meetings Act regulates our governments in performing the public's business. It states that the public has a right to attend and watch the public's business done.

The act covers nearly all public meetings with only a few minor exceptions.

Covered meetings include:

All regular and special meetings of the governing body.

Meetings of multi-member governing bodies and subagencies including city councils, planning commissions, library and park boards, etc.

Meetings excluded under the act include:

Committee meetings when they do not exercise actual or implied decision-making power, unless they compromise a majority of a governing body. The AG's office has concluded that the committee is excluded when the powers are only advisory.

Social Gatherings are excluded as long as attendees do not take any official action or discuss public business.

Certain proceedings for licensing and disciplinary action and meetings or formulating collective bargaining agreement strategies.

It is interesting to note that the public has no right to speak at a city council meeting. They can only speak when the right is granted by a majority of the council. Most cities have a place on the agenda for open public input. This is a great idea because it gives the public a perception that they have access to the council and mayor. It is always a good idea to limit the amount of time dedicated to open public input, or the meeting will be extended longer than may be necessary.

There are penalties for violating the Open Public Meetings Act which include the voiding of actions taken at the meeting, fines and responsibility for the prevailing party's attorney fees.

# *Executive Sessions*

(RCW 42.30.080)

The law allows for the governing body to adjourn to an “executive session” for a limited number of reasons. This is a private meeting away from the public to discuss public business. The governing body can go into executive session for three main reasons. They are

- Personnel issues
- Real estate
- Pending or potential litigation.

Governing bodies may use the executive session:

To consider the selection of a site or acquisition of real estate when public knowledge would cause the likelihood of an increase in price.

To consider the minimum price at which real estate will be offered for sale or lease when public knowledge would cause the likelihood of a decreased price.

To receive and evaluate complaints or charges brought against a public officer or employee. The public official or employee can request the meeting be open.

To evaluate the qualifications of an applicant or the review the performance of a public employee.

To evaluate the qualifications of a candidate for appoint to elective office.

To discuss matters relating to litigation or potential litigation to which the city is a part.

An executive session may be held during any regular or special meeting. Before convening the session, the presiding officer must publicly announce the purpose for excluding the public and the time the session will be concluded.

# *Roles and Responsibilities*

Public officials and staff should always maintain their respective roles. It avoids confusion. Basically, the council is in charge of setting policy and the mayor (manager) and staff are responsible to carry it out in the day to day operation of the city. Councils should not become involved in day to day operations and mayors and staff should not set policy (outside of administrative policy). When people start operating outside of their respective roles, the checks and balances put in place by government may fail to operate. The council is not authorized to interfere with the mayor's administration of the city. They cannot give orders to city employees, including department heads. A good rule to follow is the council or the mayor cannot do indirectly what they cannot do directly.

Following is a description of roles for councils and mayors (managers).

# *Leadership Team Roles*

## **City Council**

- GOVERNS (Guides, directs)
- Decides WHAT
- Requests Information
- Considers Issues
- Creates, reviews, adapts policy
- Approves & reviews plans
- Monitors progress
- Sets budget and policy for personnel.
- Approves and reviews budget

## **Mayor/Manager/Staff**

- MANAGES (Administers, operates)
- Decides HOW
- Seeks and provides information
- Provides recommendations
- Recommends and carries out policy
- Implements plans
- Reports progress
- Supervises and evaluates personnel
- Formulates budget.

# *What Staff Needs to Know About Elected Officials*

**Elected officials have different needs than staff.**

To be effective they must respond to the needs of the constituents. Concerns for fairness and minority views sometimes outweigh effectiveness or efficiency.

**Elected officials want to know where various constituent groups stand on an issue.**

This information is important in attempting to balance the conflicting values that often come into play during the policy-making process.

**Elected officials do not like surprises. (Who does?)**

A staff member's credibility may be damaged if relevant new information is introduced at a final public hearing before action is taken. Council members may think staff has not done their job.

**Elected officials like to have choices.**

Nobody likes to feel backed into a corner where there is only one solution. A brilliant staff proposal may not carry the day if other choices were not seriously considered (or perceived as not considered).

**Staff can be an enormous help by showing how compromise can be reached on thorny issues.**

Staff can sometimes be the oil that makes the machine run smoother when there is division in the council or when there is a division between the mayor and the council.

**Staff can make everyone look good on the policy/administrative team by sharing credit.**

# *What Elected Officials Needs to Know About Staff*

**Some key staff belong to national and state associations that hold members to professional and ethical standards.**

Asking staff to help on certain political matters such as election and ballot campaigns, puts them in a difficult position. State laws also significantly limit the use of public resources for campaign issues.

**Competent staff can be a tremendous help in developing new ideas, structuring good processes, and generally keeping you out of trouble.**

Get to know and trust key staff.

**Avoid public criticism of each other...it only makes for martyrs.**

If there is a legitimate concern, discuss the matter privately. If you are a council member, remember that you do not have the authority to direct employees. Discuss your concerns with the mayor or manager. If you are on the staff, ask for policy clarification if you are not sure what is intended.

**Show appreciation for good work.**

Say thanks and share credit.

# *To Keep You Out of Trouble:*

Stay within ordinances or get rid of them.

Put policies in writing.

Minutes should reflect exactly what was done and said at meetings.

Legal counsel should review all ordinances and administration policies.

Define duties in order to know bounds.

Learn and follow due process .

Send council minutes to legal counsel to ensure compliance.

When advertising for a job, avoid references to sex, age or race.

Develop and distribute an employee handbook with job descriptions and personnel policies.

Document all evaluations and reprimands in writing.

Inform all eligible employees about promotion opportunities.

Insist all managers, supervisors and department heads follow established procedures for interviewing, hiring, evaluating and terminating employees.