



League of Oregon Cities Mayor and Manager Fall Workshop Eugene, October 12, 2023

P. Stephen DiJulio

206.447.8971 | steve.dijulio@foster.com

Mayors and Councils – You can't live with them and you can't live without them!*

Outline

*With apologies to Desiderius Erasmus of Rotterdam (1466-1536) Quotes. (n.d.). BrainyQuote.com. Retrieved May 25, 2020, from BrainyQuote.com Web site: https://www.brainyquote.com/quotes/desiderius_erasmus_110331 Erasmus

The Usual Disclaimers!

- This presentation does not necessarily reflect the views of LOC, OMA, OCCMA, Foster Garvey P.C., or any individual city or town.
- This presentation is for educational purposes. For legal advice, participants should consult with the legal counsel for your community.
- Do not take candy from a stranger and do not run with scissors!

Objective

Identify tools to minimize divisiveness that undermines citizen trust in government; how effective communication strategies build a strong organizational culture to promote relations with staff and the community.

OUTLINE

- Part One The Issue
- Part Two Authority
- Part Three Governance
- Part Four Conflicts and Ethics

Part One – The Issue

CIVILITY AND THE CONDUCT OF THE PEOPLE’S BUSINESS

The decline in civility and growth of harassment, threats and violence against public officials has been underway for decades. There is a complex network of causal and influential factors at play including polarization, spread of mis- and disinformation and the growing influence and power of social media.

[On-the-Frontlines-of-Todays-Cities-1.pdf \(fpc.org\)](#)

New Republic (NR Plus Magazine, October 16, 2023)

“The Incompetence of Local Government”

By Christine H. Rosen

“Deteriorating services by local government combined with partisan moralizing by public officials breeds cynicism in, and has a demoralizing effect on, the people these officials are supposed to govern. When citizens lose trust in their local government’s ability to do basic things, they may lose trust in their government. What we need from local officials aren’t more media-friendly murals, excuse-making, and lectures on social justice. Just do the jobs that we, as taxpayers, pay you to do: Pick up the garbage, keep the streets safe, open the swimming pools, and provide reliable emergency services. Functional municipal government might not be glamorous, but it is essential to the flourishing of healthy communities.”

An Approach: Basic Civics

Virtual Citizens Academy

The City of Snoqualmie proudly presents the Virtual Citizens Academy designed to engage and educate the public about the many facets of operating a municipality.

<https://www.snoqualmiewa.gov/308/Citizens-Academy>

And see,

www.eugene-or.gov/DocumentCenter/View/28908/So-You-Want-to-Run-For-Local-Office-League-of-Oregon-Cities?

Part Two — Authority



Constitution



Populism and the Reform Era



1902

Art. IV, § 1 reserved the initiative and referendum powers to the people, which were also available to voters of each municipality and district “as to all local, special, and municipal legislation of every character in or for their municipality or district.”



Dillon's Rule



1906

Article XI, § 2 specified that “[t]he Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town” and granted citizens the “power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon.”

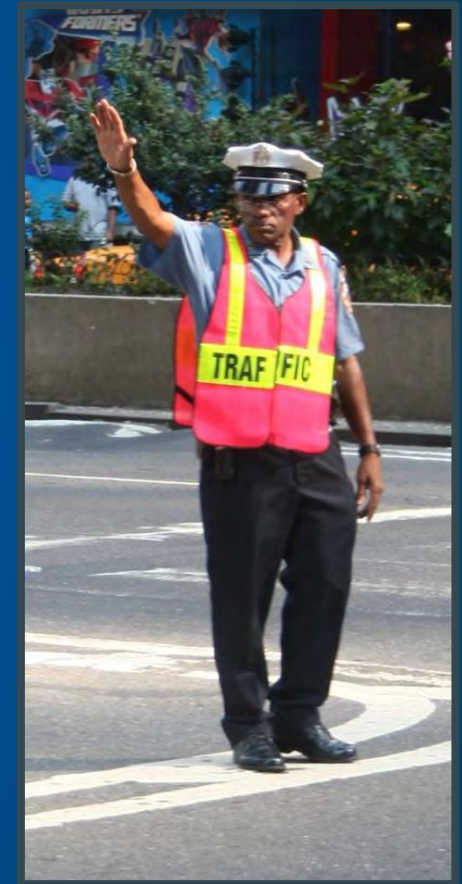


Government Sovereignty

- Taxes
- Eminent Domain
- Police Power


[T]he police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety The preservation of the health and physical safety of the people is a purpose of prime importance in the exercise of the police power."

Baer v. Bend, 206 Ore. 221, 225-26, 292 P.2d 134 (1956)



[T]he legislative assembly does not have the authority to enact a law relating to city government even though it is of general applicability to all cities in the state unless the subject matter of the enactment is of general concern to the state as a whole, that is to say that it is a matter of more than local concern to each of the municipalities purported to be regulated by the enactment.

La Grande v. Public Employees Retirement Bd.,
281 Ore. 137, 156 (1978)

A scenic view of a city at dusk with a large mountain in the background. The city lights are visible, and the sky is a mix of orange and purple. The mountain is prominent in the distance.

[A] general law addressed primarily to substantive social, economic, or other regulatory objectives of the state prevails over contrary policies preferred by some local governments if it is clearly intended to do so, unless the law is shown to be irreconcilable with the local community's freedom to choose its own political form. . . . In that case, such a state law must yield in those particulars necessary to preserve that freedom of local organization.

La Grande v. Public Employees Retirement Bd., 281 Ore. 137, 156 (1978)



Article XI, section 2 has long been interpreted to prohibit local governments from enacting legislation that conflicts with state criminal laws. . . . Local governments thus are barred from, e.g., creating a “safe haven” for outlaws by legalizing, within the boundaries of the city, that which the legislature has made criminal statewide.

Portland v. Jackson, 316 Ore. 143 (1993)

Preemption?



See, State v. Uroza-Zuniga, 364 Ore. 682 (2019); and *Oregon Restaurant Ass'n v. City of Corvallis*, 166 Ore. App. 506 (2000) (city prohibiting indoor smoking not preempted by Oregon Indoor Clean Air Act).

Cannabis?

Cities have a variety of options under their home rule authority to regulate marijuana activities, including those delegated by ORS 475C.449:

- Reasonable conditions on the manner of holding a production license
- Reasonable conditions on the manner of selling marijuana items
- Reasonable limitations on the hours at which a marijuana vendor may operate

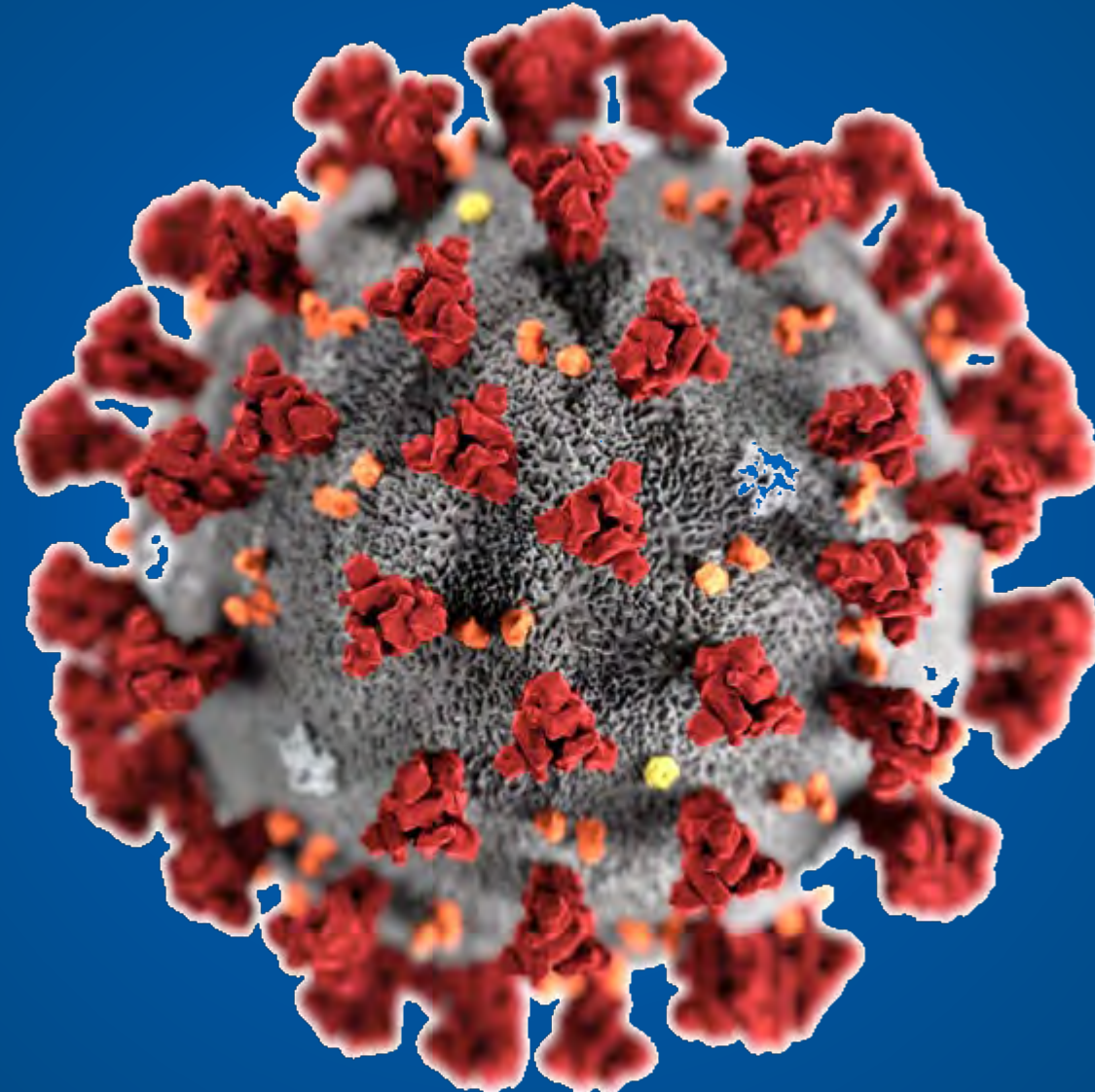


Example of Express Preemption

Except as expressly authorized by state statute, the authority to regulate the ownership or operation of unmanned aircraft systems is ***vested solely in the Legislative Assembly***. Except as expressly authorized by state statute, a **local government**, as defined ORS 174.116 (“Local government” and “local service district” defined), ***may not enact an ordinance or resolution that regulates the ownership or operation of unmanned aircraft systems*** or otherwise engage in the regulation of the ownership or operation of unmanned aircraft systems.

ORS 837.385 (emphasis added)

COVID-19



COVID-19 – Counties vs. State?

“A one-size-fits-all approach to shutting down the state was logical and appropriate in March when the onset of this pandemic was new and was unknown. Over time, we have learned, adapted, adjusted and improved. Keeping counties and regions in a Phase II for an indefinite period of time is a one size fits all approach that does not work any longer. It is time to re-evaluate the metrics and the ever-changing goal posts related to slowing the spread of COVID-19 in our rural, semi-rural, eastern and frontier communities.”

State Emergency Authority Expansive (ORS Chapter 401)

- The Governor by proclamation may declare a state of emergency at the request of a county governing body or after determining that an emergency has occurred or is imminent. ORS 401.165(1).
- During a state of emergency, the Governor has complete authority over all executive agencies of state government and the right to exercise, within the area designated in the proclamation, all police powers vested in the state by the Oregon Constitution in order to effectuate the purposes of this chapter. ORS 401.168(1).
- During the existence of an emergency, the Governor may “[a]ssume control of all police and law enforcement activities in such area, including the activities of all local police and peace officers.” ORS 401.175(2)

Scope of State Emergency Authority:

The term "police power" refers to the whole sum of inherent sovereign power which the state possesses, and, within constitutional limitations, may exercise for the promotion of the order, safety, health, morals, and general welfare of the public. The police power extends to all the great public needs. Public health is, of course, one of the important factors giving rise to the exercise of the police power. . . . Thus, through the enactment of Or. Rev. Stat. § 401.168(1), the legislature has given the Governor of Oregon authority to exercise the state's police powers during a state of emergency, and those powers include the power to regulate conduct for public health and safety.

Elkhorn Baptist Church v. Brown, 366 Ore. 506, 524-25 (2020)

City Emergency Authority

- Authority to “declare, by ordinance or resolution, that a state of emergency exists within the city or county [and which] must limit the duration of the state of emergency to the period of time during which the conditions giving rise to the declaration exist or are likely to remain in existence.” ORS 401.309(1)
- Authority “to receive grants or borrow moneys not included in the budget of the municipal corporation for the current year or current budget period,” ORS 294.481(1)(a).

City Emergency Authority

- If meeting of governing body not practicable, authority for the chief executive officer of the municipal corporation to “authorize the immediate expenditure of funds from any available source to respond to a threat to public health or safety.” ORS 294.481(2).
- Authority for municipal emergency management agency to perform functions outside the territorial limits “as required under any mutual aid or cooperative assistance agreement or as requested and authorized by the county or city in whose territorial limits the emergency functions are performed.” ORS 401.305(5).

City Emergency Authority

In carrying out the provisions of this chapter, counties or cities may enter into contracts and incur obligations necessary to mitigate, prepare for, respond to or recover from an emergency or major disaster.

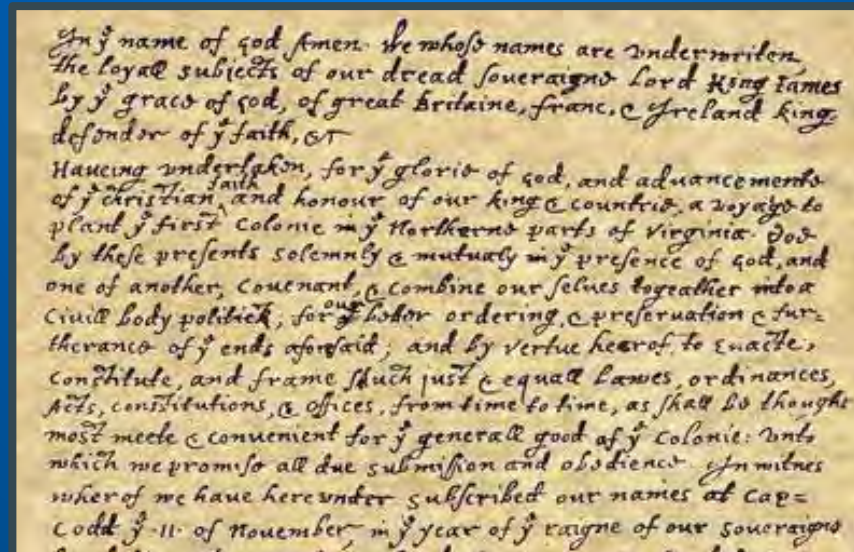
ORS 401.315

City Emergency Authority

- <https://www.orcities.org/resources/reference/topics-z/details/public-health-emergency>
- <https://www.orcities.org/resources/reference/topics-z/details/emergency-preparedness>

Charter

The Charter is the local enabling legislation of the people for the local government. Except where preempted by State law, the Charter acts as a further limit or control on municipal authority and procedure. Examples may include term limits, certain residency requirements and procedures for adoption of ordinances.





Home rule and charters

The City of Astoria's charter contains language common in city charters that provide expansive authority under the home rule amendments:

“The City has all powers that the constitutions, statutes, and common law of the United States and of this State now or hereafter expressly or impliedly grant or allow the City, as fully as though this Charter specifically enumerated each of those powers.” City of Astoria Charter, § 2.1, Powers of the City (1997).

Ordinance

An ordinance is used for legislation intended to have permanent or general effects. The procedures for adopting ordinances are prescribed by charter or statute and must be strictly followed for the ordinance to be valid.

See LOC Manual for Ordinance Drafting at <https://www.orcities.org/application/files/2716/8685/9898/ManualOrdinanceDraftingandMaintenance-updated5-23final.pdf>



Ordinance validation proceeding

Or. Rev. Stat. § 33.710 provides, in part, that the governing body of a municipal corporation may commence a proceeding in the circuit court for the purpose of having a judicial examination and judgment of the court as to the regularity and legality of any ordinance, resolution or regulation enacted by the governing body.

See, For a Jud. Examination & Judgment of the Ct. As to the Regularity v. Rosenblum, 324 Ore. App. 221 (2023)

Part Three — Conduct of city government

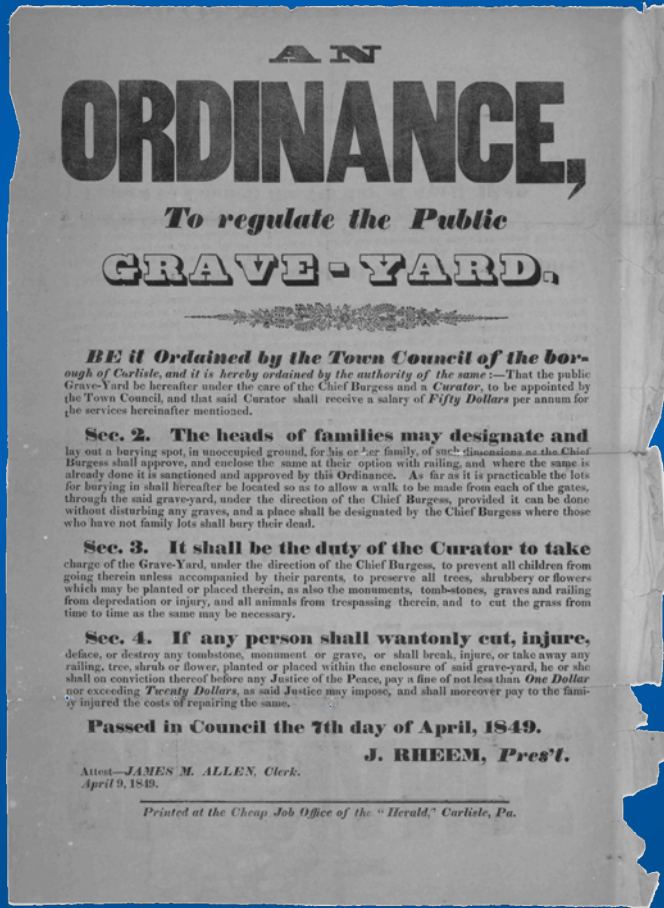


Who does what?

- Legislative
 - City Council
- Executive
 - Mayor
 - Administrator/Supervisor
 - Manager
- Legal / Judicial
 - City attorney & special counsel

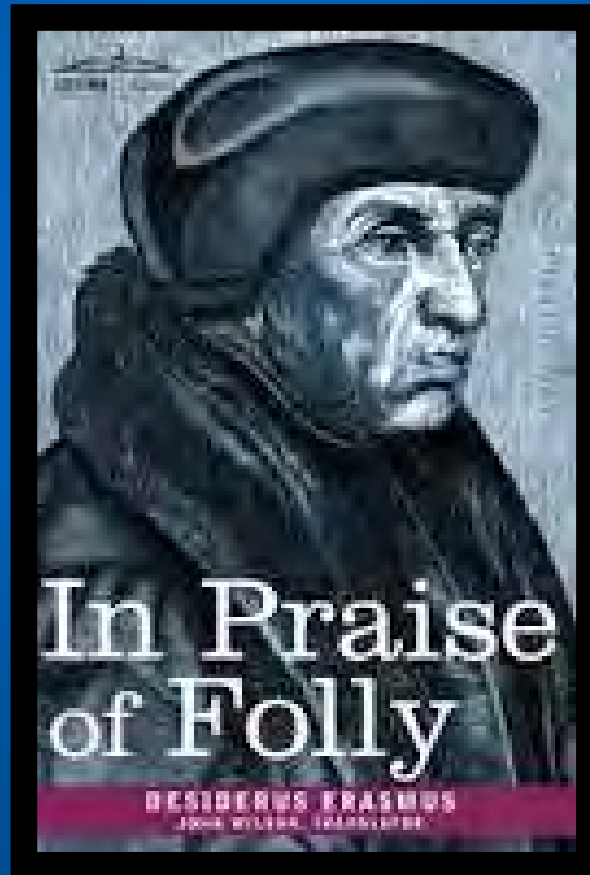
Actions of legislative authority

- Motion
- Resolution
- Ordinance
- Veto



As the Program States:

- You can't live with them and you can't live without them!



It's right in city's charter: Mayor not in charge

January 10, 2002 , Peter Callaghan; The News Tribune

Come April, Tacoma will celebrate National Library Week by having a collective reading of "To Kill a Mockingbird" by Harper Lee. It's a fun idea. I'm all for it.

But I wonder if we couldn't warm up for the novel by encouraging everyone in town to read something else. It's called the "Charter of the City of Tacoma" and it's available on the city's Web site (www.cityoftacoma.org).

Becoming familiar with the charter might help us all have more realistic expectations of what new Mayor Bill Baarsma can accomplish. Because contrary to popular belief, Bill Baarsma is not the boss of the city.

Tacoma is a council-manager city, not a strong-mayor city like Seattle, or Spokane, or Everett. It's right there in the charter. The mayor is the official head of the city government only for ceremonial purposes and in the rare event that a state of emergency exists.

But the real head of government is the city manager (although the utilities are under an independent director). Ray Corpuz serves at the pleasure of a majority of the council, not at the pleasure of the mayor. It is Corpuz who hires department heads, not the mayor. Corpuz gives direction to the city staff subject to the policy-setting authority of a council majority. Corpuz is paid \$155,833 a year.

In fact, the mayor and the council are prohibited from interfering with department heads and city employees. Again, it's right there in the charter:

"Except for the purpose of inquiry, the Council and its members shall deal with administrative officers and employees under the jurisdiction of the Manager solely through the Manager."

The mayor is a member of the council. He is a legislator, not an executive. He can influence policy only if he can attract four other council members to vote with him.

Everyone knows this, right? I'm not so sure. I think lots of folks think the mayor is the boss. So they blame the mayor when things go wrong, even though the mayor isn't to blame and the city manager operates in the shadows. The manager has maximum authority and minimal accountability.

That said, a mayor has some tools that, in skillful hands, can be quite powerful. First, he's paid \$67,568, less than half what Corpuz makes but more than double what other council members earn. He has a nice office on the 12th floor down the hall from the city manager's office. Because he's around all day, he has the opportunity to be more than just another council member.

In a 1993 interview, then-professor Baarsma said this about the odd role of the mayor: "On the one hand, you have formal authority. On the other hand, you have power. It's natural for power to gravitate to the person who's there every day."

Baarsma is the 13th person to be mayor since voters adopted the new charter 50 years ago. But the city has just gone through a decade of short-term mayors. While seven people served in the job during the charter's first 40 years, six have done so since Corpuz became manager in 1990.

That turnover, as much as anything, has made for a weak City Council of late, one without the oomph to be an effective check and balance on the authority of the city manager.

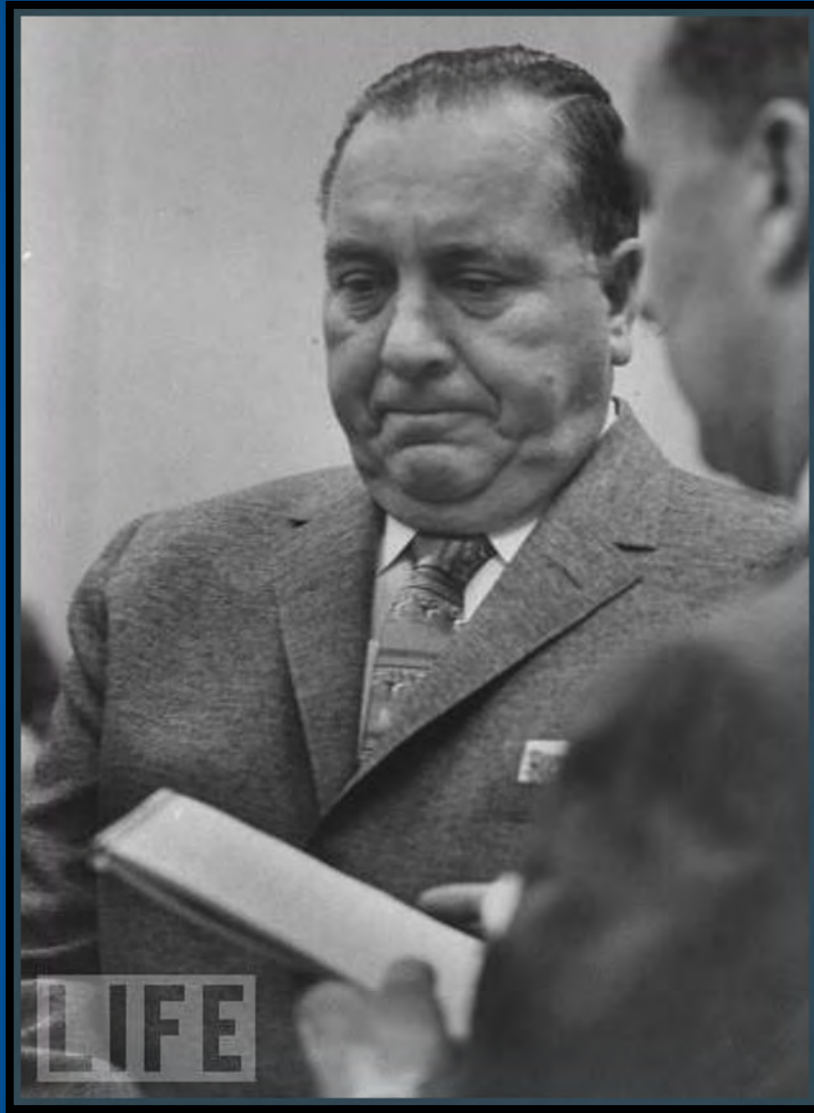
Baarsma has said he wants to change that. And his plan so far is to do it within the current charter by involving regular citizens in policy-making and by strengthening the council with committees and independent staff.

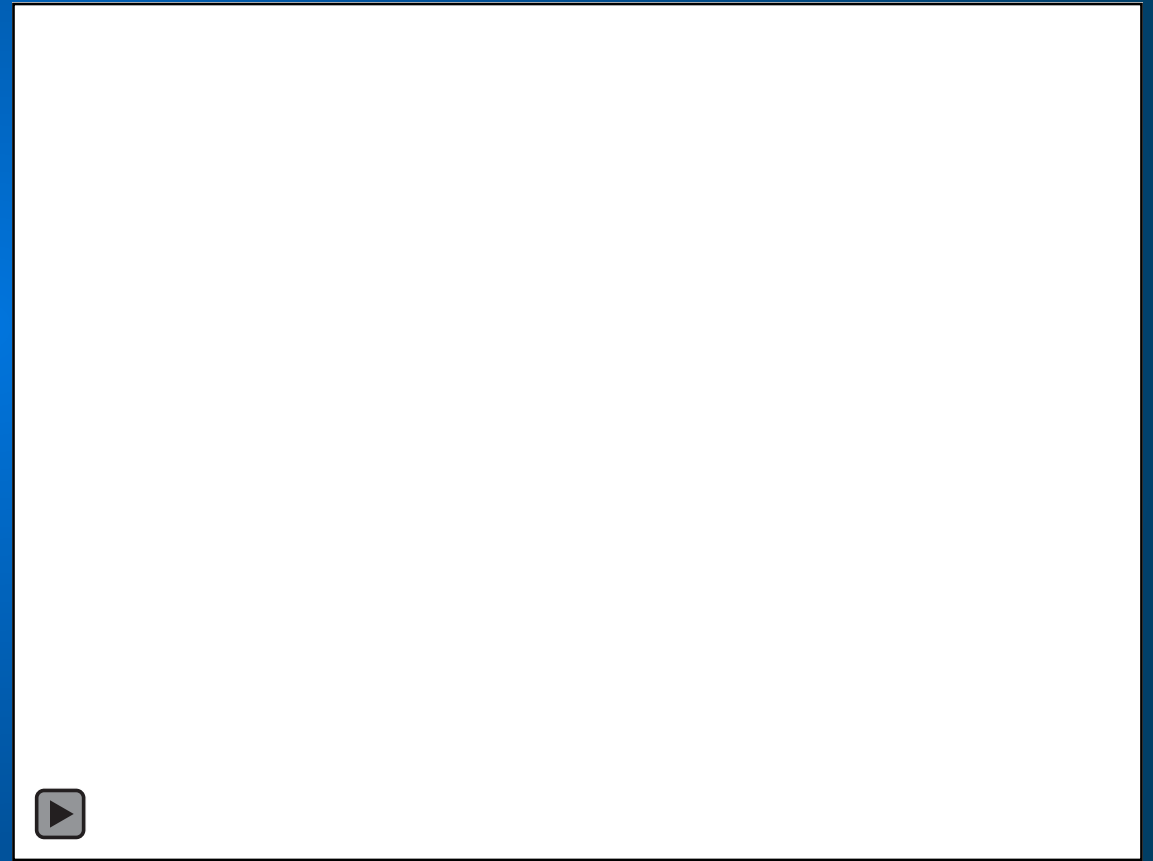
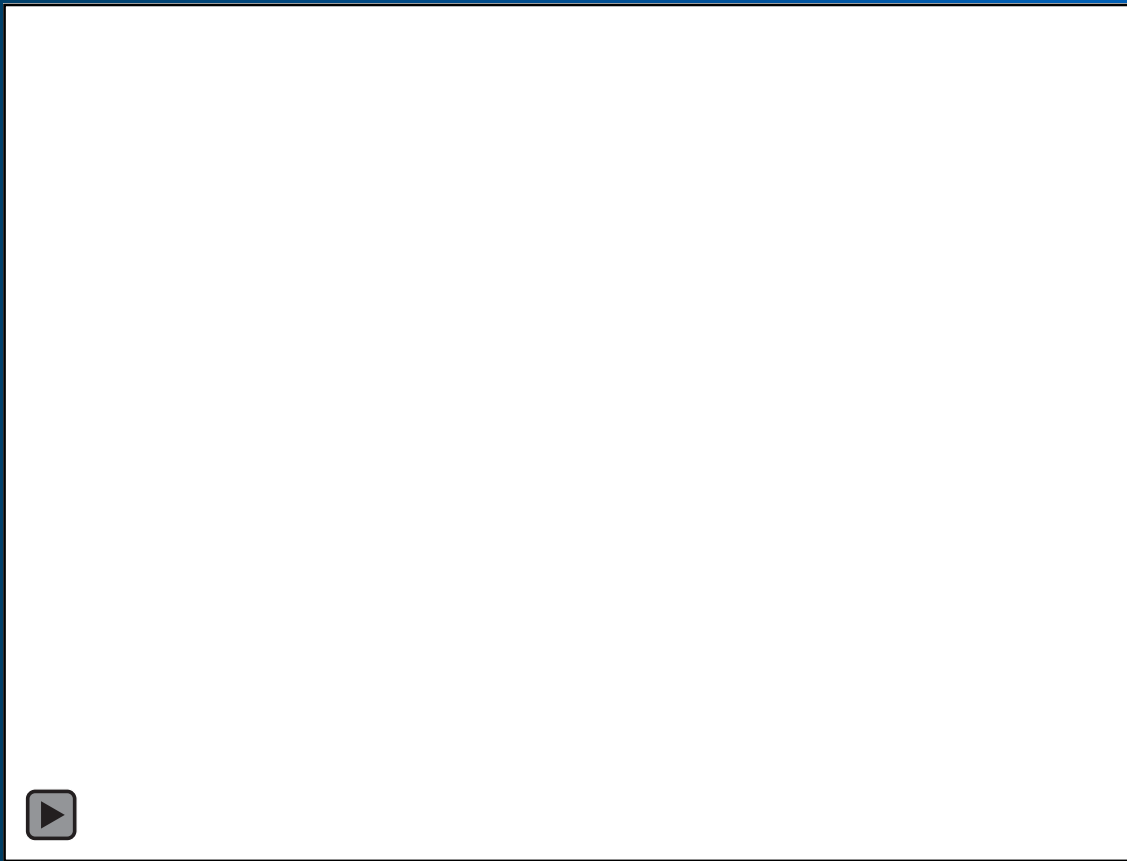
But it's also likely that toward the end of his term, Baarsma might begin advocating for a change in government to ask voters to give themselves something many think they already have: a strong mayor.

The Autocratic Mayor/Manager

Following the assumption that the city's government is business to its logical conclusion, the autocratic mayor is the natural consequence. In the modern business world the captain of industry has come to be the chief figure. With the perfection of organization, concentration of power, and fixing responsibility there has developed a one-man rule in big business. These examples have had an influence on development of municipal structure, organization and methods, and as a result the autocratic mayor has been evolved. **It is often conceded that efficiency of the public service is of more importance than the haphazard working of democracy in the old way. The voters are free to choose the mayor in the first instance whose term is limited. . .**

2 A.E. McQuillin, The Law of Municipal Corporations, 213 (3d Ed. 1996).





Potential areas of conflict

- Budgets
- Setting agendas
- Contract administration
- Personnel
- Land use
- See [LOC Oregon Municipal Handbook, Chapter 3: Municipal Officials](#)



In June, the city council of Indian Trail Town, N.C., voted, 4-1, to declare Mayor John Quinn's comments about the council in the town newsletter "whiny" and to ban his remarks from subsequent issues and from the town Web site. The new policy also prohibits Mayor Quinn from talking to any municipal employee unless the town manager is at his side, and requires Quinn to get express permission to enter the town hall except for places open to the general public.

THE NEW TRIBUNE.COM
August 12, 2009



Circleville Mayor handcuffed at fire scene, charged with misconduct: historic American hotel building gutted.

THE COLUMBUS [Ohio] DISPATCH
September 22, 2008

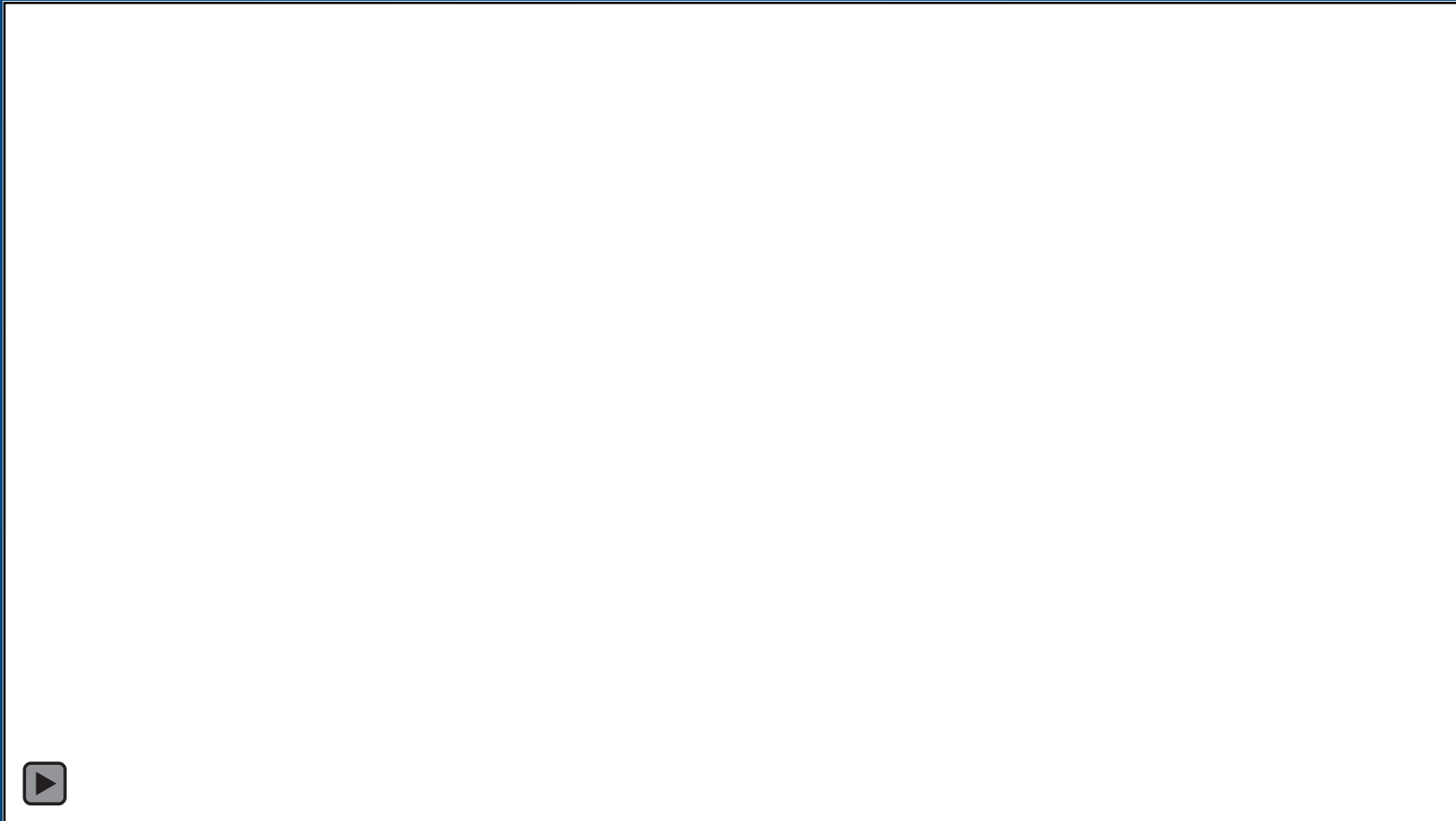
PASCO COUNCIL REMOVES LARSEN FROM POST

PASCO – The Pasco City Council voted Monday to replace its representative on the Benton-Franklin Council of Governments after a councilman misrepresented the city at a meeting last week. . . .

TRI-CITY HERALD

October 22, 2009

<https://www.youtube.com/watch?v+OnLTr04umjs>



Bethel board member free speech isn't a free pass

The 9th U.S. Circuit Court of Appeals has tossed the First Amendment suit of Bethel school board member Ken Blair, who claimed that by dumping him as vice president for criticizing the superintendent of the Pierce County district, the rest of the board had violated his constitutional rights.

Blair had evidently been criticizing the superintendent since he was hired in 2000. In 2007, Blair voted against renewing Siegel's contract. The other board members decided they wanted a different vice president. Blair sued.

There's a difference between suppressing speech and voting against someone because you don't like what he says. The court had no trouble making that distinction. It said that "the First Amendment protects Blair's discordant speech as a general matter; it does not, however, immunize him from the political fallout of what he says."

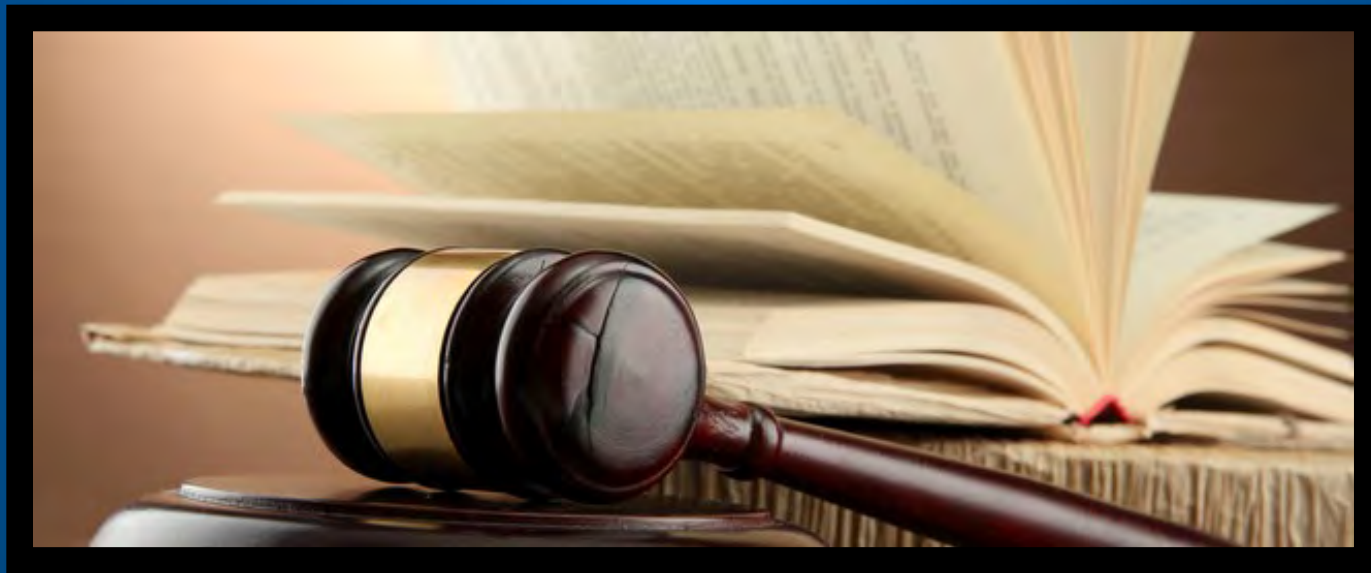
SCOTUS: Censure did not violate official's First Amendment rights

In a unanimous 13-page ruling, Justice Neil Gorsuch noted that “elected bodies in this country have long exercised the power to censure their members,” and there is no reason to believe that the First Amendment was intended to change that practice. “If anything,” Gorsuch observed, censures for an elected representative’s speech “have proven more common yet at the state and local level.”

Houston Community College System v. Wilson (March 24, 2022)

Parliamentary Procedures

Parliamentary procedures are local rules or customs regulating the conduct of legislative proceedings. However, a majority of the quorum will control the meeting procedures.



Public Hearings and the Hearing Process

All meetings of governmental bodies are public meetings, but not all meetings are public hearings. Public hearings are the proceedings in which public comment is invited.



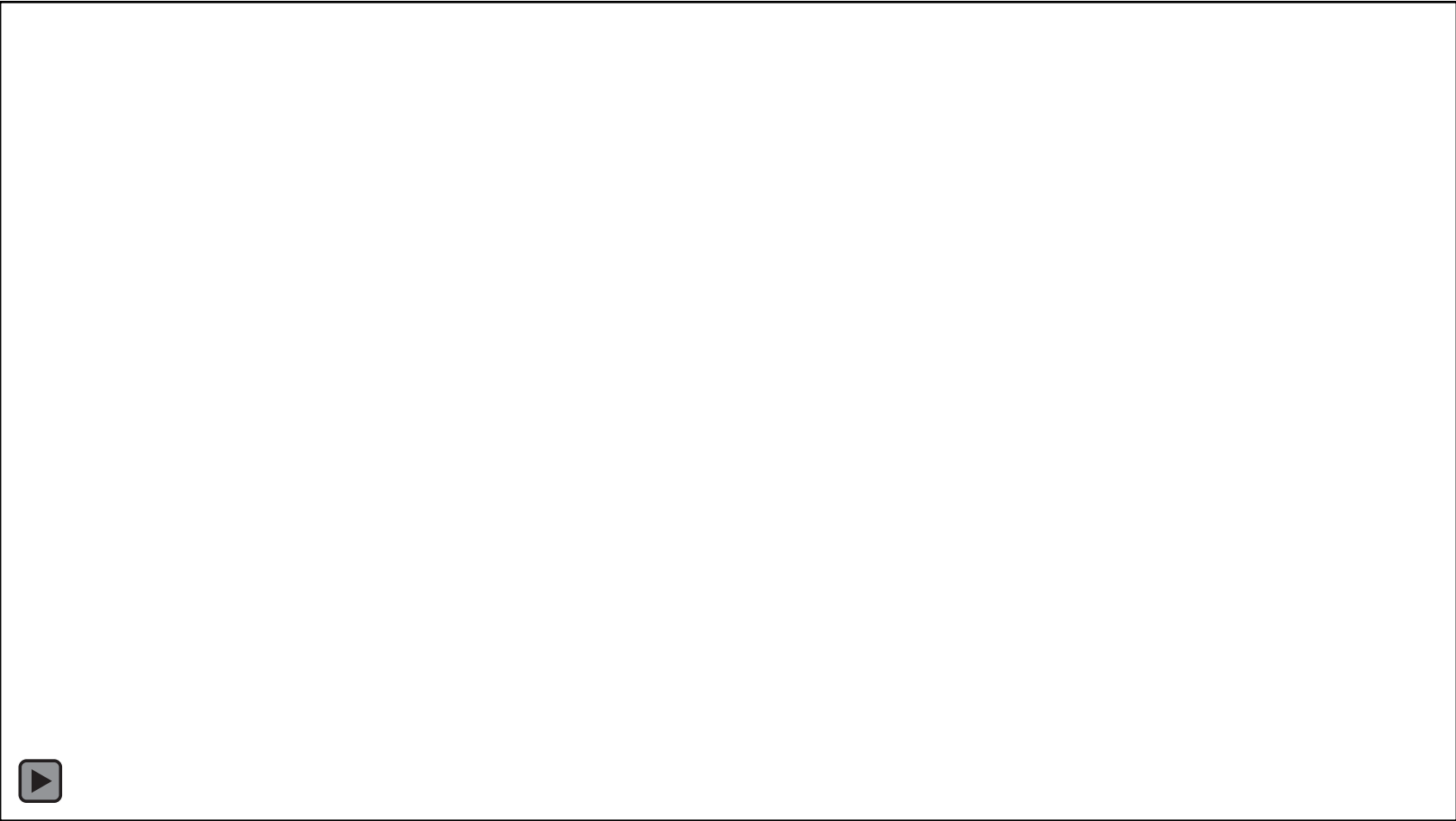
Public Comment

MAYOR'S REMOVAL OF **DISRUPTIVE** CITIZEN FROM COMMISSION MEETING
DOES NOT VIOLATE FIRST AMENDMENT.



Jones v. Heyman,
888 F.2d 1328 (11th Cir. 1989)

Public Comment Period



Three Categories of Government Property

Traditional public forum,
the designated public forum, and
the non-public forum.



Ark. Educ. Television Comm'n v. Forbes, 523 U.S. 666, 677-78, 118 S.Ct. 1633,
140 L.Ed.2d 875 (1998) ...

Public Comment

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

Dowd v. City of Los Angeles, 2013 WL 4039043 (C.D. Cal. 2013)(citing Plato, *Five Dialogues*, Hackett, 2d. Ed., Trans. G.M.A. Grube, 35 (Apology)).

The blurred line between policy and administration

Of course, things do not always run smoothly between the council and the city administration, and the line between policy and administration in some situations is not clear....

The mayor or city manager may direct that all communications with city staff go through his or her office. The council, in response, may feel that the mayor is unlawfully restricting its access to city personnel for information purposes.

MRSC Mayor & Councilmember Handbook, Page 33

4 Steps Councils Can Take towards Modern Governance

1. Reexamine your community's structure and priorities
2. Focus on council composition and development
3. Improve visibility around key risks and opportunities
4. Avoid easy cyber mistakes

GOVERNING Daily (May 25,2022):

<https://www.diligent.com/insights/government/steps-councils-can-take-toward-modern-governance/>



Council — Staff relations

No council member may directly or indirectly attempt to coerce the city manager or a candidate for the office of city manager in executing the city manager's powers and duties. In council meetings, council members may discuss or suggest anything with the city manager relating to city business. [City of Beaverton Charter, § 3.4 – No Interference](#) (2021).



Council – Staff relations

Yachats city manager resigned in spring 2023, citing personnel issues, misinformation and council interference. YachatsNews, Apr. 13, 2023, <https://yachatsnews.com/yachats-city-manager-heide-lambert-resigns-effective-may-31-citing-personnel-issues-misinformation-and-council-interference/>

Council — Staff relations

Misunderstandings may arise when a councilor intends only to ask for information. The employee receiving the request directly from a councilor can easily jump to the erroneous conclusion or misinterpret the councilor's intent. In turn, a councilor who acts outside of their authority may be at risk for a legal claim brought by the impacted employee. The best way for councilors to get information about administrative matters is to request it through the city manager or administrator, or if appropriate, make the request during a regular council meeting.

[From LOC Oregon Municipal Handbook – Chapter 5: Municipal Employees and Personnel Matters, pg. 32](#)

Management

Generally, the mayor, with consent of the council, may appoint members of commissions, boards, and committees established by ordinance or resolution. Within cities who adopt a weak mayor form of government, the mayor does not appoint administrative personnel, has no special administrative responsibility, and has no power to veto ordinances adopted by the council. However, depending on charter provisions, the mayor may appoint certain staff members, such as the city manager, city attorney, and chief of police, subject to council approval.

[From LOC Oregon Municipal Handbook – Chapter 3: Municipal Officials, pg. 6](#)



The city attorney

Types of city attorney positions

Some cities choose to retain private attorneys or private law firms to act as their city attorney, commonly known as a “**contract attorney**” or “**outside counsel**.” Other cities hire city attorneys as employees of the municipality, creating an “in-house” counsel position. Sometimes, a city will use a combination of the two, hiring an in-house counsel for general counsel responsibilities, and hiring outside counsel on an as-needed basis whenever the city has a need for an attorney with a particular specialty (such as labor negotiations).

[LOC A Guide to Recruiting a City Attorney, pg. 3](#)

Management of legal services

Municipal charters will determine whether your municipality has an appointed city attorney. For example, Portland's city charter expressly creates the office:

The Office of the City Attorney shall consist of the City Attorney and such subordinate employees as the Council may provide. The deputies of the City Attorney shall be appointed by the City Attorney in writing and shall continue in service during the City Attorney's pleasure. In the event of a vacancy in the position of the City Attorney, the deputies shall continue in office with a Chief Deputy serving as acting City Attorney until such time as the Council appoints a new City Attorney.

Portland City Charter, § 3.10.010.

Scope of city attorney's client relationship

. . . the City Attorney shall not represent individuals in their personal capacity and shall not represent individuals who, after investigation by the OMF Risk Management Division, are found by the Bureau to have acted outside the scope of their employment or duties or to have committed malfeasance in office or willful or wanton neglect of duty. If the City Charter specifically authorizes a commission to retain or employ its own special legal counsel, then the City Attorney shall not be responsible for representing such commission on matters assigned by the commission to its special legal counsel.

Portland City Charter, § 3.10.030(A).

Municipal finance

No tax or duty shall be imposed without the consent of the people or their representatives in the Legislative Assembly; and all taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax. See ORE. CONST. art. I, § 32.

Under the home rule amendments, “a municipal corporation may assume powers to impose taxes and to select the kinds of taxes most appropriate in order to provide governmental services.” *Jarvill v. Eugene*, 289 Ore. 157 (1980).

Intermission

Part Four — Conflicts and ethics



Recall

Art. II, § 18 governs the procedures for recalling an elected official: “Every public officer in Oregon is subject, as herein provided, to recall by the electors of the state or of the electoral district from which the public officer is elected.”

The state constitution also provides a “safe harbor” for new officials: “No [recall] petition shall be circulated against any officer until the officer has actually held the office six months.” Art. II, § 18(6).

Bases for disqualification

- **Bribery:** Every person shall be disqualified from holding office, during the term for which he may have been elected, who shall have given, or offered a bribe, threat, or reward to procure his election. Art. II, § 7.
- **Incompetency or malfeasance:** Public officers shall not be impeached; but incompetency, corruption, malfeasance or delinquency in office may be tried in the same manner as criminal offenses, and judgment may be given of dismissal from office, and such further punishment as may have been prescribed by law. Art. VII, § 6.
- **Dueling:** Every person who shall give, or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust, or profit. Art. II, § 9.

Private use of public funds prohibited

The Legislative Assembly shall not lend the credit of the state nor in any manner create any debt or liabilities which shall singly or in the aggregate with previous debts or liabilities exceed the sum of fifty thousand dollars, except in case of war or to repel invasion or suppress insurrection or to build and maintain permanent roads every contract of indebtedness entered into or assumed by or on behalf of the state in violation of the provisions of this section shall be void and of no effect.

Ore. Const., Art. XI, § 7.

Private use of public funds prohibited

No county, city, town or other municipal corporation, by vote of its citizens, or otherwise, shall become a stockholder in any joint company, corporation or association, whatever, or raise money for, or loan its credit to, or in aid of, any such company, corporation or association.

Oregon Constitution, Article XI, § 9



“Debt” defined

The term "debt" as used in Article XI, section 7, means an unconditional and legal obligation of the state to pay, when at the time the obligations initially are created there are insufficient unappropriated and not otherwise obligated funds in the state treasury to meet those obligations.

State ex rel. Kane v. Goldschmidt, 308 Or. 573, 583 (1989)

Oregon courts have allowed projects financed by “special funds” that do not violate the constitutional restriction on lending of credit if the promise by the state is to make installment payments from a “special revenue fund”:

If the revenues generated from a particular project being financed are pledged for repayment, rather than revenues from general taxation, no “debt” or “indebtedness” is thereby created.

State ex rel. Kane v. Goldschmidt,
308 Ore. 573, 581 (1989)



Solicitation of public employees

No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views.

ORS 260.432(2). *See also* [Oregon Government Ethics Law, A Guide for Public Officials](#)



Code of ethics (also founded in common law)

Public officials in Oregon are prohibited from using or attempting to use their “official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official’s holding of the official position or office.” ORS 244.040.

Examples of prohibited acts:

- No public official may solicit or receive employment offers in exchange for a vote, official action, or judgment. ORS 244.040(3).
- No public official may attempt to further their own personal gain through the use of confidential information gained in the course of or by reason of holding public office. ORS 244.040(4).
- No public official may solicit or receive public funds to pay a civil penalty imposed by the Oregon Government Ethics Commission. ORS 244.040(7).



A state ethics probe found that Karen La Bonte, the city's public works director, violated state conflict of interest laws after the city hired a company she co-owns with her husband for pandemic-related signs and other products.

(...continued)

It was common knowledge that La Bonte and her husband, Darwin Turner, own Cannon Beach Design Co. But while La Bonte disclosed her relationship to the business and declared a potential conflict of interest verbally to her co-workers and City Manager Bruce St. Denis, she did not do it in writing before each transaction as required by state laws, the Oregon Government Ethics Commission found.

Cannon Beach public works director fined for ethics violation over pandemic-related signs, Katie Frankowicz, Yahoo!News via The Daily Astorian, Oct. 29, 2021.

Findings as grounds for removal – ORS 244.270

- (1) If the Oregon Government Ethics Commission finds that an appointed public official has violated any provision of this chapter or any rule adopted under this chapter, the finding is prima facie evidence of unfitness where removal is authorized for cause either by law or pursuant to section 6, Article VII (Amended) of the Oregon Constitution.
- (2) If the commission finds that a public official has violated any provision of this chapter or any rule adopted under this chapter, the commission shall notify the public body, as defined in ORS 174.109 (“Public body” defined), that the public official serves. The notice shall describe the violation and any action taken by the commission. The commission shall provide the notice not later than 10 business days after the date the commission takes final action against the public official.

Code of ethics

- Certain exceptions

ORS 244.040(2)

- Financial interest in contracts

ORS 244.047

Examples of exceptions – ORS 244.040(2)

- Official compensation
- Receipt of honoraria as allowed under ORS 244.042
- Reimbursement of expenses
- An unsolicited award for professional achievement
- Certain gifts received by public officials or their relatives

Financial interest in contracts – ORS 244.047

Public officials may not have a “direct beneficial interest” in any public contracts for which that public official has authority to authorize. The prohibition applies to former public officials for a period of two years after the date a contract is authorized.

Exception: Does not apply if the public official was a member of a board, commission, council, or other governing body when contract was authorized, but who did not participate in the authorization of the contract.

Legislative policy for government ethics – ORS 244.010

- The Legislative Assembly declares that service as a public official is a **public trust** and that, as one **safeguard for that trust**, the people require all public officials to comply with the applicable provisions of this chapter.
- ***
- The Legislative Assembly recognizes that public officials should put **loyalty to the highest ethical standards** above loyalty to government, persons, political party or private enterprise.

Legislative policy for government ethics – ORS 244.010

- The Legislative Assembly recognizes that public officials should not make private promises that are binding upon the duties of a public official, because a public official has no private word that can be binding on **public duty**.
- The Legislative Assembly recognizes that public officials should **expose corruption** wherever discovered.
- The Legislative Assembly recognizes that public officials should **uphold the principles** described in this section, **ever conscious of the public's trust**.



Gift limits – ORS 244.025

During a calendar year, a public official, candidate, or relative or member of the household of a public official or candidate may not solicit or receive gifts with an aggregate value in excess of \$50 from any single source.

During a calendar year, a person with a legislative or administrative interest may not offer gifts in excess of \$50 to public officials, their relatives, or members of their household.

ORS 244.040 – Prohibited use of official position

(4) A public official may not attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official.



(...continued)

(...continued)

ORS 244.040 – Prohibited use of confidential information applies to *former* public officials!

(5) A former public official may not attempt to further or further the personal gain of any person through the use of confidential information gained in the course of or by reason of holding position as a public official or the activities of the person as a public official.

ORS 244.050 – Persons required to file statement of economic interest

(1) On or before April 15 of each year the following persons shall file with the Oregon Government Ethics Commission a verified statement of economic interest as required under this chapter:

(j) Every elected city or county official

(k) Every member of a city or county planning, zoning, or development commission

(m) Members of local government boundary commissions

(n) Every member of a governing body of a metropolitan service district and the auditor and executive officer thereof

“The most important political office is that of the private citizen.”

Louis D. Brandeis (1856 — 1941)

Sound Cities Association – Guiding Principles

- Assume that others are acting with good intent
- No surprises!
- Have each other's backs
- Think about who is not at the table
- Be candid, but kind
- Once a decision is made, work together to make it work
- Show up to meetings prepared . . .

SCA – Guiding Principles (cont.)

- Be fully present and engaged during meetings
- Extend grace to others –cut them some slack
- Remain open-minded
- Respect differing views

You can disagree without being disagreeable.

Bernard Meltzer/Ronald Reagan



Be Careful Out There!



Questions?

Thank you.



P. Stephen DiJulio

SENIOR PRINCIPAL



206.447.8971



steve.dijulio@foster.com

Integrity, innovation, insight.

 FOSTER.COM

SEATTLE

1111 Third Avenue
Suite 3000
Seattle, WA 98101

T: 206.447.4400
F: 206.447.9700

PORTLAND

Bank of America
Financial Center
121 SW Morrison Street
11th Floor
Portland, OR 97204

T: 503.228.3939
F: 503.226.0259

WASHINGTON, D.C.

Flour Mill Building
1000 Potomac Street N.W.,
Suite 200
Washington, D.C. 20007

T: 202.965.7880
F: 202.965.1729

NEW YORK

100 Wall Street
20th Floor
New York, NY 10005

T: 212.431.8700
F: 212.334.1278

SPOKANE

618 West Riverside
Avenue, Suite 300
Spokane, WA 99201

T: 509.777.1600
F: 509.777.1616