



FAQ on Legislative, Administrative and Quasi-Judicial Decisions

APRIL 2019

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Under the United States Constitution, the federal government is divided into three separate, equal branches. The Legislative branch enacts the law and authorizes the budget; the Executive branch implements and enforces the law; and the Judicial branch interprets the law and applies the law to specific facts and circumstances. With the memory of England’s King George III fresh in their minds, America’s Founding Founders believed that a government comprising separate, equal branches was the best way to avoid the concentration of power and the path towards tyranny. Oregon’s state government functions the same way, by dividing power among the Legislative Assembly, the governor, and the courts. Most cities, however, vest all powers of government in their city council, which functions as the legislative, executive and judicial body. Because a single council plays multiple roles in city government, the council’s actions may have different legal ramifications. As this FAQ demonstrates, the nature of a council’s actions has important consequences for a city and its residents.

Please note that the following information is intended to provide city officials with a starting point for understanding the different roles of a council and different council decisions. It is not a substitute for legal advice. LOC members with further questions are encouraged to consult with their city attorney or call LOC legal staff.

Finally, it’s important to note that the following information may not be applicable to every city. Each city and city council operates according to the provisions laid out in its charter and their locally-adopted council rules.

1. What Types of Decisions do City Councils Make?

City councils generally make one of three types of decisions: legislative, executive and quasi-judicial. Councils may operate slightly differently, however, according their city’s charter or locally-adopted council rules.

2. What is the Council’s Legislative Role?

Perhaps most prominently, a city council acts as the legislative body for a city. Put simply, the council makes laws for the city, much as the Oregon Legislative Assembly makes laws for the state. Subject to the people’s initiative and referendum power, the council is the only body within the city that can enact legislation, and is the highest authority within city government to resolve policy issues. Individual councilors, apart from the council, generally lack any authority to make laws or policy decisions.

3. How Does the Council Exercise its Legislative Power?

Councils make legislative decisions by enacting ordinances. A council must take a formal action to adopt an ordinance, and the process for adopting an ordinance is set out in the city charter. The process of adopting an ordinance must also conform with the council rules. For example,

the charter may require the council to read a proposed ordinance at two consecutive meetings before voting to adopt the ordinance. The council rules may address whether the proposed ordinance must be made available to the public, or whether the public has the right to comment on the proposed ordinance.

4. What is the Council’s Executive Role?

In many cities, the council acts as the executive body and makes administrative decisions for the city. In that role, the council acts as a collective body to oversee the administration of city functions.

The precise amount of executive authority that a council exercises will depend on the city charter. In a council-manager form of government, much of the city’s executive authority is delegated to a professional manager. In a council-mayor form of government, the council itself is responsible for carrying out the executive role of government. That may include managing city finances, entering contracts, hiring staff, and ensuring compliance with state and federal law. In Oregon, two cities—Beaverton and Portland—have different forms of government from the council-mayor and council-manager model. In Beaverton, the “strong mayor” acts as the executive for the city. In Portland, the councilors also serve as commissioners over various city departments. Thus, executive power is dispersed among different council members.

5. How Does the Council Exercise its Executive Power?

The council exercises its executive power as a collective body, through resolutions or motions. Less formal than an ordinance, a resolution typically deals with matters of a special or temporary nature and reflects an expression of opinion or policy. Resolutions are prepared before a council meeting, and are thus always written down. Some common uses of resolutions include approving a contract, hiring a new employee, and applying for a grant.

Motions have the same legal effect as resolutions, but are not typically written down (although they will be recorded in the meeting minutes). The process for making a motion is governed by a city charter or council rules. Motions are often used in the process of enacting an ordinance. For example, a councilor may make a motion to have a second reading of a proposed ordinance, or a motion to vote on the enactment of a proposed ordinance.

6. What is the Council’s Judicial Role?

A city council has the power to make law (legislative) and the power to execute the law (administrative). The council also has the power to decide the rights of individuals or small groups of individuals by applying the law to a specific set of facts. In other words, the council can act like a court by applying legal rules to a set of circumstances and reaching a decision based on those facts. When a council makes that type of decision, it is acting in a “quasi-

judicial” role. A three-part test is used to determine if a council is making a quasi-judicial decision:

- The council is applying a specific rule or policy;
- To a specific situation; and
- The council must make a final decision.

Some common examples of quasi-judicial decisions include land use appeals, licensing appeals, personnel decisions, and contracting code disqualification appeals.

7. Do Citizens Have Any Legal Rights When the Council Makes a Quasi-Judicial Decision?

Yes. The Fourteenth Amendment to the U.S. Constitution guarantees all people the right to “due process.” The U.S. Supreme Court has determined that due process includes the following rights and protections when the government makes a quasi-judicial decision:

- The person affected by the decision must be informed of the decision;
- The person affected by the decision must be permitted to address the decision-maker at a hearing before the final decision is made; and
- The person affected by the decision has the right to an impartial decision-maker.

Knowing the difference between legislative, executive and quasi-judicial decisions is very important, because a city council making a quasi-judicial decision must ensure that it complies with due process requirements.

8. How do We Know if a Council is Impartial?

As noted above, due process requires an impartial decision-maker in quasi-judicial decisions. The law contains three restrictions meant to ensure impartiality.

First, the law prohibits *ex parte* contacts. An *ex parte* contact is any communication or information about a quasi-judicial matter obtained from any source outside the hearing. An *ex parte* contact may be something as simple as a developer emailing a councilor about an upcoming land use appeal. If a councilor has an *ex parte* contact about a quasi-judicial matter, the councilor must fully disclose the communication at a hearing and give the affected parties the chance to respond to the information.¹

Second, the law requires that members of a council be unbiased when making a quasi-judicial decision. If a councilor is biased, they are required to recuse themselves from a decision. If a

¹ For example, state law prohibits *ex parte* contacts in the land use planning context. ORS 227.180(3).

party raises the issue of bias or if a councilor thinks that they may be biased, they should consult with their city attorney.²

Finally, state law prohibits participation in a quasi-judicial decision if a councilor has a conflict of interest. Conflicts of interest always involve financial gain or detriment. If a councilor has the appearance of a conflict of interest, they must disclose the potential conflict. If a councilor has an actual conflict of interest, they must recuse themselves from the decision.³

² Under state law, there are two types of bias: “prejudgment” and “personal interest.” Bias requires an actual, not just apparent, interest in the outcome of the decision. *See 1000 Friends of Oregon v. Wasco Cnty. Court*, 304 Or 76, 83 (1987).

³ A conflict of interest arises when a quasi-judicial decision-maker has a personal, financial interest in the outcome of a matter on which he or she is deciding. ORS 244.020(1).