



Study Session

SS

Milwaukie City Council



MILWAUKIE CITY COUNCIL STUDY SESSION

City Hall Conference Room
10722 SE Main Street
www.milwaukieoregon.gov

AGENDA
MARCH 16, 2017

Page #

1. **6:00 p.m. Legal Training**
Presenter: Jordan Ramis, PC
2. **8:00 p.m. Adjourn**

Americans with Disabilities Act (ADA) Notice

The City of Milwaukie is committed to providing equal access to all public meetings and information per the requirements of the ADA and Oregon Revised Statutes (ORS). Milwaukie City Hall is wheelchair accessible and equipped with Assisted Listening Devices; if you require any service that furthers inclusivity please contact the Office of the City Recorder at least 48 hours prior to the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502 or 503-786-7555. Most Council meetings are streamed live on the City's website and cable-cast on Comcast Channel 30 within Milwaukie City Limits.

Executive Sessions

The City Council may meet in Executive Session pursuant to ORS 192.660(2); all discussions are confidential and may not be disclosed; news media representatives may attend but may not disclose any information discussed. Executive Sessions may not be held for the purpose of taking final actions or making final decisions and are closed to the public.

Meeting Information

Times listed for each Agenda Item are approximate; actual times for each item may vary. Council may not take formal action in Study or Work Sessions. Please silence mobile devices during the meeting.



MINUTES
MILWAUKIE CITY COUNCIL
www.milwaukieoregon.gov

STUDY SESSION
MARCH 16, 2017
City Hall Conference Room

Mayor Mark Gamba called the Study Session to order at 6:00 p.m.

Council Present: Council President Lisa Batey and Councilors Angel Falconer, Wilda Parks, and Shane Abma

Staff Present: City Manager Ann Ober, City Recorder Scott Stauffer, City Attorney Tim Ramis, and Assistant to the City Manager Mitch Nieman

Legal Training

The Council and staff participated in a legal training session presented by Mr. Ramis. Topics covered included City authority, power and responsibilities of Council members, ethics and conflicts of interest, political activities, public records law, open meetings law, liability and exposure, and decision making processes.

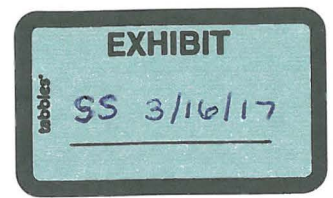
The group briefly discussed the City's process for tracking State legislation and drafting policy statements for Council to consider.

Mayor Gamba adjourned the Study Session at 8:03 p.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Scott S. Stauffer", is written over a horizontal line.

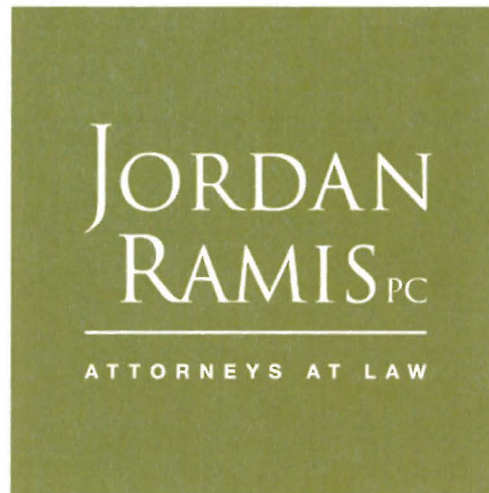
Scott S. Stauffer, City Recorder



Municipal Law 101

presented by

Tim Ramis



PO Box 230669
Portland, Oregon 97281-0669
Telephone: 503.598.7070
Facsimile: 503.598.7373
www.jordanramis.com

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MUNICIPAL LAW 101
by Tim Ramis
of Jordan Ramis PC

I. CITY AUTHORITY

- A. Cities have those powers which are expressed in, or necessarily implied from, the Constitution, Oregon Revised Statutes (ORS) and the Charter.
 - 1. Expressed powers are powers expressly authorized by law.
 - 2. Implied powers are acts necessary to carry out express powers.
 - 3. If a power is disputed, courts often resolve the dispute against the existence of the power where the power is not clearly expressed or implied.

- B. Municipal powers can be categorized in several ways:
 - 1. Intramural and Extramural powers: powers which can be exercised within or outside of City boundaries.
 - 2. Governmental and Proprietary powers: powers exercised in the City's governmental capacity (e.g. policy making) or powers exercised like a business (e.g. operating a marina or selling water).
 - 3. Legislative and Administrative powers: the power to adopt policy as opposed to the power to implement policy. For example, adopting a budget is legislative; spending the money is administrative.
 - 4. Quasi-judicial power: the power to adjudicate. Requires a decision based on the law and the evidence presented at a hearing. Requires due process. For example: zone change or appeal of a termination by an employee.

- C. Delegation of Power.
 - 1. Powers can be delegated vertically (e.g. down to a staff person, consultant, or committee) or horizontally (over to another government agency).
 - 2. Legislative power cannot be delegated; only administrative or quasi-judicial power can be delegated. Only the Council can exercise legislative power.
 - 3. Administrative power can be performed either by the Council or delegated to staff, consultants or committees. If funds permit, most administrative power should be delegated to trained or experienced staff or professionals.

This is particularly true with complicated administrative duties like hiring, firing and contracting.

4. Council members should use caution in exercising administrative power because of the potential of liability, workers compensation issues, staff morale issues and other considerations.
5. All delegations of power should be clear and in writing (e.g., a job description, employment contract, personnel manual, resolution, minutes, etc.).

D. Limitations on Powers.

1. Federal limitations: Federal Constitution and statutes impose limitations on city powers. For example, cities must afford the rights of due process, equal protection and non-discrimination in matters such as employment. Cities must also respect federal environmental and safety regulations.
2. State limitations: The state constitution and statutes impose the same limits as above, but also impose restrictions regarding meetings, records, land use, contracting, budgeting, borrowing money, and a myriad of other matters.
3. Judicial limitations: Cities are also limited in their exercise of power by judicial decisions which have interpreted and applied federal, state and local laws.

II. POWER AND RESPONSIBILITIES OF COUNCIL MEMBERS

- A. Council members have no individual powers separate from the powers of the Council, and have no authority to act individually without delegation of authority from the Council.
1. Council members only have the right and responsibility to participate in Council meetings and vote on City matters as part of the Council.
 2. Acting without authority can cause personal and City liability.
- B. Supervision of staff: Individual Council members have no individual authority to direct City staff, consultants, contractors, or administrative activities without delegation of such authority from the Council.
1. Delegate administration to staff and require compliance with the terms of such delegation.

2. The solution to poor administration is training, and if training fails, replacement of administrators. The solution is not micro-management by Council members.

III. ETHICS AND CONFLICTS OF INTEREST

A. Under Oregon's Conflict of Interest law (ORS Chapter 244), there are two types of conflicts of interest:

1. Potential Conflicts of Interest: Any action or any decision or recommendation by a public official, including staff, the effect of which **could** be to the private pecuniary benefit or avoidance of detriment of the person or the person's relative or business.
2. Actual Conflicts of Interest: Any action or any decision or recommendation by a public official, including staff, the effect of which **would** be to the private pecuniary benefit or avoidance of detriment of the person or the person's relative or business.
3. Exceptions: Where the pecuniary benefit or detriment arises out of one of the following:
 - a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
 - b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the State, or a similar class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or relative is associated, is a member or is engaged.
 - c) Membership on a private, nonprofit corporation board.
4. Pecuniary benefit: A pecuniary benefit means money or something of economic value.
5. Avoidance of detriment means relief from a financial obligation or other financial loss.
6. Relatives: The definition of relative was changed in 2007. Now, relative includes: spouse, domestic partner, children of the public official or of the public official's spouse, siblings, spouses of siblings, parents of the public official or of the public official's spouse. Relative also now includes: any individual for whom the public official has a legal support obligation; or any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment.

7. Disclosure requirements: All conflicts, whether actual or potential, must be disclosed on the record prior to consideration of the issue. The disclosure must be recorded in the minutes.
8. Participation by the official after disclosure of a conflict:
 - a) Potential conflicts: official may participate and vote, unless participation would violate the Code of Ethics prohibition of use of office for financial gain.
 - b) Actual conflicts: official may not participate or vote.
 - c) Quorum exception: where a quorum cannot be obtained without the official, the official may vote.
9. Penalties for nondisclosure: The Oregon Ethics Commission may levy fines for violation up to \$5,000.
10. Test for violations: In determining whether a violation of conflict laws has occurred, the Ethics Commission must find:
 - a) Official action or attempt by the official.
 - b) Intent to benefit financially.
 - c) Actual financial gain.

B. Code of Ethics. (ORS 244.040).

1. Under the Oregon Code of Ethics, the following are prohibited regardless of disclosure:
 - a) Use of or an attempt to use official position for financial gains or to avoid financial detriment.
 - b) Use of confidential information for personal gain.
 - c) Promises of future employment.
 - d) Receipt of gifts by public officials or relative over \$50 in a calendar year from anyone who has an interest in the business of the City. Offering such gifts is also unlawful. Exempts food, lodging and travel received by relative of public official from the \$50 gift limit when a public official participates in an event in his/her official capacity.
2. The Ethics Commission can levy fines for violation of the Code of Ethics up to \$5,000. Also, an official may be fined to recover any benefit.

IV. POLITICAL ACTIVITIES.

- A. **Political Activities:** Public employees are protected from being required or coerced to give their money, time, or other contribution to any political campaign. Public employees themselves are prohibited from using their official working hours for campaign activities. Public employees cannot campaign, raise funds, or gather signatures while on the job during working hours. Employees may, however, express personal political views while on the job during working hours. These rules apply regardless of whether the political campaign relates to an initiative or referendum measure, or to a campaign for any office. While on the job, a public employee cannot run for office, endorse candidates, circulate petitions, solicit or receive contributions, distribute political literature at work or in an official uniform, spend money for political purposes, organize fundraising events, act as a poll watcher, or drive voters to the polls. All of these activities could be accomplished lawfully while the employee is off duty.
- B. **Exemption:** Elected officials are exempt from the definition of public employee, ORS 260.432(4)(a), and therefore may campaign or promote political objectives while on the job.
- C. **Notices:** Public employees are required to post a notice available to employees that advises them of the rights and duties they have regarding campaigning. The text of the notice is set forth in ORS 260.432(3).
- D. **Campaigning:** Clearly the City can prevent campaign buttons and stickers from being affixed to any City equipment or facilities, but it is problematical whether it is a violation of the law for nonuniformed employees to wear campaign buttons while on the job. ORS 260.432(2) provides that public employees have the right to express personal political views.
- E. **Use of public funds to influence ballot measures:** Pursuant to ORS 294.100, public funds may not be used for campaigning. Public officials who authorize such expenditures are personally liable to taxpayers for their return. ORS 294.100(2). However, public funds may be used to inform the public regarding measures.
- F. **The federal Hatch Act, 7 USC §§361a-361i,** is applicable to any state or local government employees who are funded by federal resources. The Hatch Act is even more restrictive on employees' political rights than is the Oregon law.

V. PUBLIC RECORDS LAW

- D. **Purpose of the Law:** The purpose of the Oregon Public Records Law is to assure that all records of a public agency, with some exceptions, are available for inspection and copying by the public.
 - 1. Every person has a right to inspect any non-exempt public record of a public body in this state. The intent, identity, motivations, or need of the

person requesting the records are irrelevant. (Exception: under personal privacy exemption, motive may be relevant.)

2. Public records law applies to all public bodies, but may also apply to private bodies established by public agencies or other groups which are the functional equivalent of a public body.
3. What is a public record? A public record includes any writing or information relating to the conduct of the public's business in any form whatsoever, including handwriting, typewriting, printing, photographs, recordings, maps, files, computerized information, e-mail, and virtually any other method of recording information.
4. There is no duty to create a public record, only to disclose it.
5. Public records are not just documents prepared by the public body, but rather include any information owned, used, or in the possession of the public body.
6. Inspection of Public Records: The duty to disclose public records is on the custodian of those records. The custodian must supply reasonable opportunities for inspection of records in the office of the custodian during normal business hours to persons seeking access to such records. The custodian has a reasonable time to respond to a records request, and may take time to consult with legal counsel prior to disclosure. The custodian must provide reasonable facilities for a person to inspect and make notes or abstracts from the records.

The custodian may charge persons the cost of copying or locating public records, but rates for such charges should be determined by the Council in advance. Fees for copying or inspection may be waived if such reduction or waiver is in the public interest because making the record available primarily benefits the general public. There are statutory regulations governing such fee waivers or reductions.

A person has a right to a copy, and even a certified copy, upon request.

Originals of public records should never be released by the custodian. Such original records should always be protected and the custodian may impose reasonable requirements to insure such protection.

The law does not include the right to rummage through file cabinets, file folders, computers, or other information sources. Exempt material in otherwise public records may be deleted or blacked out.

7. Destruction of Public Records: It is a crime to unlawfully destroy public records. The State Archivist has the authority to adopt regulations

governing retention and destruction of public documents, and records should not be destroyed without first checking those regulations.

8. Exemption of Public Records from Disclosure: The following public records may be exempt from disclosure:
 - a) Public records pertaining to litigation;
 - b) Trade secrets;
 - c) Criminal investigation material;
 - d) Tests and examination material;
 - e) Business records required to be submitted;
 - f) Real estate appraisal information;
 - g) Employee representation cards;
 - h) Civil rights investigation material;
 - i) Unfair labor practice complaints;
 - j) Debt collection agency investigation records;
 - k) Personnel discipline actions;
 - l) Computer programs;
 - m) Unsafe workplace investigation materials;
 - n) Residence address of electors;
 - o) Internal advisory communications;
 - p) Personal privacy exemption
 - q) Public employee addresses and telephone numbers;
 - r) Confidential information submitted by citizens;
 - s) Documents exempted by federal law; and
 - t) Others
9. Voluntary Disclosure of Exempt Records: Some exempt records may nevertheless be disclosed at the discretion of the City.
10. Enforcement: A person denied the right to inspect or obtain a copy of a public record may petition the City Attorney for release of the record. The City may seek the advice of the City Attorney prior to denial of an inspection request. Upon receipt of a petition for review to the City Attorney, the City Attorney will ask the City for a copy of the record for review. The City should provide a copy to the City Attorney with an explanation justifying denial of disclosure. The City Attorney has seven days to deny or grant the petition, and failure of the City Attorney to decide within the seven-day period constitutes denial of disclosure. If the

City Attorney denies disclosure, the petitioner may seek judicial review. If the City Attorney orders disclosure, against the denial by the City, the City may give notice and file suit in Circuit Court for a judicial determination.

VI. OPEN MEETINGS LAW

- A. Purpose of the Law: The purpose of the Oregon Meetings Law is to assure that meetings of public bodies are open to the public, so that the public will know of the activities and actions of its public officials. See ORS 192.610 to 192.690.
- B. What is a Meeting? A meeting is a convening of a quorum of the governing body of a public body for the purpose of deciding or deliberating upon a public issue. Unless these criteria are met, the meeting is not a public meeting and the open meetings law does not apply.
1. If less than a quorum of a Council meets and discusses a public issue, it is not a public meeting.
 2. If a quorum of a Council meets for a reason other than deliberation or decision on a public issue (e.g. a party, a seminar, a reception, etc.) it is not a public meeting.
 3. If a quorum meets for a reason other than deliberation or decision on a public issue, but then engages in such discussion, the meeting becomes a public meeting and would be unlawful unless proper notice had been given.
- C. What is the subject of a public meeting? A statewide policy in Oregon is that meetings of a governing body, at which decisions about public business are made or discussed, should be open to the public. The presence of a substantive issue informs whether a discussion becomes subject to public meeting law.
1. Purely social meetings in which no official business is discussed typically aren't evaluated as public meetings. But discussing public business would convert the social meeting to a public meeting.
 2. A meeting such as a council retreat would typically become a public meeting (assuming a quorum of councilors was present) as such gatherings typically involve setting goals, planning long-term strategies, and the like.
- D. How does the meeting occur?
1. Certainly the law covers in-person meetings.
 2. Open meetings law also applies if councilors meet electronically. The attorney general has opined that "communications between and among a quorum of members of a governing body convening on electronically-

linked personal computers are subject to the Public Meetings Law if the communications constitute a decision or deliberation toward a decisions for which a quorum is required, or the gathering of information on which to deliberate.”

3. Serial deliberations: Continuing multiple conversations, of less than a quorum of members, at which public matters are discussed and vote tallying occurs, may comprise deliberations that invoke public meetings laws. Dumdi, et al. v. Lane County, et al, Lane County Circuit Court No. 16-10-02760 (Judge Michael Gillespie).
- E. Public Notice: The law requires that public notice be given of the time and place of meetings. This includes regular, special, and emergency meetings and workshops, and also includes meetings of subcommittees and advisory committees established by the governing body.
1. Notice must be reasonably calculated to give actual notice to interested persons, including news media that have requested notice.
 2. The same notice must be given if a meeting is to only include an executive session. Any notice of an executive session must also include the specific statutory provision authorizing the executive session. If a regular, special or emergency meeting is to be held which will include an executive session, the notice of executive session should be included in the notice along with the statutory authority.
 3. Notice must include a list of the principal subjects anticipated to be considered at the meeting. The agenda does not need to go into detail about subjects scheduled for discussion, but should be sufficiently descriptive so that interested persons will have an accurate picture of the anticipated agenda topics.
 4. The law does not require that every proposed item of business be described in the notice, but rather a reasonable effort to inform the public of the nature of the more important issues to be considered. Additional subjects may be considered at the meeting, even though not included in the notice.
 5. The goal of the notice requirement is to provide general notice to the public at large and actual notice to specifically interested persons.
 6. The Council should adopt a resolution designating particular media where notices will be placed.
- F. Types of Notices: Paid display advertising is not required, and the governing body does not have a duty to be absolutely certain that the notice is published.
- G. Special Meetings: Special meetings require at least 24 hours notice. Such notice

should include a press release or telephone call to the media, particularly media that has requested prior notice. Special meeting notice should also include telephone, letter or fax notice to other interested persons.

- H. Emergency Meetings: Emergency meetings may be held on less than 24 hours notice. An actual emergency must exist, and the minutes must describe the emergency, which justifies less than 24 hours notice. Notice of an emergency meeting must be “appropriate to the circumstances,” which should at least include a reasonable attempt to contact the media and other known interested persons.
 - 1. An actual emergency on one item does not permit consideration of other items at the emergency meeting.
 - 2. Work schedule conflicts or inconvenience of Council members is not a justification for an emergency meeting.

- I. Space and Location of Meetings: The governing body is responsible to assure that there is adequate room for public attendance. Unexpected overflow crowds need not be accommodated, but reasonable efforts should be made to allow unexpected crowds to attend.
 - 1. Meetings must be held within the geographic boundaries of the City.
 - 2. Public meetings may be held in private places, such as restaurants or residences, as long as adequate notice of the location is given so that interested persons may attend and accommodations can be made for public attendance.
 - 3. Meetings may not be held where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced.
 - 4. Regarding disabilities, the law requires that public meetings must be held in places accessible to individuals with mobility and other impairments, and that good faith efforts to provide needed interpreters for hearing-impaired persons be made. A hearing-impaired person requesting an interpreter must give the governing body at least 48 hours notice.

- J. Public Attendance and Participation: The Public Meetings Law requires that attendance be allowed, but not participation by the public. Public participation or input can be disallowed on all but the following three issues:
 - 1. Employment of a public officer.
 - 2. Determination of standards to be used in hiring a chief executive officer.
 - 3. Determination of standards to be used in evaluating the employment-related performance of a chief executive officer.

- K. Control of Meetings: The presiding officer has the inherent authority to keep order and impose reasonable restrictions necessary for the orderly and efficient conduct of a meeting. Unless the Council decides otherwise, the presiding officer may regulate or disallow public input, may limit public input to relevant points, and may establish time limits for such input. Persons who fail to comply with such reasonable regulations or who otherwise disturb the meeting may be asked to leave, and upon failure to do so, may be treated as a trespasser.
1. Members of the public cannot be prohibited from unobtrusively recording public meetings.
 2. Smoking is banned at public meetings at meetings places that are rented, leased or owned by the City.
- L. Voting: All official actions by governing bodies must be taken by public vote, and the results of such vote, including how each council member voted on each issue, must be recorded in the minutes. Secret ballots are prohibited. Failure to record a vote is not a ground to reverse the decision without a showing of intentional manipulation of the voting.
- M. Minutes and Record Keeping: Written minutes or audio or video recording is required for all meetings. Minutes need not be verbatim transcripts, nor are tape recordings required. Minutes, in whatever form, must give a true reflection of the matters discussed at the meeting and the views of the participants. Governing bodies must prepare minutes and have them available to the public within a reasonable time after the meeting. Minutes must be made available to the public even though not formally approved by the Council. Minutes must be retained for at least one year. Minutes of executive sessions are not public records. Written minutes must include:
1. Members present.
 2. Motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition.
 3. Results of all votes and the vote of each member by name.
 4. The substance of any discussion on any matter.
 5. Reference to any documents discussed at the meeting.
- N. Executive Sessions: Councils may meet in executive (closed) sessions only under certain, statutorily-authorized situations, and there are civil penalties for violation of executive session laws. The following are among the permissible purposes for executive session:
1. Employment of public officers, employees and agents.

2. Discipline of public officers and employees.
3. Performance evaluations of public officers and employees.
4. Labor negotiator consultations.
5. Labor negotiations.
6. Consideration of exempt public records.
7. Consultation with legal counsel regarding litigation.
8. Real property transactions.
9. Public investments.

No executive session may be held for the purpose of taking any final action or making any final decision. But preliminary decisions (e.g., whether to offer to purchase property, what to propose in collective bargaining) can be made in executive session).

Executive sessions may be called during a regular, special or emergency meeting for which proper notice has been given. Also, a meeting may be called which is only an executive session. The presiding officer must first announce the statutory authority for the executive session before going into session.

The media cannot be excluded from an executive session, except for sessions regarding labor negotiations. Media representatives in attendance at an executive session should be instructed not to report or disclose matters discussed at the session; if such instruction is not given, the media may disclose the discussions. The presiding officer may prohibit the media from recording an executive session.

Who is the Media? The media includes news-gathering representatives (i.e., reporters) of news media that ordinarily report activities of the public body, or ordinarily report matters of the nature under consideration by the public body.

Compliance of nondisclosure requirements by the media is based primarily on cooperation, not on the imposition of any penalties.

An executive session is a meeting that is closed to certain persons. Other persons (such as staff or consultants) who are allowed to attend by the Council may be included in such a session.

- O. Committee Meetings: The open meetings law applies to committees established by the Council which have either decision or recommendation authority delegated by the Council. The law does not apply to staff meetings.
- P. Enforcement: Enforcement of the public meetings law may be by litigation

brought by an interested person to force compliance or to determine the applicability of the law to particular meetings. A decision made in a meeting that violates the public meeting law may be ratified at a subsequent meeting that complies with the law, and a recommendation made by a committee in violation of the public meetings law can be ratified by the Council in accepting the recommendation at an open meeting. Normally, courts will not void a decision made at an improper public meeting without a finding of intentional conduct. In addition, the Oregon Government Standards and Practices Commission may consider complaints against public officials for violation of executive session laws, and may impose civil penalties of up to \$5,000.

VII. LIABILITY AND EXPOSURE

- A. Oregon Tort Claims Act (OTCA): ORS 30.260 to 30.300 governs City tort liability, provides for defense and indemnity of public officials, and limits damages.
1. Definition of a Tort: A wrong caused by a breach of duty owed resulting in injury or property damage to a person.
 2. Tort liability: Cities are liable for the torts of their officers, employees, volunteers, and agents acting under the scope of their employment or duties. Does not include contractual or criminal liability. Note: Acts by officers, employees, agents and volunteers outside the course and scope of employment can result in personal liability. This personal liability is not the responsibility of the public body. Included within this limitation are acts that are deemed malfeasance, willful and wanton neglect of duty.
 3. Time to file a claim against a public body: Within 180 days after the alleged injury or damage; one year after the alleged injury for wrongful death; or 270 days for claims made by minors, or an incompetent person. Claim can be submitted in a “formal” manner in writing and delivered to the public body’s principal administrator’s office. Actual notice of the claim can be “any communication” by which any individual expresses a clear intent to pursue a claim for damages.
 4. Statute of Limitations: The lawsuit must be filed within 2 years after the alleged loss or injury. That time period applies to all types of claims filed by any claimant (a minor included).
 5. Immunity: Cities and their officers, employees and agents are immune from tort liability for:
 - a. Injuries covered by workers compensation
 - b. Claims regarding assessment or collection of taxes

- c. Claims based on performance or failure to perform a discretionary function, even if the discretion is abused.
- 6. Indemnity: City officials, employees and agents must be indemnified by the City for any tort claim, groundless or otherwise, occurring in the performance of duty. Indemnity is not required for malfeasance or wanton or willful neglect of duty. Indemnity includes payment by the City or its insurer of any damages attributable to the act or omission of the official, employee or agent.
- 7. Defense: Unless investigation demonstrates that a claim arose out of the official's or employee's malfeasance or willful or wanton neglect, the City must provide counsel to defend the claim against the official or employee. Normally, the City's insurer provides such defense.
- 8. Officials/Employees Named as Defendants: Normally, a lawsuit naming an official or employee as defendant can be converted by motion into a claim against the City only.
- 9. Limitations on Damage Awards: Under the OTCA, damage awards against cities or their officers, employees or agents are limited to:
 - a. \$50,000 property damage per occurrence.
 - b. \$100,000 for all other claims per occurrence.
 - c. \$500,000 for all claims arising out of a single occurrence.
 - d. No punitive damages.
- B. What to do if sued: When the City or its officials or employees receive or are served with either a tort claim notice or a summons and complaint, do the following:
 - 1. Immediately provide the document to the City Attorney, insurance agent and insurer.
 - 2. Gather and preserve all related documentation.
 - 3. Do not discuss the matter publicly. Executive sessions may be called to discuss pending or threatened litigation with the City Attorney.
 - 4. Preserve attorney-client privilege.

VIII. DECISION MAKING PROCESSES

- A. Types of Decisions: Council members typically make legislative, administrative and quasi-judicial type decisions.

1. Legislative decisions constitute law or policy and are generally afforded deference by the courts.
 2. Administrative decisions generally carry out or implement previously adopted law or policy, and courts will be less lenient in reviewing administrative decisions to assure that they comply with the policy that they are to implement.
 3. Quasi-judicial decisions must comply with state and federal due process rights, and courts will review such decisions rather strictly to assure that due process has been complied with.
- B. Parliamentary Procedure: There is no statute governing the parliamentary procedure of City Councils. Therefore, Councils can determine what procedural rules to employ. Some cities merely adopt Robert's Rules of Order or other model rules of procedure. Other cities draft and adopt their own procedural rules, which can be tailored to their own needs. It is recommended that cities adopt their own rules, because Robert's Rules of Order is intended primarily for large legislative bodies, which need detailed rules to maintain order. Small councils, however, are generally better served by custom rules designed to meet the needs of the council.
- C. Council rules should contain the regular meeting date, time and place; the format of the agenda; the person responsible for preparing the agenda; the decorum and participation obligations of the public and Council members; penalties for disrupting a meeting, etc.
- D. Forms of Action: Cities normally take action by use of ordinances, resolutions and motions.
1. Ordinances: Ordinances are generally used to adopt law or policy. They are subject to statutory adoption processes found in the charter. That statutory adoption process must be followed strictly or the ordinance may be found invalid. Ordinances are subject to initiative and referendum laws.
 2. Resolutions: Resolutions are normally used to express policy or opinion of the Council or to approve an action such as a contract or major expenditure of funds. A resolution should not be used for adoption of law or policy that applies to the residents of the City. A resolution should be used for the adoption of internal regulations such as personnel rules.
 3. Motions: Motions are simply devices to place a matter before the Council for consideration. It is a procedural device rather than a written document. Motions should not be used to adopt or approve a matter that will have lasting effect beyond the meeting itself.

- E. Quorums: Councils must have a quorum in order to meet. A quorum is more than fifty percent (50%) of the members of the entire Council. A meeting of less than a quorum is not an official meeting, nor is it governed by open meetings laws. When a Council member declines to vote, the quorum is generally not affected.
- F. Voting: Normally, it takes a majority of the Council members present to adopt a motion, resolution or ordinance or take any other action.