



Virtual Citizen's Academy

Learn How Your Government Works for You

MUNICIPAL LAW 101:

**Organic Authority of Cities, Separation of Powers,
and the Role of the City Attorney**

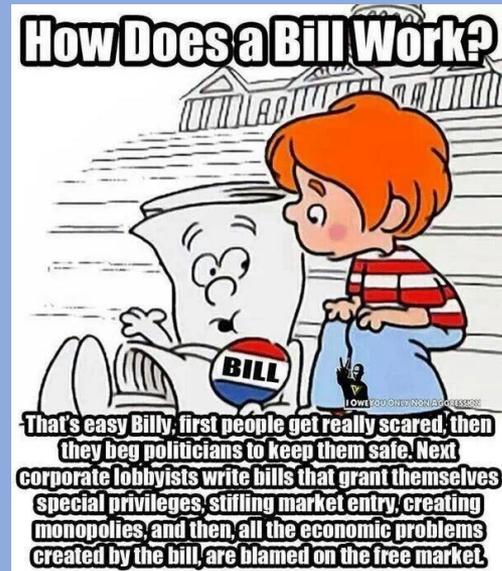
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Why Learn About Municipal Law Here?



- It's not taught in school.
- Educational programming is limited to federal legislative process:



Why Learn About Municipal Law?



But seriously . . .

Municipal law controls:

- What a city can – or can't – do.
- How it can be done.
- Who is authorized (or required) to do it.

When we find ourselves in a political disagreement, it is often helpful – if not necessary – to remember municipal law's "rules of the road."

What is a City? Why Incorporate?



A “city” or “town” is a “corporation for municipal purposes,” i.e., a “municipal corporation.” Wash. Const. Art. XI, §10.

Why incorporate? Incorporation provides local control.

Snoqualmie incorporated as a “Town” in 1903.

It was a long distance to travel to Seattle, in order to conduct government business with King County.

Local Control Over What?



Look at “ultra-local” subjects of first 200 ordinances!!

- Police and courts
- Sidewalks and streets
- Saloons
- Peddlers, hawkers and vendors
- Dog licenses
- Belling of horses and COWS

ORDINANCE NO. 115

An ordinance for the prevention of the wearing of bells by cattle or horses in the City of Snoqualmie and providing penalties for the violation thereof. Be it ordained by the City of Snoqualmie as follows:

Sec. 1--Hours in which bells may not be worn.

Sec. 1--It shall be unlawful for any person owning, controlling or in the possession of any cattle or horses to permit said cattle or horses to wear a bell or bells within the City of Snoqualmie between the hours of 9:00 o'clock P.M. and 6:00 o'clock A.M.

Sec. 2--Penalty for violation.

Sec. 2--Any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding five (5) dollars, or by imprisonment not exceeding three (3) days, or by both fine and imprisonment.

Sec. 3--Time of effect of ordinance.

Sec. 3--This ordinance shall take effect and be in force at and after the First day of July, 1909, after the same has passed the council, been approved by the Mayor, and posted according to law.

Passed the council June 15th, 1909.

Approved June 15th, 1909.

Otto Reinig, Mayor

Attest: Otto Reinig, Clerk Pro-tem.

Local Control Over What?



And billiards and pool!

- “Ya Got Trouble, right here in River City, with a capital ‘T’ that rhymes with ‘P’ and that stands for Pool!”



ORDINANCE NO. 160

An Ordinance prohibiting persons under eighteen years of age from entering or remaining in rooms in which billiard, pool, card or gaming tables are being conducted, and fixing a penalty.

Be it ordained by the Town Council of the Town of Snoqualmie, as follows:

Sec. 1-Age limit.

Sec. 1--That no person under the age of eighteen years shall be permitted to enter or remain in any room wherein are being conducted billiard, pool, card or gaming tables.

Sec. 2-Punishment.

Sec. 2--That any person under the age of eighteen years who enters or remains in such room mentioned in paragraph 1, or any person, owning, leasing or conducting a building or room in which billiard, pool, card or gaming tables are being used, who permits a violation of this ordinance, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$25.00.

Passed by the Town Council of the Town of Snoqualmie this 5th day of April, 1920.

Carl Klaus, Mayor

Attest: R. E. Nye, Clerk

The WA State Constitution on Cities



The Washington constitution says a lot about counties but very little about cities. But Article 11, Section 10 provides basic city operating authority:

- The Legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population, of cities and towns.
- Cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to and controlled by general laws.

WHAT THIS MEANS, IN CONCEPT:

Cities are “creatures of the Legislature.” They have no more or less power than the Legislature gives them.

Authority of Counties and Cities



- Within the unincorporated area of a county, county and state laws apply.
- Within city limits, *city* and state laws apply (and county laws do *not* apply), unless the Legislature says that some particular county law applies within cities.

Classification of Cities



- Washington Constitution provides for "classification in proportion to population."
- In 1890, Legislature provided for four classifications based on population at time of incorporation:
 - First class cities (over 15,000)
 - Second class cities
 - Third class cities (over 1,500)
 - Towns (under 1,500).
- In 1994, Legislature eliminated 3rd Class cities and adjusted populations:
 - First class city" (over 10,000 and having a charter (or city "constitution").
 - Second class city (population over 1,500).
 - Town" (population under 1,500). Classifications now in Title 35 of the Revised Code of Washington (RCW).

Optional Municipal Code



- 1967 brings a big change: the Legislature adopts "Optional Municipal Code," codified in Title 35A RCW.
- Optional Municipal Code gives cities choosing to operate under it "all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law."
- Cities no longer limited to powers given to them by Legislature; instead, they have all powers available under the state constitution, unless taken away by the Legislature.
- Cities with a charter on adoption of OMC, e.g., Seattle and Tacoma, retained their charters and became a "charter code city."
- A city or town without a charter on adoption of OMC became a "non-charter code city."
- Snoqualmie became a "non-charter code city" in 1976. SMC 1.08.010.

Forms of Code Cities



- Mayor – Council (“strong Mayor”) form – Mayor is separately elected and not a member of the Council. Mayor and Council have separately defined powers and duties, creating a “Separation of Powers” (stay tuned).
- Council – Manager – Mayor is a member of Council and chosen by Council. Mayor chairs the meeting and performs ceremonial duties. City operations are administered by professional City Manager hired by the Council.
- Snoqualmie utilizes the “Mayor – Council” form of code city. How do we know this? *See SMC Section 1.08.01.*
- Most Washington cities – approximately 80% - are code cities.
- Slight majority utilizes “Mayor – Council” form of government.

“Mayor-Council vs. Council – Manager”

Key Differences



Council-Manager

- Mayor has no admin duties, acts as head of the city for ceremonial purposes and when appointed by Gov. under military law.
- Mayor participates fully as a member of Council and votes on all matters.
- Council hires a City Manager as chief admin officer. CM reports to Council.
- City Manager has hire/fire authority and general supervision over the admin affairs of the city.
- Statute (RCW 35A.13.120) expressly prohibits City Council from interfering with the CM's administration of City business; Council may remove City Manager by a specified process.

Mayor-Council

- Mayor is CEO and admin officer, with hire/fire authority, exercises general supervision of city government and all city interests. RCW 35A.12.100
- Mayor is not part of Council. May vote only on a tie Council vote, exempt on passage of an ordinance; grant, or revocation of franchise or license; or resolution for the payment of money.
- Mayor hires City Administrator if authorized by Council, but CA reports to the Mayor, not Council.
- Mayor may veto ordinances passed by Council; veto may be overridden by the vote of majority of all members of Council plus one (*i.e.*, 5 votes).

How Does a City Govern? When “There Oughta Be a Law.”



- Ordinances – general and permanent laws and regulations -- may be adopted only majority vote of City Council.
- Ordinances are in writing, and numbered and filed by date and order of adoption.
- Ordinances may (but are not required to) be “codified,” that is, collected in one place and including provisions of ordinances as they are adopted, amended, or repealed.
- Snoqualmie ordinances are codified in the Snoqualmie Municipal Code is organized by “Title” (major subject), “chapter” (more specific subjects within major subject) and “section” (specific provisions or regulations).
- Text of ordinance, or summary of its content must be published at least once in the city's official newspaper.

How Does a City Govern? Ordinances



- Per statute (RCW 35A.12.130), an ordinance may only contain one subject, which must be expressed in its title. This is the “subject in title” rule, parallel to a similar state constitutional provision.
- Ordinance must be presented to the Mayor for signature. If Mayor vetoes, ordinance is returned to Council with Mayor’s written objections. Council then reconsiders ordinance and may override veto with a majority plus one of whole Council membership (*i.e.*, 5 votes).
- If the mayor fails for ten days to either sign or veto, ordinance becomes valid without mayoral approval.
- Ordinance is required to be authenticated by City Clerk, and recorded in indexed book of all ordinances and resolutions.

How Does a City Govern? Ordinances



- Ordinance takes effect five days after passage and publication in City's official newspaper.
- Exceptions:
 - Emergency ordinances may be effective immediately, if passed by a majority plus one of the whole membership of the council, but may not levy taxes, grant, renew, or extend a franchise, or authorize the borrowing of money.
 - Effective date may be as otherwise set forth in state statute

How Does a City Govern?

Resolutions and Motions



- Resolutions are a written record of Council action on more temporal issues; motions are oral Council action. Neither are “general and permanent.”
- Resolutions and motions may be adopted by majority vote of the City Council.
- The Mayor may *not veto* a resolution or motion, but *may break a tie* on a vote on a resolution or motion (except resolution for payment of money).
- Resolutions are in writing, numbered and filed with City Clerk, but *not* codified. Motions are reflected only in Council minutes.
- Some actions may be taken by either an ordinance, or a resolution or motion; there is not always a bright line.
- Resolutions and motions may be effective immediately.

Initiative and Referendum – or “I&R Cities?”



- The Washington Constitution (Art. II, Sec. 1) provides for initiative and referendum powers concerning state legislation.
- “Initiative” refers to the power of a certain percentage of legal voters to *propose* bills or laws.
- “Referendum” refers to the power of a percentage of legal voters to require a public vote to approve or reject an already-adopted law.
- The Washington Constitution does *not* provide I&R powers for *local* government.
- But, statutes adopted by Legislature (RCW 35A.11.080 - .100) provide a process for a city to choose to exercise I&R powers.
- Snoqualmie has *not* adopted I&R powers.

How Does a City Govern? Initiative and Referendum



- Statutes provide two ways for a city to adopt I&R:
 - Council initiated: Council may adopt a resolution of intent to adopt I&R powers; if no referendum petition signed by 10% of registered voters voting in City's last general municipal election is filed within 90 days of petition submission, Council may proceed to adopt I&R ordinance; and
 - Voter initiated: Voters may submit a petition signed by 50% of registered voters voting in City's last general municipal election; if no referendum petition signed by 10% of registered voters is filed within 90 days of petition submission, Council must adopt an I&R ordinance.
- In WA, use of I&R at local level is subject to multiple limitations.
- I&R limitations are imposed both by statute, *and* by appellate court decisions.

Limitations on Local Exercise of Initiative and Referendum



- Only *ordinances* may be adopted by initiative or rejected by referendum; resolutions and motions may not be.
- Per RCW 35A.11.080, I&R not available for ordinances:
 - initiated by petition;
 - necessary for immediate preservation of public peace, health, and safety or for the support of city government and its existing public institutions (requires statement of urgency and unanimous vote);
 - providing for local improvement districts;
 - appropriating money;
 - providing for or approving collective bargaining;
 - providing for the compensation of or working conditions of city employees; and
 - authorizing or repealing the levy of taxes.

Other Ordinances Not Subject to Initiative and Referendum



- Washington appellate decisions impose additional limitations on use of I&R.
- Ordinances exercising statutory authority granted specifically to a local legislative body (city council), rather than to city as a corporate entity, are not subject to I&R.
- Examples: revenue bond ordinances, budget ordinances allowing funding for "safe injection sites"; ordinances allowing use of automated traffic safety cameras.

Other Ordinances Not Subject to Initiative and Referendum



- Only ordinances that are “legislative in character” are subject to I&R. “Administrative” ordinances are not subject to I&R.
- An action is “legislative” if it:
 - Relates to a subject of a permanent and general character; and
 - prescribes a new policy or plan.
- An action is “administrative” if it:
 - Relates to a subject of temporary or special character (vs. permanent and general); *or*
 - Pursues or revises a plan already adopted by the legislative body or superior body.
- Spokane initiative proposing voter approval requirement for zoning changes for large industrial or commercial developments, and enforcing Spokane River’s water rights, was “administrative,” and thus invalid.
- Tacoma initiative proposing voter approval requirement high-quantity water applications was “administrative” and invalid.

Other Ordinances Not Subject to Initiative and Referendum



- As an offshoot of both the “administrative vs. legislative” distinction, and the “legislative body vs. corporate entity” distinction, ordinances adopted pursuant to the Washington Growth Management Act are not subject to I&R. This includes:
 - Ordinances adopting or amending a GMA comprehensive plan;
 - Ordinances adopting development (aka “zoning”) regulations;
 - Ordinances regulating environmentally critical areas;
 - Ordinances adopting countywide planning policies.
- Bottom line: use of I&R is *much more restricted* in Washington than other states, particularly California, which does allow use of I&R for zoning and other land use matters. WA courts do not.

Separation of Powers



Separation of powers is a judicial doctrine, no constitutional or statutory prohibition, but same principles apply.

- City Council is legislative branch with defined powers (see detailed slide).
- Mayor is executive branch with separately defined powers (see detailed slide).
- What these statutory provisions require in any given situation is not always clear. The separation of powers doctrine holds that each branch of government lacks authority to take actions that fundamentally intrude on powers granted to another branch.
- Statutory checks/balances – mayoral veto, council veto override – add uncertainty to the mix.
- Very little guidance in decided cases – not a single case holds that some action did or did not violate the specific allocation of powers under title 35A RCW, *vis a vis* the other branch.
- The Anderson Principle: Every Mayor and City Council invent their own version of the separation of powers doctrine.

Separation of Powers: City Council

Chapter 35A.11 RCW



All code city legislative bodies (city councils) have similar powers, regardless of Mayor or City Manager form:

- To contract and be contracted with; purchase, lease, receive, or otherwise acquire real and personal property of every kind, and use, enjoy, hold, lease, control, convey or otherwise dispose of it for the common benefit.
- To organize and regulate its internal affairs.
- To define functions, powers and duties of officers and employees; fix their compensation and working conditions; and establish and maintain civil service, or merit systems, retirement and pension systems.
- To adopt ordinances of all kinds relating to and regulating its local or municipal affairs, so long as not prohibited by federal law, state Constitution or state statute.

Separation of Powers: Mayor, RCW 35A.12.100



The Mayor shall :

- be the City's chief executive and administrative officer;
- be in charge of all departments and employees, with authority to designate assistants and department heads;
- be authorized to appoint and remove a chief administrative officer, if provided by ordinance;
- see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city;
- have general supervision of the administration of city government and all city interests;
- see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed.

Separation of Powers: Mayor, RCW 35A.12.100



The Mayor may:

- cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council; and
- appoint and remove a chief or assistant administrative officer, if provided by ordinance.

The Mayor shall:

- preside over all meetings of the city council;
- report to the council concerning the affairs of the city and its financial and other needs; and
- make recommendations for council consideration and action, including a proposed budget.

A Solution to Separation of Powers Issues?



Comity:

- A state or atmosphere of mutual respect or harmony or mutual civility and respect (apply literally).
- An informal principle that that nations and states will extend certain courtesies to other nation or states, recognizing the validity and effect of their acts (apply by analogy).
- Comity ≠ “Comedy” – it’s what’s necessary to avoid it.

Separation of Powers



Separation of powers disputes in real life:

- **Police funding dispute in Seattle**: Mayor Durkan vetoed a series of Seattle City Council budget revisions that would have resulted in the layoff of 100 police officers, slashed salaries for police command staff and directed \$14 million in new funding to community organizations.
- An appeal to comity? “The people of Seattle expect us to work together,” Durkan said during a Friday afternoon news conference, adding that she had spoken to Council President M. Lorena González on how to “make changes in a more thoughtful, deliberate way.”
- How’s it Working? “Tell Seattle City Council to Stand Strong, Override Durkan’s Police Budget Veto.” Seattle Indivisible website, September 8, 2020.

Separation of Powers



Closer to home, comity in action:

- **Funding for emergencies during pandemic:** Snoqualmie Mayor Larson issued emergency proclamation at start of COVID-19 pandemic. Council followed with ordinance adding expenditure authority to Mayor's emergency powers, and authorizing Mayor to make general fund expenditures backfilled by transfer of funds out of Fund 002 (Contingency Reserve Fund).
- **Approval of contracts:** To facilitate more efficient provision of services and construction of public works projects, the Council adopted code revisions granting the Mayor and City Administrator power to execute contracts within specified dollar limits, in order provide efficiency in city operation. To allow Council to monitor new system, ordinance requires regular reporting of contracts executed under amended code provisions.

Staff Roles



Management and Professional Staff also have conceptually distinct roles.

- The City Administrator exercises the Mayor's authority, under the direction and supervision of only the Mayor.
- All appointments of city officers and employees shall be made on the basis of ability and training or experience, from among persons having such qualifications as may be prescribed by ordinance. Council confirmation of appointments is required only when the Council prescribes by ordinance. In Snoqualmie, confirmation is required for the City Administrator and all department heads, including any future department head positions that may be created. See SMC Section 2.64.010.

Staff Roles



- The Department Directors have overall supervision of day to day operation of their departments, manage division supervisors, prepare recommended budgets and facilities improvements for their departments. All answer to City Administrator and ultimately to Mayor.
- Only three positions are mandated by state law – City Attorney, City Clerk and City Treasurer. The last two may be filled by the same person, who serves as the “Clerk-Treasurer.” Arguably, a fourth position – police chief – is also mandated.

Role of the City Attorney



- Role of the City Attorney is different than other staff. Ethical rules governing attorneys mandate that the City Attorney's duty runs to the "Client," which is the municipal corporation - not the Council, individual Council members, the Mayor, or the City Administrator. *See* RPC 1.13 (a) A lawyer employed or retained by an organization *represents the organization* acting through its duly authorized constituents.").
- City Attorney fulfills that role by impartially advising individual branches of government concerning their respective actions as those actions may be authorized by state law, with respect for any comity established between the branches.
- Providing legal advice requires knowledge of the state Constitution, state statutes, federal laws and regulations, applicable case law, decisions of administrative boards, and familiarity with state and federal courts and decisionmakers.



Role of the City Attorney cont'd.

- Can the City Council hire its own attorney using City funds?
Short answer: absent special circumstances, no.
- "As a general rule, when a municipal corporation has legal counsel charged with a duty of conducting the legal business of a government agency, contracts with other attorneys for additional or extra legal services are void." *State v. Volkmer*, 73 Wn.App. 89 (Div. II 1994); 1997 AGO No. 7 ("The city council's authority to enter a contract for legal services depends on whether the city charter or city ordinances provide for an appointed officer position for the city's attorney.")
- Special circumstances include instances in which the mayor and/or town council is incapacitated, or the city attorney refuses to act, is incapable of acting or is disqualified from acting.

Role of the City Attorney cont'd.



- Examples:
 - Where court found that city attorney always represents mayor in any conflict between the branches, city council was authorized to hire outside counsel. *Todd v. Tukwila*, 17 Wn.App. 401 (Div. I 1977).
 - Where council overrode veto and adopted ordinance authorizing illegal bonds and sought writ of mandamus to require mayor to execute bonds, and where city's attorneys declined to provide mayor legal assistance, mayor was justified in retaining private counsel. *Wiley v. Seattle*, 7 Wash. 576 (1894).
- If Council hires its own outside counsel in the belief that a special circumstance exists, it must prevail on the underlying substantive legal issue in order to have the legal fees paid with public funds. *Volkmer, Tukwila v. Todd*.

Is this Any Way to Run a Railroad?



From Kim Wilde, the first Snoqualmie City Administrator, at the City's 1998 Council retreat, analogizing local government to operating a railroad. It's still good advice!

- When catching a moving train, get up to speed in a hurry.
- Turn a moving train very gradually.
- Be sure the train stays on the track.
- Everybody on the train ends up at the same station.
- Don't fire the engineer between stations.
- There is no room in the engine room for the board of directors – or the president.
- The tracks don't end at the station.

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