

Oregon Municipal Handbook

CHAPTER 3: MUNICIPAL OFFICIALS

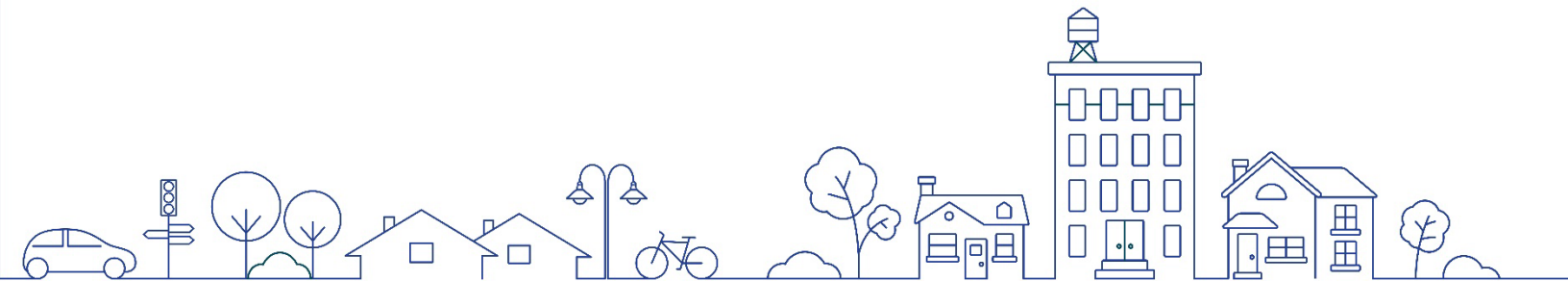


Table of Contents

Introduction.....	1
Roles of Elected Council/Commission Officials	1
Policy Role	1
Administrative Role	2
Quasi-Judicial Power.....	3
Communications between Council/Commission and Staff.....	4
Liaison Role	5
Role of Mayors	5
Policy Role	6
Administrative Role	6
Liaison Role	6
Recalls.....	6
Process and Procedure.....	7
Statement of Justification	7
Common Appointed Officials.....	8
City Manager.....	8
City Attorney.....	9
City Recorder	9
Public Safety Officials	10

Chapter 3: Municipal Officials

Introduction

Municipal officials have many responsibilities. All officials must have a thorough knowledge of the community, its people, and its problems, as well as an understanding of their individual roles and the issues they will confront. This chapter of the Handbook will provide an overview of the common roles of municipal officials. This chapter is not intended to be a substitute for legal advice. LOC members with additional questions about their role as a municipal official are encouraged to contact their city attorney.

Roles of Elected Council/Commission Officials

Oregon cities have councils of fewer than 10 members, although there is variation in council size – from five to nine members. Most councilor terms are four years, but a few cities have two-year terms. A few city charters provide a limit for the number of terms that one individual may serve as a councilor.

City councils and commissions usually have major responsibilities in both their policy and administrative roles. Understanding these responsibilities will increase the ability of the council, councilors, and staff to get their job done. Two primary functions of city councils are policy and administration. Councils also have limited quasi-judicial powers. Policy is the process of deciding what is to be done, while administration is the process of implementing the policy. Quasi-judicial powers allow the council to act like a court of law.

Policy Role

The city council clearly has the dominant voice in policy matters, but this responsibility is shared with the city administrator, other city employees, and private citizens. The unique role of the council in the policy-making process is to serve as the decision maker within city government in resolving issues of policy. Although the administrator and city employees may be involved in policy formulation, only the council may pass an ordinance or adopt a comprehensive plan. In addition, the budget is a major vehicle for making city policy decisions – and only the council may adopt the budget.

For the council to be successful in bringing issues forward for discussion and in setting policy, each councilor must have a clear understanding of the policy process and the stages at which council intervention is most effective. The policy process may be viewed as a series of steps or phases:

- Identification of problems and needs;

- Establishment of community goals;
- Determination of objectives;
- Development and analysis of alternative means for achieving objectives;
- Establishment of priorities;
- Development of programs;
- Implementation of programs;
- Monitoring and evaluation of programs; and
- Feedback.

These steps usually do not occur as separate actions or decisions, but they may occur more or less in sequence, as in the adoption and periodic review of the comprehensive plan, a capital improvement plan, or an annual budget.

Councilors may be involved in each of these steps, but their most important contributions are likely to be in identifying needs, establishing goals and objectives, choosing among alternatives, setting priorities, and providing feedback.

Administrative Role

Once policies are established, they must be implemented through administration. Administrative actions are generally those types of decisions that are internal and relate to city operations. These decisions normally implement requirements of city ordinances and state statutes and deal with matters that are special or temporary.

There are several ways in which city councils can, and do, influence city administration. The most common actions taken by a council that affect administration are the passage of resolutions and motions, special investigations, approval of appointments, public hearings, the budget process, legislative audits, review of administrative rules, and agency reporting requirements. Resolutions are generally written and deal with matters of temporary importance. A motion is similar to a resolution, except that motions are generally not presented to the council in writing. It should be noted that motions are not limited to administrative decisions and may often be a mechanism by which a council will adopt an ordinance or other decision. Through these actions, the council exercises significant control over administration, even if the day-to-day administration of the city business is conducted separately from the council.

The extent in which the city council is involved in administration depends on the size of the city and its form of government. The council is collectively responsible for the oversight of administration in most cities¹, but the roles that individual city councilors play in city administration vary considerably, depending on the size of the city and its form of government. Some small cities have no full-time employees and as a result, councilors for those cities may be deeply involved in administration. Often small cities rely upon part-time employees or contracted professional services to assist with various issues and volunteers. Somewhat larger cities have full-time employees. Even so, councilors may still perform administrative functions or oversee projects, usually through council committees. As cities grow and the complexity of their operations increase, councils often employ a city manager or a city administrator. Councils in these cities seldom retain any significant involvement in day-to-day supervision of city employees and departments, although the extent to which they may seek to exercise supervision may vary depending on the size of the city the abilities of the councilors, and language in the city’s charter.

Quasi-Judicial Power

In some instances, the council will sit much like a court of law to hear a matter and make a decision that affects a person’s rights. These “quasi-judicial” decisions always involve a specific set of rules or policies that will be applied to a specific situation in which the council must make a decision. Typical quasi-judicial decisions include land use applications and appeals of licensing decisions. A person affected by a quasi-judicial decision has certain rights such as the right to be informed of the decision, a right to address the decision maker at a hearing before the decision is made, and a right to an impartial decision maker.

¹ The city of Beaverton’s form of government has a strong mayor. In a strong mayor form of government, it is the mayor who handles the administrative functions of the city, not the council.

Three Forms of Government

A city’s form of government defines its internal organizational structure, relations along its electorate, its legislative body, and its executive officials, and the respective roles of each in the formal decision-making process. The form of government is often said to be less important to the quality of a city’s performance than the personal qualities and abilities of its city officials and employees. Although there are three basic forms of city government, rarely does the organization of a city adhere completely to one form.

Council-Manager Form

Most cities with populations above 2,500 have a council-manager form of government. The council retains the decision-making authority of the city, but the charter creates an office of city manager (or administrator). The appointed city manager takes charge of the daily supervision of the city’s operations and serves at the pleasure of the council. The council sets policy and the manager carries it out.

This type of form works best when the council exercises its responsibility for policy leadership and respects the manager’s leadership role and responsibility for administration. Council-manager charters commonly include specific provisions that prohibit individual councilors from giving orders to city employees or from attempting to influence or coerce the manager with respect to appointments, purchasing, or other matters.

Communications between Council/Commission and Staff

Regardless of the size of the city or its form of government, communication between the council and city staff must be made with the recognition of two facts:

- The city employee is responsible to his or her immediate supervisor and cannot take orders from an individual councilor; and
- Each councilor has authority in administrative matters only to the extent delegated by the council as a whole. This delegation is often formally contained in an ordinance or charter provision.

Misunderstandings may arise when a councilor intends to only ask for information. The employee receiving a direct request from a councilor can easily jump to erroneous conclusions or misinterpret the councilor's intent. The best way for councilors to get information about administrative matters is to make the request during a regular council meeting or to a specific manager or administrator.

Decision Making

City council action is taken by vote and that action is typically referred to as a decision. A decision may be made with respect to formal documents such as ordinances, resolutions, orders, and contracts. A decision may also be made to direct city staff to take certain action or made on a question of motion before the council.

Councils adopt laws in the form of ordinances. Ideally, councils have adopted rules that help implement the ordinance process and provide for an orderly discussion. For example, charters will often require, subject to some exceptions, that an ordinance be "read" by the council at two meetings. By comparison, the council rules will state when those meetings are to occur, whether the council will get copies of the ordinance in advance, and whether the public may speak on the proposed ordinance.

Three Forms of Government *continued*

Mayor-Council Form

The mayor-council form can either have a "weak mayor" or "strong mayor" form of government. Under a weak mayor, the elected council is the basic policy making body in the city. The mayor has no formal authority outside the council, and unless, specified by charter, has no veto power over council decisions. Under a strong mayor, the mayor essentially serves as the head administrative manager of the city.

While there is no appointed city manager, the mayor may appoint an assistant to oversee the general supervision and control over appointed city officers and employees. Rather than reporting directly to the city council, as may be the case under the council-manager form of government, the mayor's assistant reports directly to the mayor.

Commission Form

Only the City of Portland has a true commission form of government. Voters directly elect the city's major department heads who collectively function as a city council.

The city charter specifies the quorum and voting requirements for a decision. A quorum is the minimum number of councilors required to be in attendance to transact business and is usually the majority of the council.² City charters may impose different voting requirements for certain actions. For example, a city charter may require approval of two-thirds of the members for passage of ordinances with emergency clauses, or unanimous approval for a combined first and second reading of a non-emergency ordinance.

The council's authority to adopt law cannot be delegated to anyone else within city government. However, under the Oregon Constitution, the people have reserved unto themselves the power of initiative and referendum. An initiative is when the voters gather enough signatures to put a law on the ballot for a vote. A referendum is when the voters gather enough signatures to put a law that the council has already adopted on the ballot. A referendum is different from a referral. A referral is when the council elects to send a matter to the ballot for a vote, rather than exercising its authority to adopt the law.

Liaison Role

Councilors serve as liaisons on local, state, or even federal boards. They may also serve on commissions or committees, such as the chamber of commerce, economic development groups, selected interest groups (such as the League of Oregon cities or National League of Cities), and civic groups. The councilor will not have the authority to commit the city to any course of action, but can make recommendations to the council regarding proposed actions. A councilor may also serve on an intergovernmental body, such as a council of governments, joint city-county board or commission, or any other entity created by intergovernmental agreement. The type of body may have its own independent policy-making and administrative authority. Appointment to these kinds of bodies is usually made by the mayor with council approval, but individual councilor appointees may receive more direction from the council to guide their actions on behalf of the city.

Role of Mayors

The mayor is generally recognized as the civic leader in the eyes of the community. The mayor's authority beyond that will vary from city to city depending on the city's charter and its chosen form of government. In most cities, the mayor presides over council meetings and participates in discussions. Unlike city councilors who are elected, the mayor may be either elected by the people or appointed by the council from among its own members. Many cities have two-year terms for the mayor, even though the councilors serve for four years.

² The Oregon Supreme Court has recently held: 1) A quorum applies to any organized body, even if the body hasn't established its own quorum; and 2) the Oregon Public Meetings Laws applies to "some decision-making of a governing body that does not occur in a 'meeting'." *Tri-County Metropolitan Transportation District of Oregon v. Amalgamated Transit Union Local 757*, 362 Or 484, 412 P3d 162 (2018).

Policy Role

In most cities, the elected council is the legislative and basic policy-making body of the city. The mayor is the ceremonial head of the city and is often the presiding officer of the council. The mayor calls city council meetings to order; announces the order of business as provided in the agenda; states motions; puts them to a vote; announces the result of the vote; prevents irrelevant or frivolous debate or discussion; maintains order and decorum; and otherwise enforces the council's rules and appropriate parliamentary procedures. In addition to the general policy role of a council member, in most cities, the mayor also signs all ordinances and their records of proceedings approved by the council, and in small cities, they may sign all orders to disburse funds.

Administrative Role

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. Within cities which adopt a strong mayor form of government, the mayor is the chief executive of the city. In addition to being the ceremonial head of the city and presiding at council meetings, the mayor has the power to appoint all or most administrative personnel of the city and has the general responsibility for proper administration of city affairs.

Liaison Role

As with other members of the city council, the mayor may serve as a liaison on local, state, and federal boards. Similar to other city councilor liaison roles, the mayor will not have authority to commit the city to any course of action, but may make recommendations to the rest of the council regarding proposed actions.

Recalls

The Oregon Constitution provides the public with the power to recall elected officials before the expiration of their terms.³ However, an elected city official may not be recalled during the first 6 months of their current term.

³ Or Const, Art II, §18.

Process and Procedure

The recall amendment states that every elected public officer is subject to recall by popular vote. This process is initiated by the filing of a recall petition and completed by an election. A petition to recall a public officer must contain signatures equaling at least 15% of the votes cast for governor in the officer's district during the last election. The petition must contain the reasons for the recall and must be filed with the official who accepts nominations for the position, usually the city recorder. The requisite forms needed to file a petition are published online on the Oregon Secretary of State's website.

File Prospective Petition

First, the prospective petitioner must file a prospective recall petition form, which must be completed and signed by the chief petitioner stating in 200 words or less the reasons for recall and providing their residence address. This form must be submitted to the city's filing officer. Prior to collecting signatures in favor of recall, the chief petitioner must establish a campaign account, and file a statement of organization designating a treasurer with the secretary of state's elections division. After receiving the prospective recall petition, the elections official reviews the forms for required information; date and time stamps the prospective petitioner if the form is complete; and assigns the petition an identification number. The local elections official will either provide the chief petitioner with written notification of required corrections; or provide written approval to circulate the petition that includes the number of required signatures and the last day to submit signatures for verification.

Gather Signatures

After the prospective petition form is approved, the chief petitioner may then gather signatures. Once the required number of signatures are gathered, the chief petitioner or an authorized agent may submit the signature sheet along with the petition submission form to the local elections official for verification. Only signature sheets from the chief petitioner or an authorized agent will be accepted. The local elections official will either reject the submitted petition sheets that do not comply with the legal requirements or coordinate with the county elections official to verify the signatures. The local elections official will provide in writing to both the chief petitioner and the elected official subject to recall the results of the signature verification; the final number of signatures determined to be valid and either the deadline to submit additional signatures or the deadline for the elected official to resign or submit a statement of justification. After a recall petition is successfully filed, the elected official has 5 days in which to resign.

Statement of Justification

If the elected official subject to recall does not choose to resign, he or she may file a statement of justification form explaining, in 200 words or less, the official's course in office. The statement of justification must contain true factual information and is due within 5 days after the filing

officer determines the recall petition contains sufficient signatures. The completed statement of justification is printed on the election ballot. A recall election will be scheduled even if the public official fails to submit a statement of justification within the required deadline.

Recall Election

If the public official does not resign, a special recall election is ordered to be held within 35 days. The local elections official coordinates with the county elections official to schedule and conduct the election. If the recall election is successful, the position becomes vacant. Vacancies resulting from a recall are treated the same as vacancies caused by death or resignation. Typically, city charter provisions call for such vacancies to be filled by city council appointment. If the recall election is unsuccessful, the public official remains in office.

A public official may be subjected to only one recall election during a term in office, unless the sponsors of a later recall effort are willing to pay the entire cost of the previous, unsuccessful recall election.

Common Appointed Officials

*City Manager*⁴

Most Oregon cities have a council-manager form of government. In this form, the city council appoints a qualified professional person as city manager or administrator to take charge of the daily supervision of city affairs. The manager or administrator serves at the pleasure of the council. In theory, the city council sets policy and the city manager carries it out. However, managers may take part in the policy-making process when they make recommendations to the council, and many city charters require them to do so. Managers also set policy when they make decision on specific matters that are not clearly covered by existing ordinances or regulations.

The position of city manager is typically set out in the city charter and includes specific provisions that prohibit individual councilors from giving orders to city employees or from attempting to influence or coerce the manager with respect to appoints, purchasing, or other matters. However, charters do not prohibit the council from discussing administrative matters with the manager in open meetings.

Many small cities have established a position of the city administrator instead of a city manager position. This is typically accomplished by ordinance rather than by charter, and occasionally a city sets up such a position merely by budgeting for it. The duties and responsibilities of city

⁴ For additional information on recruiting a city administrator, please see the League's *Guide to Recruiting a City Administrator* (April 2019), available at: <https://www.orcities.org/application/files/7015/7904/8177/Guide-RecruitingCityAdministrator.pdf>. The guidebook includes recruitment techniques, information on interim managements, and steps in the selection process.

administrators vary. In some cities, they are indistinguishable from those of a city manager. In others, the administrator may share administrative duties with the council or its committees, including hiring and firing department heads.

*City Attorney*⁵

A city may appoint an attorney to oversee the city's legal affairs. The type of employment arrangement between a city and its attorney can vary. A city may appoint in-house legal counsel in which the attorney serves as a city employee and the city is not billed separately for the attorney's services. In other instances, a city may employ the use of contract counsel in which the city retains the services of an attorney or law firm and the attorney bills the city for legal services provided. A city may also employ a contract attorney on retainer in which a flat fee is paid for basic defined services. All services provided in addition to the agreed upon basics will typically be billed to the city at an hourly rate. There may be instances where due to the type of litigation, or subject matter of a legal matter, the city may wish to employ outside counsel in addition to the regularly appointed attorney to handle complex matters.

A city attorney, regardless of the employment arrangement, may be called upon to attend all city council meetings, receive and respond to requests for advice from city council and staff, draft and review ordinances and resolutions, prepare and review contracts, and represent the city in litigation. In cities with municipal courts, the city attorney may serve as the municipal prosecutor. The city attorney's ethical obligations are to the city as a whole. The city attorney may not represent individual councilors or staff members. Regardless of the type of legal counsel the city wishes to employ, the city should keep the city attorney apprised of all issues and concerns.

City Recorder

The city recorder plays a number of invaluable roles within the city. While the primary responsibility of the city recorder is to serve as the city's records custodian and elections officer, city recorders also provides routine and complex administrative support to the council, city manager, and department heads. The city recorder's roles are typically outlined in the city charter, and usually include the duty to serve as the city council clerk. Under this role, the recorder prepares meeting agendas, meeting notices, and is responsible for keeping accurate council meeting minutes. As the city's records custodian, the recorder serves as a liaison with the secretary of state's archivist to ensure that the city's records are being maintained in accordance with record retention laws. The recorder also responds to public records requests, performs record certifications, and maintains city records. As the elections officer, the recorder processes petitions, prepares required notices and forms for the city, county clerk, and the public,

⁵ For additional information on recruiting a city attorney, please see the League's *Guide to Recruiting a City Attorney* (July 2017), available at: https://www.orcities.org/application/files/9315/7904/8499/GuidetoRecruitingaCity_Atorney2-2-19.pdf. The guidebook includes steps in the selection process for both a contract city attorney and an in-house city attorney.

and arranges for the placement of measures on the ballot. In the recorder's role as administrative support, the recorder may be asked to draft correspondence, coordinate events, and administer oaths of office to public officials.

Public Safety Officials

As part of the city's responsibility to provide for the safety of its citizens, cities may either employ or contract for police and fire protection services.

Police

The role of local law enforcement officers encompasses a wide range of responsibilities. Some of the functions commonly associated with police forces are crime control and investigation, preservation of the peace, regulation of conduct other than criminal activity such as licensing and inspection, traffic supervision, community relations, and provision of general assistance to the community. Oregon cities are not legally required to provide law enforcement services, and some cities do not. When a city decides to provide police services, state and federal constitutional requirements relating to the rights of individuals become applicable.

Oregon statutes prescribe certain duties and authorities of police officers and establish general requirements such as certification standards. Police officer training is governed by state law, which requires, in part, that all newly hired police officers complete a basic course of instruction.⁶ City police departments must send recruits to the Oregon Police Academy for their basic training. The Oregon Department of Public Safety Standards and Training requires officers to attend 16 weeks of basic instruction. Upon graduation, officers are required to participate in a structured field training program. Some city police departments also maintain their own instruction programs.

The time and resources expended on police activities varies with the size and social and economic characteristic of the city. The history of criminal activity and police practices also plays a role in the framework for police services. In some small cities, a single officer may perform few duties other than traffic and parking enforcement, with other police functions provided by the county sheriff or the state police. Many small cities receive police services under contract with the county sheriff. As an alternative, law enforcement personnel and services may be shared by several cities, or by a city and a county. In a large city, the police department may have specialized units dealing with specific police and law enforcement functions such as crime laboratories, information management systems, juvenile programs, and intelligence.

⁶ ORS 181A.490.

Many cities have police reserves that volunteer to assist police officers in certain activities. Other cities have code enforcement officers who handle activities such as dogs, parking, nuisance abatement, weed control, or other non-criminal actions.

Fire Protection

Most city fire departments are part of the city government structure. Small cities usually use volunteer firefighters, and medium-sized cities often use a combination of fulltime and volunteer personnel. In large cities, fire departments are staffed by fulltime professionals. Many city residents in Oregon receive their fire protection from Rural Fire Protection Districts (RFPDs). Cooperation, contractual arrangements, and various forms of unification among local government entities are common in Oregon. Mutual-aid agreements among cities and adjacent RFPDs are virtually universal. Arrangements whereby a city provides fire protection services to neighboring RFPDs under contract are also widespread. The reverse is found in several areas – RFPDs sometimes provide service to cities under contract. This arrangement has become increasingly popular with small cities that can be served by large fire districts. Also, the law permits cities to participate in merged and consolidated districts.⁷

The state Board on Public Safety Standards and Training adopts rules and fire personnel certification programs. In addition to personnel certification, the board recommends standards for firefighting equipment and develops criteria for exemption of local jurisdictions from state fire and life safety regulations.

⁷ ORS 198.885 – 198.915.