

**LYNNWOOD CITY COUNCIL
Special Business Meeting
City Hall Council Chambers**

**Date: Wednesday, June 19, 2019
Time: 7:00 PM**

10 CALL TO ORDER & FLAG SALUTE

20 ROLL CALL

30 APPROVAL OF MINUTES

40 MESSAGES AND PAPERS FROM THE MAYOR

50 CITIZEN COMMENTS AND COMMUNICATIONS

60 PRESENTATIONS AND PROCLAMATIONS

A AWC Webinar: Owning Your Role: Elected Officials' Responsibilities and Legal Requirements

70 WRITTEN COMMUNICATIONS AND PETITIONS

80 COUNCIL COMMENTS AND ANNOUNCEMENTS

90 BUSINESS ITEMS AND OTHER MATTERS

90 .1 UNANIMOUS CONSENT AGENDA

90 .2 PUBLIC HEARINGS OR MEETINGS

90 .3 OTHER BUSINESS ITEMS

A Executive Session, if needed

100 NEW BUSINESS

110 ADJOURNMENT

THE PUBLIC IS INVITED TO ATTEND

Parking and meeting rooms are accessible for persons with disabilities. Individuals requiring reasonable accommodations may request written materials in alternate formats, sign language interpreters, language interpreters, physical accessibility accommodations, or other reasonable accommodations by contacting 425-670-5023 no later than 3pm on Friday before the meeting. Persons who are deaf or hard of hearing may contact the event sponsor through the Washington Relay Service at 7-1-1.

"El estacionamiento y las salas de junta cuentan con acceso para personas con discapacidad. Las personas que requieran de adaptaciones razonables pueden solicitar materiales impresos en formatos alternativos como intérpretes de lenguaje de señas, intérpretes de idiomas, asistencia física para acceso, así como otros ajustes razonables. Pueden comunicarse al número 425-670-5023 antes de las 3:00 pm del Viernes antes a la reunión. Las personas con discapacidad auditiva o con problemas de audición pueden

comunicarse con el patrocinador del evento a través del Washington Relay Service al 7-1-1."

Regular Business Meetings are held on the second and fourth Mondays of the month. They are videotaped for broadcast on Comcast Channel 21 and FIOS - Frontier Channel 38 on Wednesdays at 7:30p.m. and Sundays at 7:00a.m. and 2:00p.m.

CITY COUNCIL ITEM 60-A

CITY OF LYNNWOOD City Council

TITLE: AWC Webinar: Owning Your Role: Elected Officials' Responsibilities and Legal Requirements

DEPARTMENT CONTACT: Benjamin Goodwin, Council President

SUMMARY:

At the March 4, 2019 Council Summit, the Council reviewed a variety of training opportunities they would be interested in registering for during the coming year.

Association of Washington Cities (AWC) offered a series of Elected Officials Essentials Webinars that Council could view on their own or as a group.

Tonight's webinar is one in the series they have elected to view as a group.

DOCUMENT ATTACHMENTS

Description:	Type:
PowerPoint	Backup Material
AWC Q&A	Backup Material



Association of Washington Cities (AWC)



The Municipal Research And Services Center Of Washington (MRSC)

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Using GoToWebinar

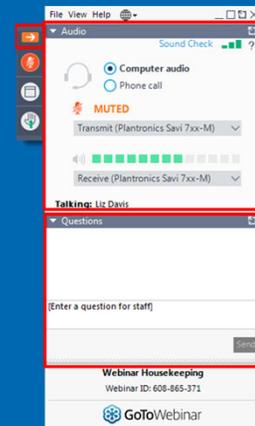


Click the orange arrow button as necessary to reveal the control panel.

Manage **Audio** settings in the top half of the control panel.

- Select **Computer audio** to listen via your computer speaker(s).
- Select **Phone call** to listen via your phone.

Submit **Questions** in the bottom half of the control panel.



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Webinar technical notes



During the webinar

Technical difficulties?
Call GoToWebinar
phone support at
(877) 582-7011.

After the webinar

AWC will email a link
to the webinar
recording to
registered attendees
within one week.

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Owning Your Role

Elected Officials' Responsibilities and Legal Requirements

Presented by:

Tom Brubaker, Attorney, Lighthouse Law Group, PLLC

Moderated by:

Tonia Sugarman, Director of Member Services, AWC

March 13, 2019

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Presenter



Tom Brubaker

Attorney
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The information contained in this presentation is for general educational purposes only and is not intended to be legal advice. Please consult legal counsel for advice about specific questions.

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Quick Poll 1



Who's on the webinar today?

- a. Mayor
- b. Councilmember
- c. City Manager/Administrator
- d. Multiple attendees in one location
- e. Other

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Agenda



- City Government - Checks and Balances
 - Mayor and Council Authority
- City Council Meetings
- Open Public Meetings Act and Public Records Act
- Ethics in Government

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City Government - Checks & Balances



- “The federal government in miniature.”
 - Legislative branch—city council
 - Executive branch—mayor or city manager
 - Judicial branch—Washington (and federal) courts
- Mayor-council form - each branch is independently elected
- Council-manager form - manager serves at pleasure of council
 - Manager must always be able to “count to four”
 - Manager has exclusive administrative control

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City Government - Checks & Balances



Code cities have all powers possible, except where limited by statute.

- Make and enforce laws
- Health, safety & welfare regulations (land use, building codes, etc.)
- Buying, leasing, selling real property, including eminent domain
- Social, cultural, recreational services
- Utility operation
- Street design, construction, operation, and maintenance
- “[A]ll the powers possible for a city or town to have under the Constitution, ... not specifically denied by law.” RCW 35A.11.020

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City Government - Checks & Balances



Generally speaking... The council sets policy and the Mayor/Manager executes policy.

- Council sets policy through its various authorizations—think big picture
 - Creates laws (ordinances)
 - Establishes budgets
 - Authorizes projects and agreements
- Mayor/Manager is CEO—runs day-to-day city business—the details
 - Enforces laws (statutes, ordinances)
 - Administers budgets (authorizes expenditures)
 - Executes and manages contracts
 - Hires and fires staff

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Quick Poll 2



You are a councilmember. You have heard repeated stories that your city's code enforcement officer "really doesn't care" about your city or doing his job well. People have seen him parked in his city car napping or smoking, both of which are prohibited. He is known to be rude to property owners, but at the same time regularly "badmouths" the city.

You think his boss, the city's building official and planning director, should fire the employee. What can you do?

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Quick Poll 2



- a. Direct the mayor to fire the employee
- b. Direct the building official/planning manager to fire the employee
- c. Ask the mayor to review the employee's performance
- d. Fire the employee yourself

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City Government - Checks & Balances



Hiring, firing, disciplining staff: Mayor/Manager

- Mayor-council: Mayor has “the power of appointment and removal of all appointive officers and employees...” RCW 35A.12.090
 - Power can be delegated to city department heads or directors.
 - **But** Council has optional power of confirmation over staff positions.
- Council-manager: Manager has *exclusive authority* to hire/fire city staff
 - Councilmembers, individually or collectively, cannot direct the city manager’s (or the manager’s subordinates) appointment or removal of any staff.
 - “*Except for the purpose of inquiry,*” councilmembers, individually or collectively, can only deal with administration of city exclusively through the manager, and they cannot “give orders to any subordinate of the city manager.” RCW 35A.13.12

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City Government - Checks & Balances



- Hiring, firing, disciplining staff - Always subject to collective bargaining agreements and civil service rules
- A word about elected officials...
 - Cannot be fired; can only be recalled
 - BUT, must be removed if three consecutive unexcused council meetings
 - Unique employment position—Discipline? Investigation over violations of discrimination policies or other forms of office behavior?
 - Setting salaries and benefits—cannot “feather” own nest

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City Government - Checks & Balances



Your Mayor/Manager claims that:

- she is in control of the budget,
- she will determine what goes into the proposed budget, and
- council cannot pass the final budget without her approval.

Are the mayor's assertions correct?

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City Government - Checks & Balances



A word about budgets...

- Budget is perhaps the council's most powerful policy measure
 - Determines where city's limited resources will be placed
 - Better parks? Improved streets? More police?
 - Each budget sets a course and direction for future appropriations
 - Budget establishes broad "funds"--street, utility, general fund, etc.
- Mayor/manager can move "individual items" (money) around within any fund without council approval, unless council limits that authority by ordinance. RCW 35A.33.120
- Only council can move money from one fund to another (by supermajority vote)

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City Council Meetings



- Who “owns” the meeting?
 - City council does - that’s why they’re called “council” meetings!
- Regular meetings - set by council, must occur at least once a month
- Special meetings - set by mayor (manager?) or any three members of the council
 - Require at least 24 hours notice to each councilmember (can be waived) and to media that have requested notice of special meetings
 - Limited only to items on the special meeting agenda—no additions!

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City Council Meetings



- Mayor presides (RCW 35A.12.110)
 - If council-manager form, “mayor” is elected biennially at first meeting of year by council members, and presides over meetings (RCW 35A.13.030)
 - If mayor is from council-manager form, he or she retains all “rights, privileges, and immunities” of a councilmember
 - In mayor-council form, if mayor is away,
 - Mayor Pro Tempore presides - if council has designated who will be Mayor Pro Tem (RCW.35A.12.110)
 - If no Mayor Pro Tem, a member of council selected by majority of councilmembers
 - Mayor Pro Tem also retains all rights of a councilmember

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City Council Meetings



- Duties of the mayor at meetings....
 - Mayor is facilitator—the “conduit” through which the regular order is maintained.
 - **If mayor-council form:**
 - Mayor does not vote, except in case of a tie
 - Except “the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money.” (RCW 35A.12.100)
 - Mayor approves ordinances by signature
 - If vetoed, Mayor tenders “written objections” along with veto
 - Then ordinance is set for reconsideration—to pass, majority plus one
 - If no signature, ordinance deemed approved after ten days

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City Council Meetings



- Maintaining order among council members:
 - It is the council’s meeting, so council sets its own rules of conduct
 - Agendas usually driven by administration/staff—but council has final say
 - Establish Rules of Procedure or By-laws by motion or resolution
 - Establish committees
 - Election process for council president, committee chairs
 - Meeting times
 - Agenda order
 - Absences
 - Mayor Pro Tem
 - Public comment rules
 - Affirm, by signature, after each election(?)

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City Council Meetings



- **Maintain decorum and formality**
 - Avoid becoming too relaxed or informal—"Mr. Smith," not "Jim"
- **Brigadier General Henry Martyn Robert—Robert's Rules**
 - Focus on democratic participation—fairness
 - Everyone has a say;
 - Each member has a right to speak before speaking a second time
 - Minority or dissenting opinions protected
- **"Bob's Rules"**

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Quick Poll 3



True or False?

As long as a speaker stays within the time allotted, that person can speak about anything he or she wants during the "public comment" portion of your council meeting.

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City Council Meetings



- Maintaining order among attendees
- Public comment section of meeting
 - A limited public forum—Council determines rules for public comment
 - Establish clear written rules regarding topics allowed and time to speak
 - Have mayor read written statement explaining these rules
 - Enforce those rules equally

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Quick Poll 4



An irate, vocal, and somewhat threatening person steps to the podium during public comment to protest the way he was treated during a traffic stop. He screams, call out councilmembers by name, calls them crooks, and repeatedly uses the "F" word even though a cub scout troop is present.

During public comment, the council allows up to 3 minutes for each speaker. This person is only 2 minutes into his irate ramble.

Can he be silenced and evicted from council chambers?

Yes/No

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Quick Poll 4B



Later in the meeting, he occasionally shouts, calling the council “Liars” and “Cheats,” with more curse words, and, during a discussion on a comprehensive plan update, he strides up to the dais, demanding the police chief be fired immediately and the mayor resign. He won’t sit down and he won’t stop talking.

Now can he be removed from chambers?

Yes/No

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City Council Meetings



“Citizens have an enormous first amendment interest in directing speech about public issues to those who govern their city.”

White v. City of Norwalk, 900 F.2d 1421, 1425 (9th Cir. 1990).

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

Dowd v. City of Los Angeles, 2013 WL 4039043 (2013). (From a federal court decision, citing Plato’s *Five Dialogues*)

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City Council Meetings



- Actual Disruption
 - Physical combat
 - “Fighting words” that threaten combat
 - Speaking beyond allowed time limit
 - Comments unduly repetitious
 - Extended discussion of irrelevancies
- Must be disrupted to the point where council business *can no longer be conducted*.
 - Temporary disruption not enough
 - Three strikes approach
 - Remove from meeting, not arrest

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Open Public Meetings



Your council wants to hold a retreat offsite at a conference in another city. You have a number of critical issues you want to discuss. You want free, uninhibited, and open discussion at the retreat, and in order to create the right atmosphere, you want a “closed door” retreat.

Can you? Can you combine this retreat with a regular council meeting?

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Open Public Meetings



- All council meetings must be open to the public
 - Regular meetings
 - Special meetings
 - Workshops
 - Retreats
 - Council committees, commissions, etc.
- Exceptions—If committee does not ...
 - Act on behalf of council (advisory only)
 - Does not take testimony or accept public comment
 - Does not conduct hearings
- Consult with your city attorney

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Open Public Meetings



- **Executive Sessions - Limited Reasons**
 - Sale, purchase, or lease of real property—value only!
 - Evaluation of charges or complaints of public officer or employee
 - Employee subject of charge can remove from executive session
 - Evaluation of qualifications of applicant for public employment or review performance of public employee
 - Wages, salaries, benefits must be in open public meeting
 - Evaluation of a candidate for public office
 - Discussion of enforcement actions, litigation, or pending litigation if city is or is likely to become a party—city attorney must attend
 - Cannot take “Final Action” during executive session

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Quasi-judicial actions



The council as judge - Quasi-judicial actions

- Not legislative policy-makers
- Decision typically affects specifically identifiable parties and specifically identifiable properties
 - Not “area-wide”
- Not subject to OPMA!
- Appearance of Fairness doctrine
 - Hearing must not only be fair, but must “appear” to be fair....
 - Personal interest
 - Prejudgment of issue
 - Partiality

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Public Records Act



It's not as hard as you think ... Everything is a record!

- Documents, notes, marginalia, post-its, photos, electronic documents, emails, texts—you name it, they are all records!
- Do not mix anything slightly related to city business with your personal phone, personal computer, social networks, or web pages
- And don't mix up city business with your campaign resources
- Exemptions are limited and few and far between
- **Assume everything you type, write, scribble, text, ... whatever ...**

Is a RECORD

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Ethics in City Government



Code of Ethics for Municipal Officers—Chapter 42.23 RCW

- Prohibits transaction of private business that conflicts with the “proper performance” of duties as a municipal officer
“Municipal officer” broadly defined and applied
- Rule adopted by Thomas Jefferson when he was president of the Senate:
“Where private interests of a member are concerned in a bill or question, he is to withdraw.”

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Quick Poll 5



You have operated a towing company for over 40 years. A number of cities have used your company during this time when police or other city staff have ordered a vehicle to be towed. You were just elected to city council, and your city is one of the cities your company has provided towing service to for decades.

Can you continue to tow vehicles for your city?

Yes/No

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Ethics in City Government



Interest in contracts:

- No direct or indirect beneficial interest in any contract made by, through, or under the supervision of a municipal officer
 - Phrase, “under the supervision” broadly interpreted
- May not accept, directly or indirectly, any gratuity, reward, compensation in connection with the contract

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Ethics in City Government



Remote Interests in contracts excepted:

- Non-salaried officer of non-profit corporation
- Employee of contracting party if employee’s wages or salary are fixed compensation
- Landlord or tenant of the contracting party
- Owns less than 1% of the shares of the contracting organization
- But if interest is remote, still cannot influence or attempt to influence other officers to enter into contract

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Quick Poll 6



Your council has authorized a budget expenditure to remodel council chambers. An audio-video company that specializes in and understands the unique demands of public meetings and that has remodeled a number of other cities' council chambers has offered to take the councilmembers to a site in Denver, all expenses paid, to demonstrate how well their system works.

Can you accept?

Yes/No

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Quick Poll 7



The planning department has received an application to remodel a commercial building in your downtown. He intends to open a trendy doughnut shop. At a plan review meeting with staff, he brings in a dozen doughnuts.

Should staff eat the doughnuts? (They're really good!)

Yes/No

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Ethics in City Government



Prohibited Acts

- Cannot use your position to secure special privileges or exemptions for yourself or “others.”
- Cannot, directly or indirectly, give or receive any compensation, gift, reward, or gratuity.
 - No minimum on value of gift
- Cannot accept employment or engage in business that might reasonably require or induce officer to disclose or acquire confidential information by reason of the officer’s position
- May not disclose or use confidential information for personal gain or benefit

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Ethics in City Government



Penalties

- Contract is void (but “quantum meruit” exception?)
- \$500 penalty (beware of multiple violations)
- Removal from office

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Questions?



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Q&A – Owning your role: Elected officials’ responsibilities and legal requirements

Q: We recently incorporated a committee process to support our city council’s legislative process. Can you provide any lessons learned or pitfalls we should be aware of with regard to the use of committees?

A: Committees are extremely helpful to councils because they can break into smaller groups and specialize in various areas of city operations. They can do some of the heavy lifting for council, resulting in streamlined council meetings—and potentially allowing for fewer meetings in a given month. Committees are generally subject to the OPMA. It may be possible to declare a committee “advisory only,” but committees don’t often meet the exceptions available for an advisory group serving the council.

Q: Why can't we use a point of order to maintain order in our chambers?

A: You can indeed use a point of order to maintain your chambers, and hopefully it will work! Some individuals simply will not heed a point of order. Remember that this is political speech in a political space, and you will find that your rules of order likely afford individuals a great deal of latitude in the amount and type of speech allowed. Occasionally, citizens who have been reprimanded for disorderly conduct in chambers have taken cities to court, and in some instances the courts have found that the citizens’ rights were violated by the city council. Be very cautious in your approach to unruly meeting attendees.

Q: In a mayor-council form of government, where management of personnel is a weak link in running the city, how can council help improve management of personnel (assume advising the mayor of personnel concerns has been ineffective)?

A: In the mayor-council form of government, the mayor is ultimately responsible for the administration of the city, including management of personnel. The council can through its oversight role request reports from the mayor or ask the mayor to review the performance of an employee. Council can also exercise its power of confirmation over employees hired by the Mayor, if it establishes that power by ordinance, but that authority is only helpful when hiring employees, not when disciplining or terminating them.

Q: Is it okay for a mayor to continually call for executive sessions for contract or agreement review?

A: It depends on the contract, agreement, or topic being selected, but the answer is most likely no. A contract is a public issue—it involves public money spent on a public project or service. Unless there is a genuine threat of litigation, you do not have the basis to go into an executive session. An exception might apply if the contract under review is for the purchase or sale of real estate

Q: What are the implications if an elected official uses social media pages to highlight city issues? Is this a public record that has to be archived and retained?

A: Social media pages are likely records that would be subject to the city’s retention requirements and subject to disclosure under the public records act. The factors a court will use to determine whether an elected official’s personal pages are the city’s public records include whether they are related to the conduct of the city and the elected official’s scope of employment or official capacity. Under several recent court cases, the court clarified that documents held on a personal device or a public official’s posts on a personal social media page can be public records subject to retention and disclosure under the public records act if they meet these tests. In limited cases posting city information on a personal social media page may not be considered a record, such as merely linking to public city webpages on personal pages where the posts are not under the direction of the city, not used by the councilmember, or not furthering the city interests. For more information, see the Electronic Records Toolkit compiled by MRSC and the State Auditor’s Office.

<http://mrsc.org/getdoc/6f8c9611-b65e-46a3-b551-336ffe92e3e6/Electronic-Records-Policy-Toolkit.aspx>

Q: Our planning commission includes a developer who has multiple rental properties in the city. That developer also continues to build multiple structures in the city. Should someone with that type of employment be allowed on the committee?

A: It depends on the duties of your planning commission. To the extent your planning commission deals with area-wide initiatives, issues, or policies, such as the comprehensive plan, the fact that the developer is a member of the community, owns property, and conducts business makes the developer highly qualified to decide on general, area-wide land use issues. To the extent the issues that come before this individual directly affect property they own in a specific way (e.g. a rezone of a lot the developer owns or a site-specific rezone that would increase or decrease the value of a lot the developer owns), then there would be a conflict and they would need to step away from that particular issue. Generally, they can serve on the commission, but they need to have heightened attention to the site-specific issues to ensure there is no direct conflict.

Q: If a restaurateur or coffee shop owner wants to treat a council member to a meal or drink, and there is nothing before the council relative to the business, can they accept?

A: Theoretically, no. You cannot accept even a cup of coffee. It is a gratuity or gift, and should an issue later come before the council involving that establishment it could present a perceived or real conflict of interest.

Q: In this presentation, Tom said that the only way a council member could be removed from office was by recall or missing three consecutive meetings, but then said that if they are found in violation of ethics rules, they could also be removed. Under what authority?

A: RCW 42.23.050 sets out the penalties for violation of the ethics rules in RCW Chapter 42.23 and includes forfeiture of office. In the case of a councilmember, forfeiture could occur upon conviction for a criminal violation or may be sufficient grounds for establishing "misfeasance or malfeasance" required for a recall petition. Again, though, only a court can remove a councilmember from office under this statutory framework.

Q: Who has the power to direct the city attorney: the mayor or the council?

A: This is a never-ending issue for city attorneys without a clear answer, since technically the attorney represents the government entity and must serve both the city council and mayor at the same time. There is an existing tension for the attorney as they represent and advise both parties as objectively and well as possible, particularly when the mayor or council are not in agreement. If the council has not exercised the power of confirmation in a mayor-council city, the attorney can be hired or fired by the mayor over the objection of the city council. But the city attorney still serves both the mayor and council at the same time. Where the council has confirmation authority over the city attorney position, the attorney in effect must answer to both parties because both have some control over the attorney's employment. In the rare event of a strong dispute between the mayor and council, for that issue, it may be wisest to hire outside counsel to represent one party or the other, or perhaps for that limited issue, to have independent legal counsel for both.

CITY COUNCIL ITEM 90.3-A

**CITY OF LYNNWOOD
City Council**

TITLE: Executive Session, if needed

DEPARTMENT CONTACT: Nicola Smith, Mayor

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available