

## Part two — Understanding the separation and distribution of local government powers



## Who does what?

- Council (Legislative authority)
- Executive
  - Mayor
    - Administrator/Supervisor
  - Manager
- City attorney & special counsel
- Municipal court

## Actions of legislative authority

- Motion
- Resolution
- Ordinance
- Veto



3

## Autocratic Mayor/Manager?

Following the assumption that the city's government is business to its logical conclusion, the autocratic mayor is the natural consequence. In the modern business world the captain of industry has come to be the chief figure. With the perfection of organization, concentration of power, and fixing responsibility there has developed a one-man rule in big business. These examples have had an influence on development of municipal structure, organization and methods, and as a result the autocratic mayor has been evolved. It is often conceded that efficiency of the public service is of more importance than the haphazard working of democracy in the old way. The voters are free to choose the mayor in the first instance whose term is limited. . .

2 A.E. McQuillin, *The Law of Municipal Corporations*, 213 (3d Ed. 1996).



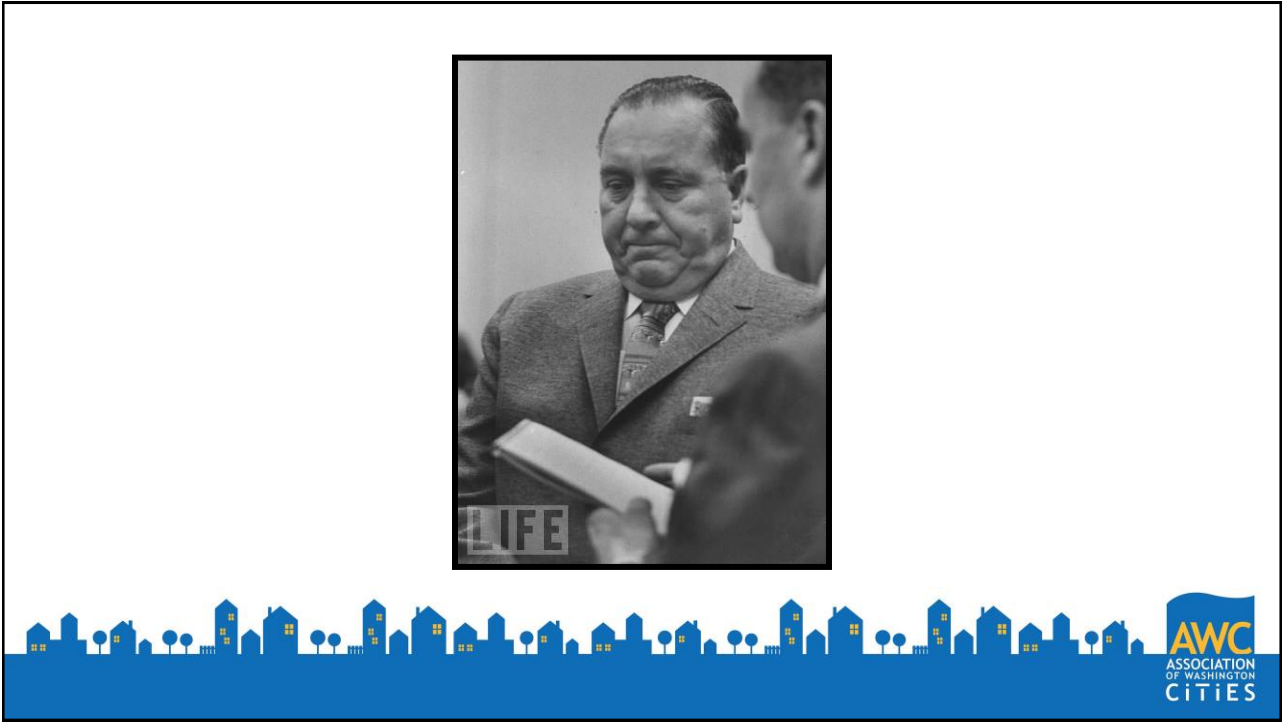
4



5



6



## The blurred line between policy and administration

Of course, things do not always run smoothly between the council and the city administration, and the line between policy and administration in some situations is not clear....

The mayor or city manager may direct that all communications with city staff go through his or her office. The council, in response, may feel that the mayor is unlawfully restricting its access to city personnel for information purposes.

*Mayor & Councilmember's Handbook, Page 33*



7

## Potential areas of conflict

- Budgets
- Contract administration
- Personnel and human relations issues



8



## Parliamentary procedure

- See A. Macfarlane and A. Estep, *Mastering Council Meetings*
- [Jurassic Parliament]



## Bethel board member free speech isn't a free pass

The **9th U.S. Circuit** Court of Appeals has tossed the First Amendment suit of Bethel school board member Ken Blair, who claimed that by dumping him as vice president for criticizing the superintendent of the Pierce County [district](#), the rest of the board had violated his constitutional rights.

Blair had evidently been criticizing the superintendent since he was hired in 2000. In 2007, Blair voted against renewing Siegel's contract. The other board members decided they wanted a different vice president. Blair sued.

There's a difference between suppressing speech and voting against someone because you don't like what he says. The court had no trouble making that distinction. It said that "the First Amendment protects Blair's discordant speech as a general matter; it does not, however, immunize him from the political fallout of what he says."



11

## Civility

**In a unanimous SCOTUS ruling, censure did not violate speech rights. Justice Gorsuch: "elected bodies in this country have long exercised the power to censure their members," and there is no reason to believe that the First Amendment was intended to change that practice.**

*Houston Community College System v. Wilson* (March 2022)



12

# Roles and responsibilities

MRSC: Roles and Responsibilities: Questions and Answers

<https://mrsc.org/Home/Stay-Informed/MRSC-Insight/April-2021/Roles-and-Responsibilities-Questions-and-Answers.aspx>



## Council — Staff relations

Law prohibits interference by council members,

- “Except for the purpose of inquiry,” and
- discussions in open session with city manager.

**RCW 35A.13.120**

*See Rod Younker’s presentation to follow*





## The city attorney



## Management of legal services

State law authorizes the obtaining of legal services “for the city”. RCW 35A.12.020. Neither the council alone nor the mayor alone constitutes “the city”. . . . In this respect and in others, chapter 35A.12 RCW contemplates that the mayor and the city council will act together on behalf of the city.

1997 AGO No. 7, at 3.



# Management of legal services



In Washington, there are two scenarios in which the town council of a municipal corporation has the implied authority to hire outside counsel.

**One**, if the council hires outside counsel to represent it, and it prevails . . .

•See *Tukwila v. Todd*, 17 Wn. App. 401, 563 P.2d 223 (1977).

**Two**, if extraordinary circumstances exist, such that the mayor and/or town council is incapacitated, or the town attorney refuses to act or is incapable of acting.

*State v. Volkmer*, 73 Wn. App. 89, 95, 867, P.2d 678 (1994)

(continued...)



# Separation of powers?

## City executive v. presiding judge authority



# Municipal court v. executive authority?

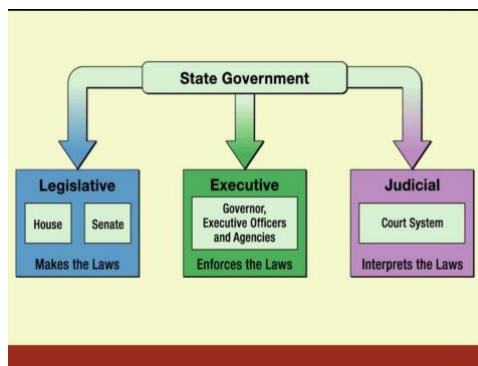
All employees of the municipal court are deemed city employees (RCW 3.50.080).

But under Court Rule GR29, employees are subject in most respects to authority of the court.

*See, In re Salary of Juvenile Dir., 87 Wn.2d 232, 552 P.2d 163 (1976)*



# Separation of powers - Summary



## Forfeiture and resignation

*See, State Ex Munroe v. City of Poulsbo,*  
109 Wn. App. 672 (2002)



21

## Incompatible offices

A person may not hold simultaneous, incompatible public offices. Offices are incompatible when the functions of the office are inconsistent, or the public interest would suffer.

*See Knowing the Territory*



22

# Recall

A recall petition must meet two tests: factual sufficiency and legal sufficiency.

Facts in a recall petition, verified under oath must show misfeasance, malfeasance, or violation of the oath of office. Exercise of judgment or discretion cannot be grounds for recall.



23

# Municipal finance

- Local taxation must be authorized by a legislative delegation of taxing power. See WASH. CONST. art. I, § 1.
- Municipal corporations have no inherent power to tax.  
*Arborwood Idaho, LLC v. City of Kennewick*, 151 Wn.2d 359 (2004)
- Statutory tax examples: *property, sales, utility, business and occupation, gambling*



24

# Municipal finance

State and each local government must have balanced budget



25

# Municipal finance

## Debt authorized

- General
- Non-voted (councilmanic)
- Voted



26

# General fund and other funds?

Streetlights and hydrants are a *governmental function* payable from the *general fund*, not from *utility rates*.

*Okeson v. Seattle*, 150 Wn.2d 540 (2003)

*Lane v. Seattle*, 164 Wn.2d 875 (2008)

See, Deanna Gregory's presentation to follow

