

**ASHLAND CITY COUNCIL
BUSINESS MEETING DRAFT MINUTES
Tuesday, February 7, 2023
Council Chambers, 1175 E. Main Street**

View on Channel 9 or Channels 180 and 181 (Charter Communications) or live stream via rvtv.sou.edu select RVTV Prime.

HELD HYBRID (Limited In-Person Social Distancing Seating and Zoom Meeting Access)

For written public testimony, email public-testimony@ashland.or.us using the subject line: Ashland City Council Public Testimony.

For public oral testimony, fill out a Speaker Request Form at ashland.or.us/speakerrequest and return to the City Recorder.

5:30 PM Executive Session

The Ashland City Council will hold an Executive Session for the following:

1. To conduct deliberations with persons the City of Ashland has designated to negotiate real property transactions pursuant to ORS 192.660(2)(e)

The Executive Session was called to order at 5:30 PM. Councilors' Hyatt, Graham, DuQuenne, Hansen and Kaplan were present.

The Executive Session was adjourned at 6:00 PM.

6:00 PM Regular Business Meeting*

I. CALL TO ORDER

The Regular Business Meeting was called to order at 6:05 PM

1. Land Acknowledgement**

Councilor Kaplan read the Land Acknowledgment into the record.

II. PLEDGE OF ALLEGIANCE

Councilor Hansen led the Pledge of Allegiance.

III. ROLL CALL

Councilors' Hyatt, Graham, DuQuenne, Hansen and Kaplan were present.

IV. MAYOR'S/CHAIR OF THE COUNCIL ANNOUNCEMENTS

Graham spoke that the order under New Business would be moved up to unfinished Business.

V. APPROVAL OF MINUTES ***

VI. SPECIAL PRESENTATIONS

1. City Council Orientation / Training (estimate approx. 45 minutes)

Deputy City Manager Sabrina Cotta gave a brief Staff report and introduced CIS Deputy General Counsel Tamara E. Russell.

Russell went over a PowerPoint Presentation (*see attached*).

Items discussed were:

- Eight Habits of a highly effect Council
- Principles of a team
- Habit #1, 2 & 3
- Form of government
- Centralized Power
- Management Role/Authority
- What rules apply to City Council
- Habit #4, 5, 6, 7 & 8
- Seven ways to improve communication during a conflict
- Debate vs. Dialogue
- Legal Issues regarding City Councilors
- Claims against Public Officials
- Social Media
- Public Records & Social Media
- Types of Accounts
- Key Takeaways
- Liability Coverage for Claims against City Councilors

VII. CITY MANAGER REPORT

City Manager Joe Lessard went over the Manager report.

Items discussed were:

- City Hall office moves
- Hiring process & updates
- Look Ahead

VIII. PUBLIC FORUM (15 minutes)

Mark – Ashland – spoke regarding the roles of City leadership. He spoke to the importance of trust in the City. He spoke regarding housing.

Miriam Reed – Ashland – Spoke regarding the harms of 5G.

Paul – Ashland – Spoke 5G Tower location.

IX. CONSENT AGENDA

1. Antisemitism Proclamation

Hyatt pulled Item #1 and Graham Pulled Item #2.

Public Forum:

Emily Simon – Ashland - Spoke regarding item #1. She spoke in support of the Proclamation how proud she is to be a part of SERJ Committee.

Hyatt/Kaplan moved to approve acceptance of the proclamation rejecting antisemitism and reaffirming Ashland’s commitment to ensuring our community as a safe welcoming place to live, work and visit. Discussion: Hyatt spoke in support of the motion. Kaplan spoke that Ashland is a welcoming community and spoke in support of the motion. DuQuenne thanked Emily Simon and SERJ. She spoke in support of the motion. Hansen thanked Staff for bringing this proclamation forward. Graham thanked all. **Roll Call Vote: Hansen, DuQuenne, Kaplan, Hyatt and Graham: YES. Motion passed unanimously.**

Graham read the Proclamation into the record.

2. Standing Advisory Committee Appointments

Graham gave a brief Staff report.

Hansen/DuQuenne moved to approve the to approve the Mayor’s recommendations to approve the Mayor’s recommendations for the Standing Advisory Committee Appointments to the Public Arts, Housing and Human Services and Social Services and Racial Justice. Discussion: Graham explained Human Services and Social Services needs to be pulled. Hansen withdrew his motion and moved to approve the Mayor’s recommendations for the Standing Advisory Committee Appointments to the Public Arts, and Racial Justice DuQuenne seconded. Discussion: Hansen spoke to the importance of this item.. **Roll Call Vote: Hyatt, Graham, Kaplan, DuQuenne and Hansen: YES. Motion passed unanimously.**

X. PUBLIC HEARINGS

XI. UNFINISHED BUSINESS

1. 165 Water Street Appeal Findings Adoption

Interim Community Development Director, Brandon Goldman and Senior Planner Derek Severson gave a Staff report.

Kaplan/Hansen moved to adopt the findings for PA-APPEAL-2022-00015 as presented. Discussion: Hansen spoke in appreciation of Staff and moving this project forward. **Roll Call Vote: Hansen, DuQuenne, Kaplan, Hyatt and Graham: YES. Motion passed unanimously.**

XII. NEW BUSINESS

1. Special Called Election for May 16, 2023

- a. Food and Beverage Tax ordinance Amendment Ballot Measure Language

Public Forum:

Michael Gardiner – Ashland – spoke regarding the Food and Beverage Petition Ballot language.

Rebecca Kay – Ashland – Spoke requesting Council to consider approving the Food and Beverage Ballot Measure and explained her reasons why.

Susan Hall – Ashland – Spoke that making a decision without full Council and Mayor is not a good decision. She spoke that the APRC needs to be monitored and City Council management is vital.

Cathy Shaw – Ashland – Spoke regarding Food and Beverage Tax and that this tax is fair. She spoke in support of the Food and Beverage Tax.

Council discussed options.

Hansen moved to approve the Food and Beverage Tax referendum ballot as PET-01 with as staff has written it with changes to add a 2040 sunset date and replace language section C to say for the purpose of funding parks, trails and open space. Due to lack of a second the motion failed.

Hyatt/Kaplan moved to approve the Food and Beverage Tax referendum ballot language dedicating 25% of food and Beverage to CIP 73% to the operations and maintenance and uses of subsection 3.C.1. 2% to administration and amounts shall continue to be directed consistent with financial and administer policies directed by Council that the funds be used for Parks, Recreation and Senior Services with an end date of 2040. Discussion: Hyatt spoke that the ultimate survey is a ballot. She spoke that it is ultimately the voters decision. Kaplan spoke in agreement with Hyatt and the importance of Parks. DuQuenne spoke to the importance of parks, open space and the voice of the citizens. She spoke that she would not support this motion. Hansen spoke in support of the motion. He spoke that the voters should decide. Lessard explained process.

Lessard clarified the motion.

Hansen/Hyatt moved to suspend rules to allow the Chair and Parks Director to answer questions. Voice vote. All Ayes.

Roll Call Vote to main motion: Hansen, Hyatt, Graham and Kaplan: YES. DuQuenne: NO Motion passed 4-1.

b. City Council Compensation Ballot Measure Language

Acting City Attorney Doug McGeary gave a Staff report.

Graham discussed health care coverage.

Council discussed options.

Graham/DuQuenne moved to alter the proposed summary to read “A “Yes” vote changes the Mayor and Councilors’ compensation to \$10,800 each annually / \$900 each monthly for preparing for and participating in City Council Meetings, completing Council Liaison assignments with City Committees, Commissions and external organizations and undertaking the other tasks required to fulfill their duties as elected leaders. Lessard clarified to change the wording to \$900 a month. Graham agreed to make that change.

Discussion: DuQuenne spoke that she looks forward to this going to the voters. **Roll Call Vote: DuQuenne, Hansen, Hyatt, Graham and Kaplan: YES. Motion passed unanimously.**

- c. Resolution 2023-01 Referring Ballot Measure Language to City Election Officer

Lessard gave a Staff report.

Council discussed options.

Hyatt/Hansen moved to approve Resolution 2023-01 submitting the Food and Beverage Tax amendments and the Mayor and Council compensation change ballot items to the Jackson County Elections Officer no later than Feb. 14th for inclusion as referendum items on the May 16th Special Called Election ballot. Discussion: DuQuenne spoke that she wishes these two were separate. She spoke that she will vote yes because it is a combination but does not support the Food & Beverage Tax amendments. **Roll Call Vote: Kaplan, Hansen, DuQuenne, Graham and Hyatt: YES. Motion passed unanimously.**

2. City Council Election or Process to fill Mayor Vacancy

Lessard gave a Staff report.

DuQuenne/Hansen moved to nominate Councilor Graham as Mayor. Discussion:

DuQuenne spoke that at the last Council Meeting spoke too soon and hadn’t discussed the option with Councilor Graham, however because our Mayor Akins stepped down and the City of Ashland is in need of a Mayor. Councilor Graham has been on Council, has experience and the next in succession. She spoke that it is important that the people know who you are. Hansen spoke that Chair Graham’s leadership in the body is exemplary and will make a great Mayor. He spoke that the nomination process is abrupt but agrees with DuQuenne and spoke in support of the motion. Hyatt questioned if Graham accepted the nomination. Graham spoke that she does accept the nomination. Hyatt spoke that the job takes a lot of time and effort and that Graham has done a great job taking care of the job and spoke in support of the motion. Kaplan thanked Graham for taking on this role and appreciates her work and spoke in support of the motion. **Roll Call Vote: DuQuenne, Hansen, Kaplan, Hyatt and Graham: YES. Motion passed unanimously.**

Graham spoke that the City has been in a time of great change and we now have a transition with a lot of work to do and appreciates the support of the fellow Councilors and will do all she can to do the best possible.

3. Community Renewable Energy Planning Grant Application

Director of Electric Thomas McBartlett gave a Staff Report.

Council discussed options.

Hyatt/ Kaplan moved to authorize staff to submit an application to ODOE for a CREP planning grant. Discussion: Hyatt and Kaplan thanked Director of Electric Thomas McBartlett and Staff for their work on this application. **Roll Call Vote: Kaplan, Graham, Hyatt, Hansen and DuQuenne: YES. Motion passed unanimously.**

Graham spoke that due to the Mayor appointment there is now an opening for a Councilor position.

Council discussed the process.

Hyatt/Kaplan moved to apply the same process as we are for Council Seat 3 to the selection of an appointed position to Council Seat 2 and inform the term deadlines and implications. Discussion: None. **Roll Call Vote: Hyatt, Graham, Kaplan, DuQuenne and Hansen: YES. Motion passed unanimously.**

Council discussed that there may need to be a Special Meeting scheduled for the purpose of appointing the two positions.

I. ORDINANCES, RESOLUTIONS AND CONTRACTS

1. Sprint Telecommunication Franchise Renewal

Hyatt/Kaplan moved Council approve the franchise agreement with Sprint Communications Company L.P., wholly owned subsidiary of T-Mobile USA, Inc retroactive September 30, 2022, with a termination date of September 30, 2023. Discussion: Hyatt spoke in appreciation of the Legal department. **Roll Call Vote: Kaplan, DuQuenne, Hansen, Hyatt and Graham: YES. Motion passed unanimously.**

II. OTHER BUSINESS FROM COUNCIL MEMBERS/REPORTS FROM COUNCIL LIAISONS

III. ADJOURNMENT OF BUSINESS MEETING

Hyatt/DuQuenne moved to adjourn the Business Meeting at 9:30 PM. Discussion: None. All Ayes. Motion passed unanimously.

Respectfully submitted by:

City Recorder Melissa Huhtala

Attest:

Councilor Chair Graham

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Manager's office at (541) 488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title I).

* Items on the Agenda not considered due to time constraints are automatically continued to the next regularly scheduled Council meeting [AMC 2.04.030.(D)(3)]

**** LAND ACKNOWLEDGEMENT**

We acknowledge and honor the aboriginal people on whose ancestral homelands we work—the Ikirakutsum Band of the Shasta Nation, as well as the diverse and vibrant Native communities who make their home here today. We honor the first stewards in the Rogue Valley and the lands we love and depend on: Tribes with ancestral lands in and surrounding the geography of the Ashland Watershed include the original past, present and future indigenous inhabitants of the Shasta, Takelma, and Athabaskan people. We also recognize and acknowledge the Shasta village of K'wakhakha - "Where the Crow Lights" - that is now the Ashland City Plaza.

***Agendas and minutes for City of Ashland's Boards and Commissions meetings may be found at the City's website, <https://www.ashland.or.us/Agendas.asp> . Use the View By box to select the Board or Commission information you are seeking.



Presentation to City of Ashland City Council

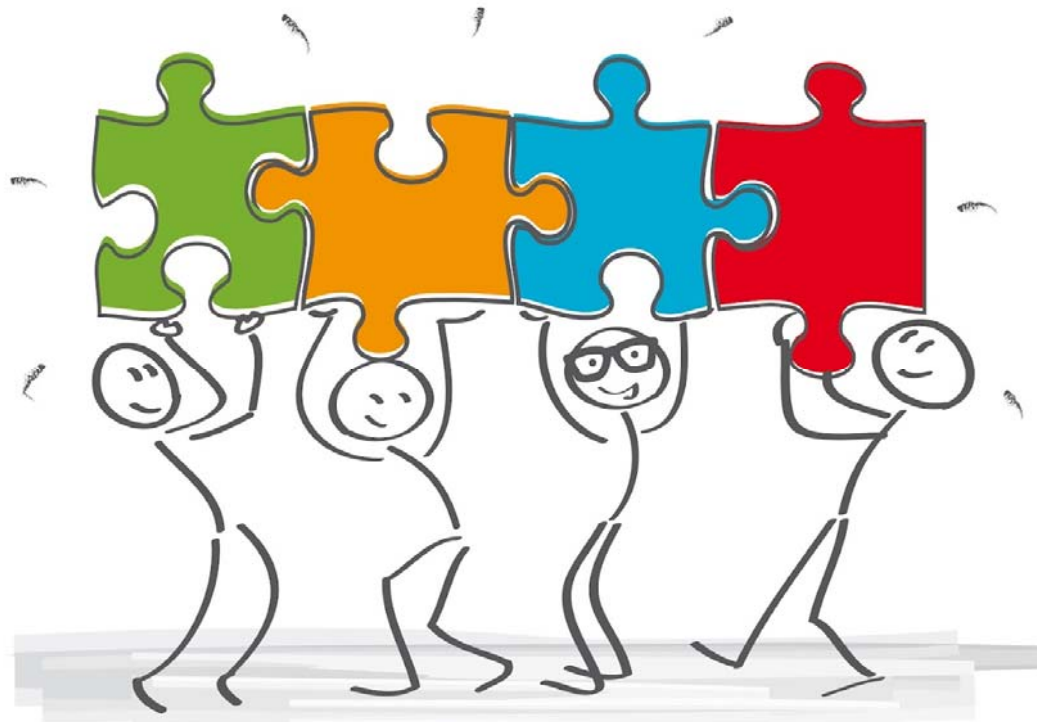
By Acting City Attorney Douglas M. McGearry
& CIS Deputy General Counsel Tamara E. Russell
February 7, 2023



- The Eight Habits of Highly Effective Councils
- Legal Issues re City Councilors' "Scope of Duties"
- Social Media: Potential Legal Pitfalls
- Q&A (a.k.a., "Let's play *Stump the City Attorney and CIS Lawyer!*")



Eight Habits of Highly Effective Councils (a.k.a., “teams”)



But first . . . Principles of a Team

- Shared Goals
 - Everyone Contributes
 - No Person Feels Threatened by Conflict
 - Participative Decision-Making
- Shared Ownership
 - Room for Everyone to Express Ideas & Opinions
 - Atmosphere of Trust and Encouragement



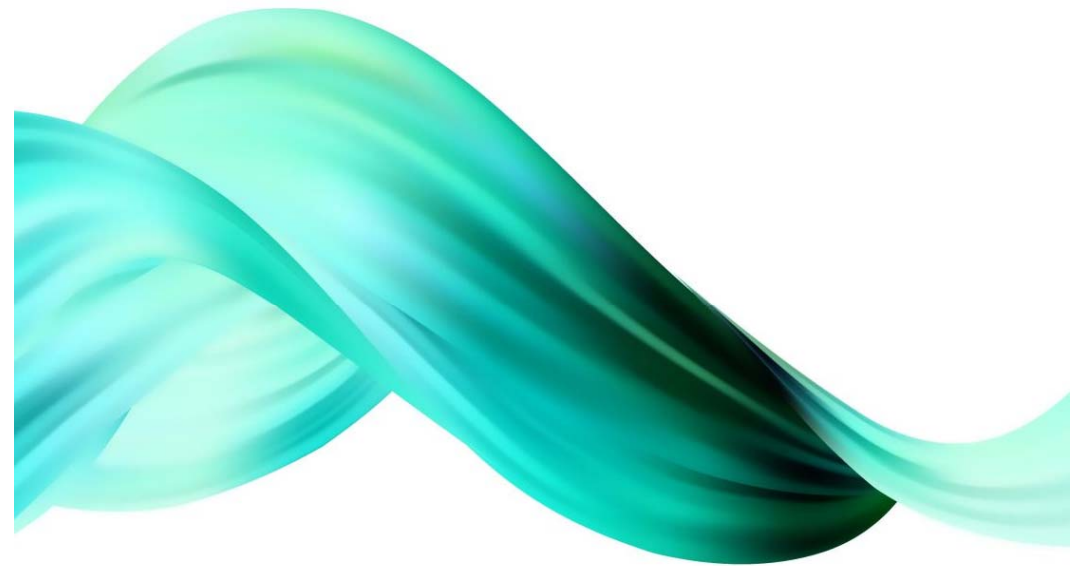
Habit #1

Think and act strategically

Habit #2: Understand & Demonstrate Teamwork

The Three Hallmarks of an Effective Small Group:

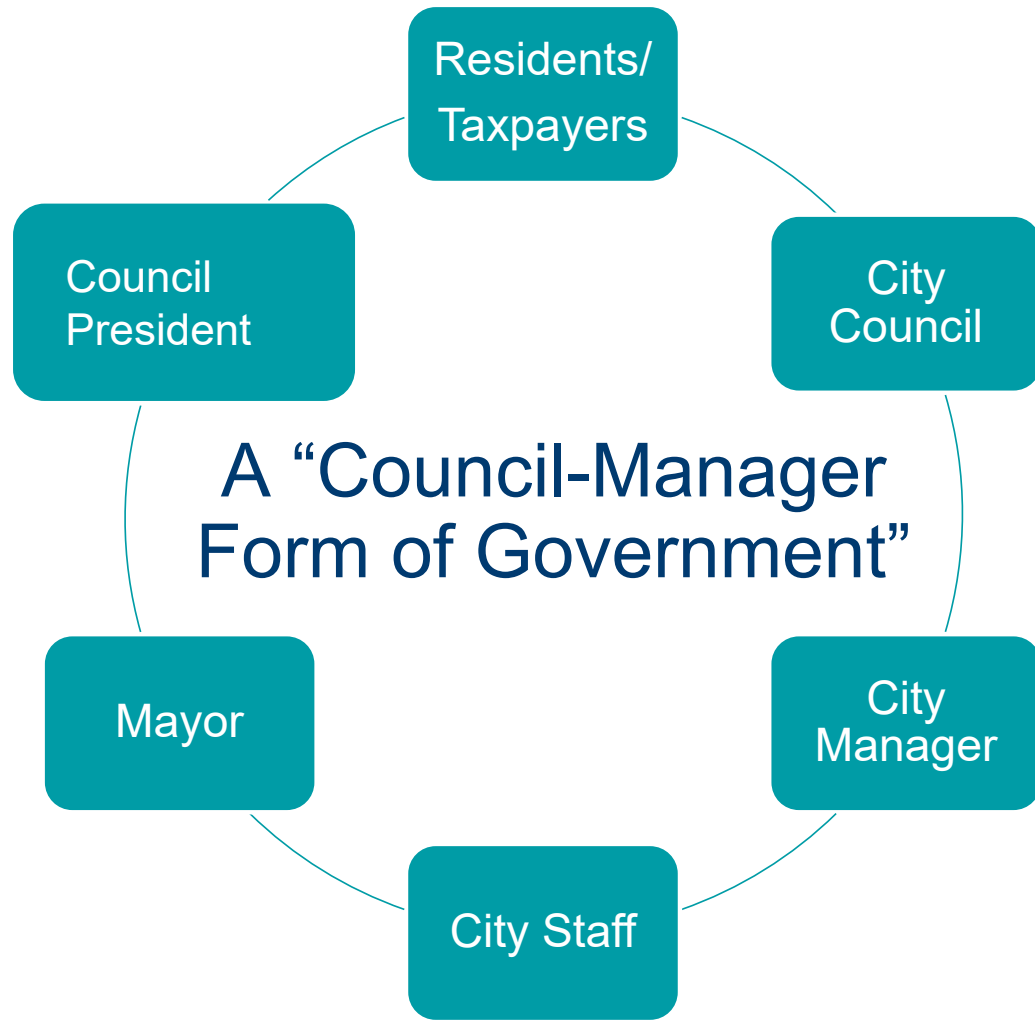
1. **Interpersonal Skills**
Ability to Work With Others
2. **Task Skills**
Knowledge to do a Job
3. **Rational Skills**
Ability to Deal with Issues and Problems Rationally



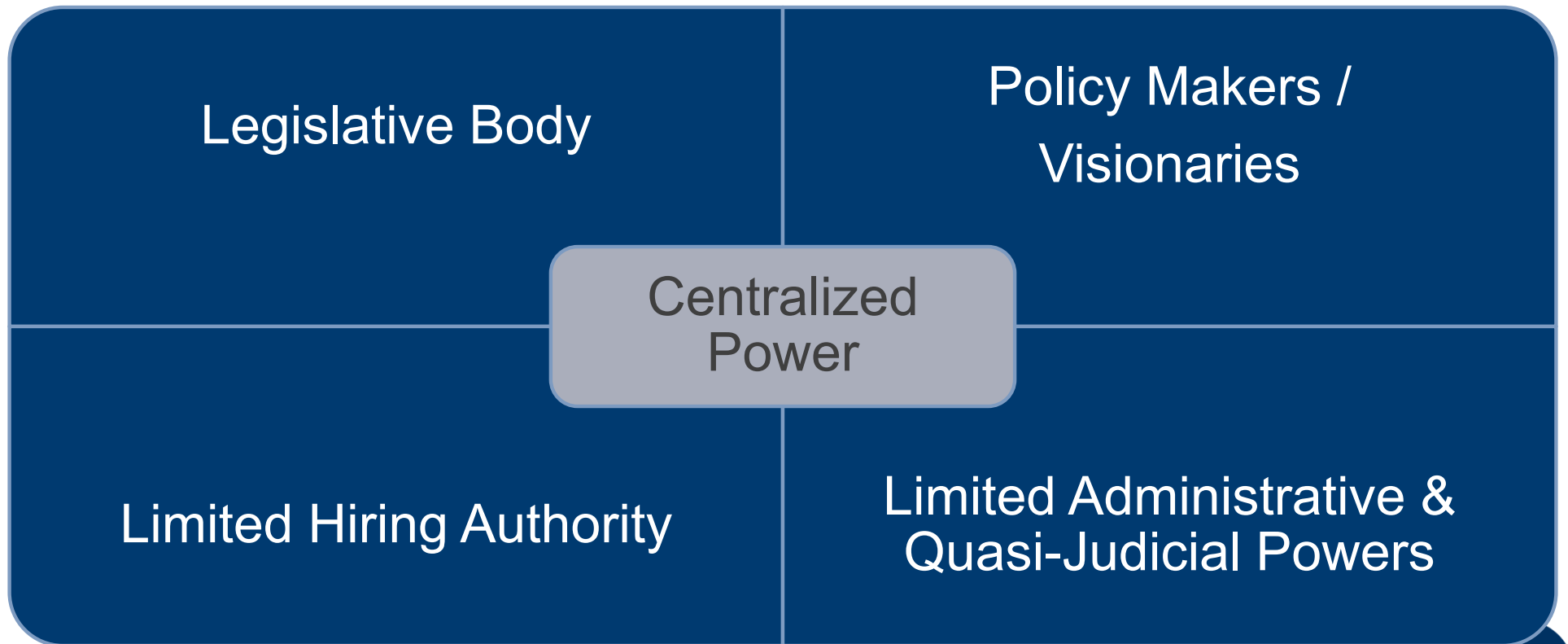


Habit #3

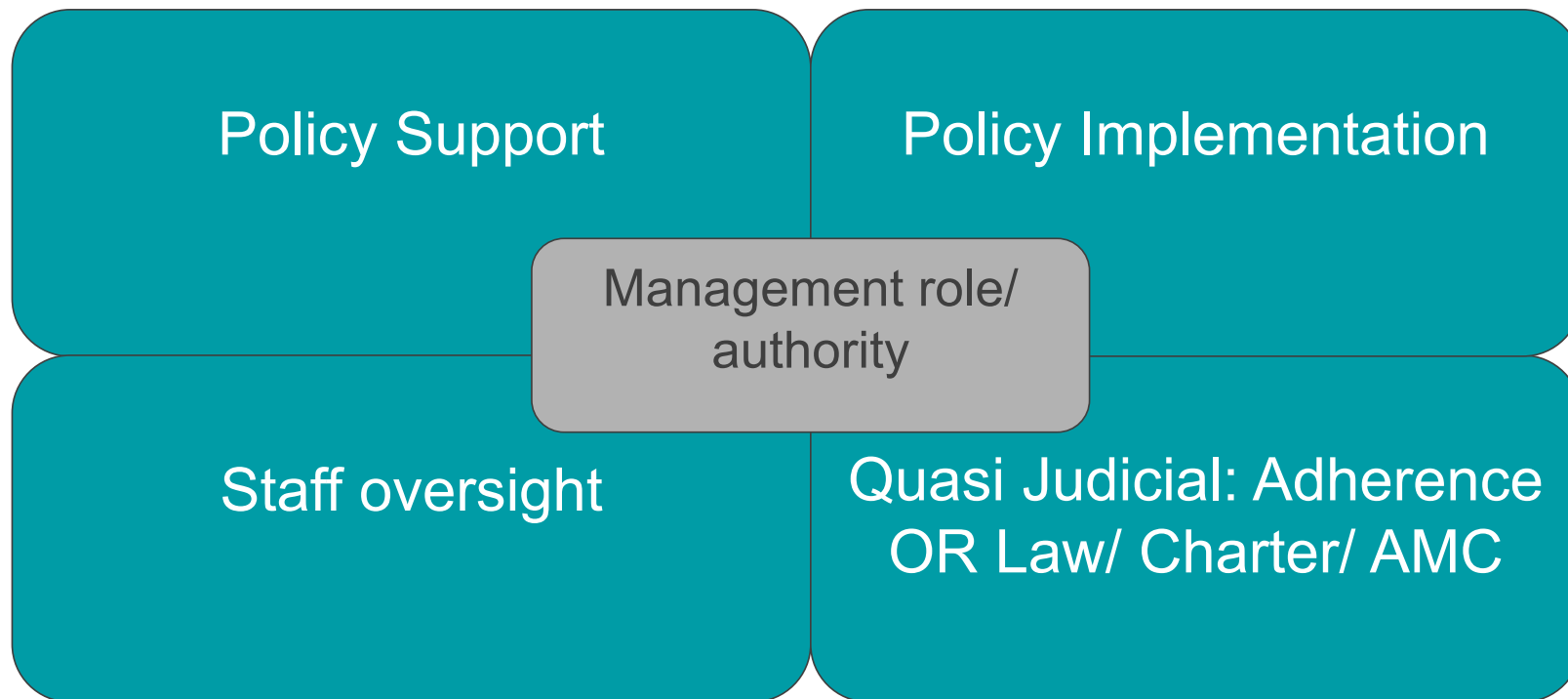
Define Roles and Responsibilities



City Councils - Generally



City Management- Generally



What “rules” apply to a City Council?

- Authority given by Charter, Ordinance & Resolution
- Authority does not rest with any single elected official but with the majority of the body
- City business is not an elected official’s business
- City employees are not elected official’s employees
- Elected officials can be held responsible for their actions toward city employees and third parties
- Statements made to the city attorney are not necessarily confidential



Habit #4

Consistently Evaluate
Policy Implementation



Habit #5: Allocate Time Appropriately





Habit #6

Follow the Council's
Rules of Procedures

AMC 2.04 and City of
Ashland Resolution 2020-03

Habit #7

Seek Objective
Assessments



Habit #8

Never Stop Growing or Learning
(continuing education)

Example:
LOC's Elected Essentials Training
(available on the LOC website)



Seven Ways to Improve Communication During a Conflict

Focus on behaviors and not your interpretations	Avoid the use of “always” and “never”
Use “I” statements	Say what you want and not what you don’t want
Beware of non-verbal messages	Apologize for your contribution
Give others a chance to speak	

Debate vs. Dialogue

Debate	Dialogue
Assumes there is one right answer (and you have it)	Assumes others have pieces of information that, when joined, crafts a solution (together)
Style is combative, attempting to prove the other side “wrong”	Style is collaborative, seeks to find common understanding
Listens to find flaws and counter argue	Listens to understand
Critiques only the other position	Critiques all views, including your own
Defends your own views at all costs	Allows others’ thinking to improve yours
Encourages searches for differences	Encourages search for basic agreement
Creates a winner/loser & discourages further conversation	Creates an open end, leaving the idea open for further discussion
Involves no focus on feelings, often actively seeking to belittle or offend	Involves a real concerns for the other, doesn’t actively seek to alienate or offend

Legal Issues re City Councilors' "Scope of Duties"



Claims Against Public Officials

“ [E]very public body is subject to civil action for its torts and those of its officers, employees and agents **acting within the scope of their employment or duties**, . . . arising out of a governmental or proprietary function” (ORS 30.265)

What isn't Included?

- Malfeasance in office;
- Willful or wanton neglect of duty;
- Actions outside the scope of duties/employment

Social Media:

Potential Legal Pitfalls



Photo by Jeremy Bezanger on Unsplash

Public Records & Social Media

Oregon's Public Records law applies to cities in two ways:

- Retention; and
- Requests

Public Records & Social Media

What social media content needs to be retained?

- At a minimum, any records covered by the general retention schedule under OAR, Ch. 166, Div. 200.
- These regulations do not specify a retention schedule for social media posts. BUT they do specify rules for “communications and distributions” and “complaints” received by the City.

Public Records & Social Media

What social media content can be requested by the public?

- Any content that pertains to “the conduct of the public’s business”
- This would include any content on a City-operated account because it is a product of City resources.
 - Ex. 1: Social media content that is no longer retained, but still recoverable on the web site.
 - Ex. 2: Direct messages or posts made on other user’s pages.

Types of Accounts

For cities, there are two types of social media accounts.

1. City-operated accounts

- A city's main FB page, a police department's Twitter account, etc.

2. Private accounts

- The accounts belonging to city staff and elected officials.
- To what extent are these private accounts subject to regulation? Answer: Depends on how they are used!

“Private” Accounts

Campbell v. Reisch, 986 F3d 822 (8th Cir 2021)

(Lawmaker’s Twitter account was found to be a “private” account – lawmaker protected from liability for a First Amendment violation)



“Private” Accounts

Davison v. Randall, 912 F3d 666 (4th Cir 2019)

(County commissioner violated the First Amendment rights of a County resident by banning the resident from her Facebook page.)



“Private” Accounts: State of OR Interpretation

Social media posts are considered public records if:

- Posts are made on an official public agency account or on a private account that is being used to distribute information for that agency to the public
- If a private account is used to conduct government business[,] then it becomes public and is subject to the Oregon Public Records Law. . . .”

- Oregon State Archives, Record Management Section



Key Takeaways

Have Two Social Media Accounts:

An “official” City Councilor social media page that you oversee and post to. Use this to inform the public about the City’s business.

A “personal” social media page. Use this to post stories and pictures about your family and dog, write restaurant reviews, and to address non-City issues.

Key Takeaways

- (1) CIS recommendation: Implement a Policy
- (2) Professionalism matters on both your “official” and “personal” social media pages.
- (3) When conducting the City’s business on social media, you have no privacy rights.
- (4) Visitors to your social media pages have First Amendment rights. There are legal consequences if you don’t honor those rights (and may be coverage issues as well – see next slide).

Liability Coverage for Claims Against City Councilors

CIS provides coverage for claims against City Councilors who are “authorized to act on behalf of [the City], all **acting within the scope of their employment or duties**”

BUT: No coverage for public records/meeting violations

- If no CIS coverage, attorney fees and damages become the City’s concern and situation
- If acting outside the scope, personal liability. (ORS 30.265)



A close-up photograph of a stack of cut logs, showing the circular cross-sections of the wood with visible grain patterns and some cracks. The logs are piled together, creating a textured, layered appearance.

Questions?

Let's play "Stump the City Attorney and CIS Lawyer"!

" ... you can either ask the question or experience the answer ..."

- Author unknown

A dark blue circular logo containing the white letters "CIS".

CIS

Thank you, City of Ashland City Council!

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