

## CITIZEN INFORMATION ABOUT QUASI-JUDICIAL CITY COUNCIL PROCEEDINGS

Applying constitutional due process (fair hearing) requirements, state and federal courts have characterized certain City Council decisions as legislative and others as “quasi-judicial.” It is important to understand the differences between legislative and quasi-judicial decisions because the courts require the Council to follow special procedures for "quasi-judicial" matters. We offer these frequently asked questions and responses as a general and brief explanation of those procedures.<sup>1</sup>

### The Council's Legislative Functions

The Council normally operates as a policy-making body. In that capacity, the Council gathers information at public hearings, from informal conversations with citizens and others, from memoranda prepared by City staff, and from other sources. The Council then deliberates and implements a policy by enacting an ordinance. This is a legislative process by which the Council creates citywide policy that operates prospectively from the effective date of the ordinance. For example, when the Council enacts an ordinance setting future citywide noise standards, it is acting in its policy-making, or legislative capacity.

### The Council's Quasi-Judicial Functions

Occasionally the Council must act in a manner similar to a judge in a court of law. Courts call this kind of action adjudicatory, or “quasi-judicial”. In a quasi-judicial proceeding, the Council is not setting new policy but is applying policies expressed by an existing ordinance, statute or regulation to past or present facts presented at a hearing. In other words, much like a court, the Council is applying the law to facts gathered at the hearing to arrive at its decision. Quasi-judicial land use decisions usually apply only to a few specific properties and are not effective citywide. For example, when the Council hears an appeal of a Planning and Zoning Commission decision on a specific property or development, it is generally operating in its quasi-judicial capacity.

### Some Examples of Quasi-Judicial Council Decisions

Determining whether a particular Council decision involves legislative or quasi-judicial action sometimes requires analysis of court decisions. As a rule, however, “site-specific” land use decisions (including most rezoning decisions)<sup>2</sup> are generally quasi-judicial. On the other hand, courts generally consider the rezoning of large areas consisting of many properties legislative<sup>3</sup>. “Other quasi-judicial matters include historic preservation district permits, conditional and special use permits, and variances.”<sup>4</sup>

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<sup>1</sup> The City prepared this material for general public information. When prepared, it was a *summary* and *paraphrase* of applicable rules and court decisions. As a summary, it omits many details that could be important to particular cases or questions. In addition, court decisions, ordinances and statutes adopted after preparation of this material may alter its accuracy, completeness or applicability. Therefore, citizens should use this material as a general reference only.

<sup>2</sup> *Snyder v. City of Lakewood*, 189 Colo. 421, 542 P.2d 371 (1975) (site-specific rezoning), *Reynolds v. City Council of the City of Longmont*, 680 P.2d 1350 (Colo. App. 1984) (subdivision plat)

<sup>3</sup> *Jafay v. Board of County Commissioners of Boulder County*, 848 P.2d 892, 898 (Colo. 1993)

<sup>4</sup> Gerald E. Dahl, Advising Quasi-Judges: Bias, Conflicts of Interest, Prejudgment, at Ex Parte Contacts, *The Colorado Lawyer*, Vol. 33, No. 3 [Page 69], March 2004

## Special Rules for Quasi-Judicial Decisions

In making quasi-judicial decisions, due process (which means a constitutionally fair procedure) generally requires that the Council follow certain rules, including:

- The Council must provide advance notice and a reasonable opportunity for interested persons to present evidence and argument at the hearing.
- The Council must make a record of the proceeding, including all information it considers in making its decision. The City will collect letters, email messages and documents submitted at least seven (7) business days before the hearing and will include them in the record of the hearing. If there is an appeal of the Council's decision, the reviewing court will look to see if evidence in the record supports the Council's decision.
- The Council must not consider any information received outside the record (this is called "*ex parte communication*"), so everyone has a fair opportunity to hear the evidence and argument.

## Ex Parte Communication

Information (verbal, written, electronic or graphic) received outside of the record is "*ex-parte communication*". Courts generally hold that such communication is improper and may provide legal grounds for overturning a decision. This rule against ex-parte communication promotes impartial decisions by ensuring disclosure of all evidence and argument presented to the Council in its deliberation and decision. The rule also gives everyone involved a fair chance to respond to all information that may affect the decision.

## Communication with Council Members

Council members and citizens are free to discuss legislative matters at any time. However, Council members should not receive information on a pending quasi-judicial matter outside of the official record (including any hearings on the matter).

## Participating in a Quasi-Judicial Decision

If you wish to express your opinion or communicate information on a quasi-judicial decision, you can simply address the Council at the appropriate time, according to applicable procedures. (Participation in some quasi-judicial Council hearings may require that you participate at earlier stages of the process; for example by speaking at a board or commission hearing or writing an appeal letter to the Council). If you have any questions about the applicable procedures or about how or when you may make your views known, contact:

Planning and Development Services Division  
350 Kimbark St.  
Longmont, CO 80501  
Phone: 303-651-8330  
Fax: 303-651-8696  
[longmont.planning@ci.longmont.co.us](mailto:longmont.planning@ci.longmont.co.us)

## Conveying Your Thoughts to the Council If You Cannot Attend a Hearing

Generally, you may submit your thoughts or concerns in written form (letters or e-mail) to City staff (at one of the addresses listed above) for inclusion in the public record. City staff conveys this

information in the appeal or Council packet, which is provided to the Council with their agenda and meeting materials. Due to time and duplication constraints, documents should be submitted to staff no later than seven (7) business days prior to a hearing.