



FREQUENTLY ASKED QUESTIONS ABOUT QUASI-JUDICIAL TOWN COUNCIL PROCEEDINGS

Interpreting and applying constitutional due process (fair hearing) requirements, state and federal courts have described specific town Council Members' ("Council") decisions as legislative and others as "quasi-judicial" and require specific procedures for "quasi-judicial" hearings. These frequently asked questions and responses to those questions provide a general and brief explanation of those procedures.¹

What Does "Legislative" Mean?

The Council generally operates as a policy-making body. In that capacity, it gathers information from many sources, including public comments, individual conversations with citizens and others, memorandums prepared by town staff, and newspapers and other publications or media formats. The Council then implements a policy based on the information gathered and passes an ordinance. It is through this "legislative process" that the Council creates a town-wide policy that operates prospectively from the effective date of the ordinance. For example, when the Council enacts an ordinance adopting building codes or establishing requirements for the keeping of backyard chickens, it is acting in its policy-making or legislative capacity.

What Does "Quasi-Judicial" Mean?

Occasionally, the Council acts in an adjudicatory or "quasi-judicial" manner. In that capacity, the Council operates not as a legislature but more like a court. In a quasi-judicial proceeding, the Council is not setting new policy but applying the standards in an existing ordinance, statute, or regulation to facts presented at a hearing, similar to how a judge would act. In other words, much like a court would at a trial, the Council applies the law to the facts gathered at a public hearing to arrive at its decision. Quasi-judicial proceedings usually only involve individual properties and are not effective town-wide.

For example, when the Council hears a land use application on a specific property or development, it is generally operating in its quasi-judicial, or adjudicatory, capacity.

What Types of Applications Are Quasi-Judicial?

Determining whether a particular Council decision involves legislative or quasi-judicial action sometimes requires analysis of court decisions. However, "site-specific" land use decisions (including rezoning)² are generally quasi-judicial. Area-wide rezoning, on the other hand, is typically legislative³. "Other quasi-judicial matters include subdivision approval, special use reviews, and variances."⁴

¹ As a summary, this memorandum omits many details that could be important to particular cases or questions. In addition, court decisions, ordinances, and statutes adopted after this preparation may alter its accuracy, completeness, or applicability. Therefore, citizens should use this material as a general reference only.

² *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)

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

⁴ 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 200

How Do Quasi-Judicial Rules Affect the Hearing Process?

In making quasi-judicial decisions, due process (a constitutionally guaranteed fair procedure) generally requires that the Council only consider the evidence and testimony it receives at the public hearing on the matter. That testimony and evidence make up the record of the proceeding. If there is an appeal of the Council's decision, the reviewing court would see if the evidence presented at the public hearing supports the Council's decision.

Can I Speak to My Elected Officials?

Council members are free to discuss legislative matters with citizens at any time. However, Council Members should not receive evidence or argument on a pending quasi-judicial matter outside of the official public hearing on the matter. It is inappropriate for the Council Members to discuss or read correspondence concerning the quasi-judicial matter outside of the public hearing.

What Is Ex-Parte Communication?

Information received by any member of the Council outside of the public hearing is an "ex-parte communication". Such communication is improper and may provide legal grounds for overturning a decision. This rule against ex-parte communication ensures impartial decisions by requiring public disclosure of all evidence and arguments presented to the Council. The rule also ensures that everyone involved receives a chance to respond to all evidence and arguments that may affect the decision.

Ex-parte communication means any oral, written, electronic, or graphic communication with a Council Member about a quasi-judicial matter that may directly or indirectly relate to the matter at issue and could influence the matter's disposition. This does not include communications made at the public hearing before the entire Council during the quasi-judicial proceedings.

How Do I Take Part in the Process?

If you wish to express your opinion or communicate information on a quasi-judicial decision, you have an opportunity to appear and state your case at the appropriate time at the public hearing, according to applicable procedures. If you have any questions about the applicable procedures or how or when you may make your views known, contact:

Town Clerk's Office
3 S Timber Ridge Pkwy
Severance, CO 80546
Phone: 970-686-1218

Clerk@townofseverance.org

Town Hall
3 S Timber Ridge Pkwy
Severance, CO 80546
Phone: 970-686-1218

Info@townofseverance.org

If I Cannot Attend the Hearing, How Can I Convey My Thoughts or Concerns to the Council?

You may submit your comments in written form to the Town Clerk for inclusion in the public record. Town staff conveys this information to the Council, either with their agenda packets or at the public hearing. Due to time and duplication limitations, documents should be submitted to staff no later than twenty-four (24) hours prior to a public hearing.