

Aspects of Authorities

Executive and Legislative Branches of County Government – List Only

A glossary is provided at the end of this document to explain some terms used

AUTHORITY RELATIONSHIPS:

County Commission only (executive and legislative branches combined in one body)

County Commission/County Manager (appointed executive, legislative commission)

County Council/County Executive (elected executive, legislative council)

Note: Other executives are Assessor, Auditor, Clerk, Sheriff, Prosecuting Attorney, and Treasurer

EXECUTIVE AUTHORITIES COMMON TO BOTH A COUNTY MANAGER AND ELECTED EXECUTIVE

Authority: Chief executive officer

Authority: Manage/supervise appointed executive departments

Authority: Appointment of departmental directors

Authority: State of the county

Authority: Preparation and presentation of the budget

Authority: Preparation and presentation of comprehensive plans

Authority: Signature authority

Authority: Conduct collective bargaining

EXECUTIVE AUTHORITIES COMMON TO AN ELECTED EXECUTIVE

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LEGISLATIVE AUTHORITIES COMMON TO BOTH A COMMISSION AND COUNTY COUNCIL

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LEGISLATIVE AUTHORITIES COMMON TO A COUNTY COUNCIL

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Authority: County executive/manager appointments subject to confirmation

Aspects of Authorities

Executive and Legislative Branches of County Government – Elaboration

EXECUTIVE AUTHORITIES COMMON TO BOTH A COUNTY MANAGER AND ELECTED EXECUTIVE

Authority: Chief Executive Officer

Whether an elected county executive or appointed county manager, that position represents the chief executive officer (“CEO”) for the county and is at the top of the organizational hierarchy. He/she is responsible for all day-to-day management decisions and for managing county operations, ensuring the organization functions efficiently, effectively, and consistently with policies developed by the legislative branch and state/federal laws. It is also the role of the CEO to articulate a vision for the agency (a vision could also be reflected in a commission or council strategic plan) and lead development and execution of the county’s long-term strategy. The CEO’s leadership role also entails communicating on behalf of the county to the public, media, and other stakeholders, and to lead legislative advocacy on behalf of county interests. The CEO has limited policy-making authority over such things as how laws are implemented, personnel policies, budgeting policies, expenditures policies, and other such policies of general application.

Authority: Manage/Supervise Appointed Executive Departments

Both the elected county executive and the appointed county manager have sole responsibility for managing, supervising, and evaluating appointed executive departmental directors.

Authority: Appointment of Departmental Directors

With the exception of those positions and departments which are filled by elected officials, the county executive/manager has authority to appoint departmental directors for direct report departments (the “executive departments”). Nominees for these positions are typically subject to confirmation or rejection by the legislative authority, although such positions as deputy county executive, confidential secretary, or administrative assistant to the county executive would not be subject to council confirmation. For a county manager who is subject to termination by the legislative authority, director appointments would usually be done following extensive consultation with commissioners/councilmembers to ensure they are amenable. It should be noted that this same authority to appoint often extends to committee and commission positions, again subject to confirmation by the legislative authority. It should also be noted that lower level appointments by departmental directors are not subject to confirmation by the county’s legislative authority.

Authority: State of the County

The county executive or county manager position is responsible for presenting the state of the county report to the legislative branch. This typically takes the form of an annual statement of governmental affairs delivered to the commission/council, followed by a public speech.

Authority: Preparation and Presentation of the Budget

It is the executive branch’s responsibility to prepare and present to the legislative branch a budget (coupled with a budget message) setting forth proposals and operational intent during the upcoming fiscal year (which may be annual or biennial; see attached glossary for more discussion about budget cycles under “biennial”). This must typically be done within a set number of days prior to the end of the fiscal year (e.g., 100 days). The budget is essentially a planning document which estimates the revenues and expenditures proposed to be incurred in the county’s performance of proposed work. Though proposed by the executive, the budget is always approved by the legislative authority of the county. Since no government has limitless

resources, a budget is effectively an exercise in establishing policy via the prioritization of governmental services, and thus is one of its most important (and potentially contentious) responsibilities.

Authority: Preparation and Presentation of Comprehensive Plans

In kind with other urban counties in Washington, Clark County is a comprehensive planning county under the state's Growth Management Act ("GMA"). To ensure compliance with this complex law, it is the executive's responsibility to prepare and present to the legislative branch the comprehensive plans, capital improvements, and economic development strategies for the current and future development of the county. The executive develops these plans and strategies through extensive participation and integration of the public, city governments, and special district jurisdictions within the county. It is the responsibility of the legislative branch to eventually approve the plans and strategies for subsequent submission to the Western Washington Growth Management Hearings Board.

Authority: Signature Authority

Both the elected executive and county manager are authorized (via the charter) on behalf of the county to sign, or cause to be signed, all claims, deeds, contracts, and similar instruments.

Authority: Conduct Collective Bargaining

The county executive/manager is responsible for negotiating collective bargaining agreements with representative unions. However, approval of collective bargaining contracts comes under the authority of the legislative branch.

EXECUTIVE AUTHORITIES COMMON TO AN ELECTED EXECUTIVE

Authority: Power of Veto

As a check against legislative powers, an elected county executive is usually granted the power to veto an ordinance passed by council. Such authority is not given to an appointed county manager. An ordinance is a law passed by the legislative branch; veto authority does not extend to resolutions, which are not laws, but rather are expressions of legislative policy and intent. *(Please see "Glossary" at the end of this document which goes into more detail about the difference between an ordinance and a resolution since that distinction does have some relationship to separation of powers.)* A charter may be specific as to what kind of veto authority the elected county executive possesses. For example, in some cases this may include the power of line-item veto (to veto specific pieces in lieu of the entire ordinance), as is often found with budgetary vetoes. If the power of veto only refers to an ordinance without the line-item specificity, then the county executive's veto is against the ordinance as a whole. An ordinance passed by the legislative authority is presented to the county executive, who then has three options:

- (1) The county executive has the opportunity to sign the ordinance. If the county executive approves the ordinance and signs it, then it becomes law within a set number of days (e.g., within ten days of signing).
- (2) The county executive may choose not to sign the ordinance. If the county executive does not sign the ordinance within a set number of days (e.g., within 30 days), then the ordinance becomes law automatically without that signature.
- (3) The county executive may veto the ordinance. If the county executive does not approve of the law and exercises his/her power of veto, then that veto must be returned to the legislative authority with the executive's written objection.

The county executive's veto prevents enactment of the ordinance (or the vetoed pieces). The legislative authority then has a set number of days (e.g., 30 days) during which it may override the executive's veto.

LEGISLATIVE AUTHORITIES COMMON TO BOTH A COMMISSION AND COUNTY COUNCIL

Authority: Powers Not Exclusive

Subject to court and statutory limitations, the legislative body is the ultimate power and authority of the county. Therefore, all powers of the county reside with the legislative body except those which are specifically reserved to the people (e.g., initiative, referendum, recall), the executive (as provided by a charter), and general laws of the state and federal governments. Likewise, any enumeration of powers for the legislative body which may be written into a charter should not be construed as limiting the legislative body's powers.

Authority: Ordinances

The heart of legislative authority is the ability to pass ordinances which create laws for the people of the county. However, this authority does not extend to the ability to change a county charter since that authority is in the hands of the electorate exclusively. Generally, every legislative act taken by the commission or council must be by ordinance, except for resolutions. *(Please see "Glossary" at the end of this document which goes into more detail about the difference between an ordinance and a resolution since that distinction does have some relationship to separation of powers.)*

Authority: Resolutions

The legislative authority of the county has the ability to pass resolutions which are an expression of legislative policy and intent. Thus, resolutions are distinguished from ordinances which are law-making acts of the body. *(Please see "Glossary" at the end of this document which goes into more detail about the difference between an ordinance and a resolution since that distinction does have some relationship to separation of powers.)*

Authority: Levy Taxes

The legislative body's authority to levy taxes extends from authorizations by the state legislature. Where authorized, the legislative body is the county branch which may levy taxes, appropriate revenues, and set fees, rates, charges, and special assessments. In some charters, the authority to levy taxes could require a supermajority vote.

Authority: Approve the Budget

The legislative body of the county is authorized to approve the budget. The budget is typically proposed by the executive (whether an elected county executive, an appointed county manager, or an appointed county administrator), but the legislative body approves it. As an extension of this authority, the legislative body also establishes compensation to be paid to all county officers and employees and to provide for the reimbursement of expenses. An optional method is for salaries of elected officials to be determined by a salary review commission (a requirement which could be set forth in the charter). In Washington, the budget serves as an authorizing document such that no expenditures may be legally incurred by the county without budgetary authority.

Authority: Establish Departments

An inherent authority held by both a county commission and a county council is the ability to establish and disestablish executive departments. The charter should specify whether this legislative authority extends to organization of elected executive departments (including county executive, assessor, auditor, clerk, prosecuting attorney, sheriff, and treasurer). This same authority includes the ability to establish the powers and responsibilities attendant to each department. Such establishment of departments and responsibilities is always enacted

through an ordinance. Note that some executive departments may be established by a charter and therefore only subject to change by the electorate, not the legislative authority.

Authority: Zoning and Land Use Regulations

Under its police powers, a commission/council has legislative authority to enact ordinances that control zoning and other land use regulations. This authority also includes approval of comprehensive plans for present and future development of the county.

Authority: Approve Contracts

As an extension of its budgetary authority, the legislative authority of the county generally has the power to approve contracts. However, once a budget has been approved for an executive department, that official has the authority to approve contracts within that budget (this issue was decided by a Spokane County court case with respect to the elected Clerk executive department). In the interests of operational efficiency, the legislative authority may enact an ordinance that allows some contract approvals to be completed procedurally such that lower cost contracts may be administratively approved, albeit within budgetary and statutory limitations.

Authority: Establish Collective Bargaining Guidelines

The legislative authority establishes guidelines within which the county executive or county manager must negotiate collective bargaining contracts (usually within the context of budgetary limitations). It is also the branch of government which approves all such contracts.

LEGISLATIVE AUTHORITIES COMMON TO A COUNTY COUNCIL

Authority: Override of Veto

As a check against the elected executive's authority to veto an ordinance in a home rule county, the legislative authority may override such a veto. To do so usually requires some kind of supermajority vote, typically equal to or more than 2/3 of the legislative body voting, but a charter could set that override level to be as little as a simple majority or as much as 100%. By overriding the veto, the council's original ordinance proceeds to enactment and the county executive has no further ability to veto it.

Authority: Referenda

In lieu of passing an ordinance itself, the legislative authority of the county can directly refer a referendum to the electorate for approval or rejection. The referendum would be an ordinance for the people to vote on (as opposed to an advisory vote). Importantly, the legislative authority does not itself approve or reject the measure prior to it being referred to the people. Note that there are two kinds of referenda. Along with the legislative authority to refer an ordinance to the electorate, the people may have the direct power to place on the ballot for voter consideration an ordinance which has already been approved by the legislative authority of the county.

Authority: Subpoena Powers

Subpoena can be a powerful tool. In terms of county governance (as opposed to the courts), the power of subpoena is held by the legislative branch. A subpoena is a document issued administratively to command a person (i.e., a county employee, contractor, vendor, etc.) to provide information, either in person by testifying, or through producing documents or other tangible items. A witness must respond to a lawful council subpoena and may be represented by counsel. Failure to respond to a lawful subpoena could result in sanctions, penalties, and/or fines, including being held in contempt. The county council may invoke the aid of the courts to carry out such powers. The value of subpoena for a county council is the ability to conduct

investigations into the affairs of the county and examine the conduct of any county department, office, employee, agency, supplier, or vendor. If the council as a whole is conducting such an investigation then proceedings must be public, but if it assigns its subpoena power to a non-quorum committee to conduct the investigation then testimony/witnesses may be presented in private. The subpoena power may also be extended to specific committees or commissions as identified in the charter, for example a policy review committee, a human rights commission, or police commission. A charter which includes subpoena powers should specify whether an elected executive officer (including county executive, assessor, auditor, clerk, prosecuting attorney, sheriff, and/or treasurer) will be subject to subpoena by the legislative branch.

Authority: County Executive/Manager Appointments Subject to Confirmation

As part of the balance of powers between the executive and legislative branches of county government, the executive's authority to appoint departmental directors for those departments which directly report to him/her (the "executive departments") is usually subject to confirmation by the legislative authority. In some charters this authority is referred to as "advice and consent" which is an excerpt from Article II, Section 2, Clause 2 of the U.S. Constitution, but it still means to require confirmation. Such positions as deputy county executive, confidential secretary, or administrative assistant to the county executive would not be subject to confirmation. The same legislative authority to confirm executive appointments may extend to committee/commission positions. Lower level appointments by departmental directors are not subject to confirmation by the legislative authority. Existing charters in Washington are generally silent as to what happens in event the legislative branch chooses to take no action on the executive's nomination for appointment (i.e., no time limitation to take action, no requirement that action be taken, no provision that legislative authority must explicitly oppose the nomination for it to be rejected, etc.). However, under Washington law it may be argued that the legislative body *must* take action when it is deemed to be a ministerial duty (i.e., not involving discretion or policymaking).

GLOSSARY

Appointed	An appointed official is a person hired by existing governmental officials (elected or appointed) into a permanent or temporary position. Appointed officials are subject to being terminated at any time (usually for cause, but not always). Appointed officials are thus distinguished from elected positions which hold office for a set term (usually four years).
Biennial	Biennial is something occurring once every two years and its typically used in reference to a two-year budget cycle (i.e., how often a budget must be adopted by the legislative authority; referred to as a “biennial budget”). Biennial is distinguished from annual, meaning occurring once every year. Biennial is also distinguished from biannual, which is something occurring two times during a year. For example, a biennial budget may provide biannual opportunities for readjustment.
Balance of Powers	Those men who founded the United States were highly concerned with balancing powers between branches of government so that no one branch would be strong enough to dominate the others, nor be so weak as to be dominated. They were reacting to their direct experience under the centralized, monarchical authority Britain imposed on America when it was a colony. This balancing concept is not just about powers inherent to the structure of one government; there is also a principle in the United States of establishing a balance of powers between the national government and its sub-national governments, primarily states. James Madison was particularly concerned with these balancing issues when he wrote Federalist Number 51 (published February 6, 1788) wherein he stated, “... <i>a double security arises to the rights of the people. The governments will control each other, at the same time that each will be controlled by itself. Ambition must be made to counteract ambition.</i> ” By integrating checks and balances into a form of government, whether at the federal, state, or local levels, separate branches are empowered to prevent an excessive use (or abuse) of power by a single branch, thus effectively forcing them to <i>share</i> powers.
Compensation	It can have other meanings (for example, workers’ compensation or deferred compensation), but governmental entities usually regard “compensation” as the money paid to employees for work provided, usually in the form of a wage or salary. A home rule charter has the ability to set compensation levels for elected officials, but not for appointed officials, or for the prosecuting attorney or judges. Unless otherwise specified in a charter, the setting of compensation is an authority inherent to the legislative body of the county.
Contract	A contract is an agreement between two or more parties whereby legal obligation and mutual benefit are derived in some form from its provisions.
Fees	Fees, unlike taxes, are typically linked to the cost of providing a service that is specifically requested by a constituent and which benefits him or her individually. Fees are based on the idea of “user pays,” meaning if you use the service you should pay for it and not get subsidized by anyone else since you individually received the direct benefit of that service. If a constituent does not request the service, then no fee must be paid. An example of a county fee is a building permit. Someone obtaining a building permit pays a fee, not a tax, for the service rendered. When aggregated across all building permits issued during the year, the amount of the fee is intended to cover the overall cost to government of providing that service, or at least a predetermined percentage of that overall cost.
General Law	General law is law established by the State of Washington. In the county context, general law provides a uniform structure of governance and authorities for counties. Counties

generally are unable to diverge from that uniformity unless the local electorate approves a home rule charter.

- Ordinance** An ordinance is a law passed by a city or county government. In Washington, cities and counties may only pass laws under which they have been granted that authority by the state (either through statute or by the state constitution). In other words, any city or county which enacts an ordinance that is in conflict with state (or federal) law can be challenged in court and ruled void. Ordinances passed by cities and counties get codified, which means they are officially recorded in that governmental entity's book of laws called a code book. Some specifics in a home rule charter regarding ordinances may be whether or not they need be single-subject, whether they can be passed with one reading before the public or require two or more successive readings (e.g., Washington County in Oregon requires three readings of the ordinance at successive board meetings), or specific publishing requirements. A charter could also impose supermajority voting requirements on certain kinds of ordinances, for example budgetary or compensation ordinances.
- Policy** A policy is a statement of intent by the legislative or executive authority of a government. When expressed as laws, policies are adopted by a vote of the legislative body. When expressed as administrative implementation, they are the rules or procedures pursued by the executive branch.
- Power** Whether in reference to the power of a branch of government or the power of the people, the word "power" can appear frequently in city and county charters. In general language, power is the ability to influence the behavior of people in ways they would not otherwise choose to behave. However, in the context of a charter, power is more about enabling a body (e.g., a legislative, executive, or judicial branch, the electorate, or other body) with specific rights, capacities, and authorities.
- Resolution** Resolutions are not laws, but rather are expressions of legislative policy and intent. It should be noted, however, that because resolutions may result in policy implementation that can produce results similar to those obtained from a law, resolutions are serious issues for consideration by the legislative authority. The practice of submitting and voting on resolutions is a typical part of business in city and county governments. Resolutions are generally used for two purposes. First, resolutions express the majority perspective of the legislative body on matters of public policy. This may take the form of a resolution expressing support or criticism for a social, political, legal, or economic issue. Second, they give administrative and policy direction to employees, committees, and representatives of the organization. In a council/executive form of county government, resolutions are not subject to veto. Because of this, when a county executive's appointments are subject to approval by the county council, the county council always confirms or rejects such recommendations by resolution.
- Taxes** The word tax is derived from two Latin words used in ancient Rome, "taxo" (rate) and "taxare" (to evaluate and charge). In modern usage, a tax is a financial charge or levy imposed upon residents of or visitors to a jurisdiction. A taxpayer can be either an individual or a legal entity such as a corporation. Taxes are not voluntary, are imposed by the legislative authority of a government, and are enforced by law. Generally, taxes are applied as a percentage of something's value, such as property taxes, or when paying sales tax on a car or boat. Thus, higher value usually means higher taxes. The purpose of a tax is to support the general cost of government, which differentiates taxes from fees. When not adjusted according to value, it is more of an "assessment" (for example, the \$2 per room night tourism promotion area charge paid by lodgers in Clark County; the \$2 charge applies at that same rate regardless how much the hotel otherwise charges the lodger).