



**POLICY AND PROCEDURE**

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	Administrative/Council			
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City Council Appearance of Fairness Standards and Procedures	Supersedes 6/11/07	Prepared by: [City Manager]	Approved by: [Mayor]	

**1.0 Purpose**

The purpose of this policy is to affirm the applicability of the Appearance of Fairness Doctrine to quasi-judicial proceedings before the Vancouver City Council, and to establish proceedings for implementation of the Appearance of Fairness Doctrine in quasi-judicial proceedings before the Vancouver City Council.

**2.0 Organizations Affected**

City Council

**3.0 References**

City Council Resolution M-3622, adopted June 11, 2007  
 City Council Resolution M-4157, adopted December 13, 2021

**4.0 Declaration of Policy**

**Applicability of Appearance of Fairness Doctrine:** The Appearance of Fairness Doctrine is a requirement of Washington law that protects the integrity of quasi-judicial public hearings before the Vancouver City Council. The Appearance of Fairness Doctrine imposes the following requirements: “When the law which calls for public hearings gives the public not only the right to attend but the right to be heard as well, the hearings must not only be fair but must appear to be so. It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been

violated is as follows: Would a disinterested person, having been apprised of the totality of a boardmember's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided." *Zehring v. Bellevue*, 99 Wn.2d 488 (1983).

**Procedures for Implementation of the Appearance of Fairness Doctrine.** This Policy establishes procedures for implementation of the Appearance of Fairness Doctrine in quasi-judicial proceedings before the Vancouver City Council.

## **5.0 Types of Hearings to Which Doctrine Applies**

The appearance of Fairness Doctrine applies only to quasi-judicial actions before the Council. Quasi-judicial actions are defined as action of the City Council that determine the legal rights, duties, or privileges of specific parties in a hearing or other contested proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents of the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance. RCW 42.36.010. Some examples of quasi-judicial actions that may come before the Council are: rezones or reclassifications of specific parcels of property; appeals from decisions of the Hearing Examiner; substantive appeals of threshold decisions under the State Environmental Protection Act, and special land use permits.

## **6.0 General Obligations Under the Appearance of Fairness Doctrine**

Council Members should recognize that the Appearance of Fairness Doctrine does not require establishment of a conflict of interest. Rather, a violation of the Appearance of Fairness Doctrine occurs when there is an appearance of conflict of interest to the average person. This may involve the Council Member or a Council Member's business associate or a member of the Council Member's immediate family. It could involve *ex parte* communications, ownership of property in the vicinity, business dealings with the proponents or opponents before or after the hearing, business dealings of the Council Member's employer with the proponents or opponents, announced predisposition, and the like.

## **7.0 Procedures for Implementation of the Appearance of Fairness Doctrine**

**Prior to any quasi-judicial hearing,** each Councilmember should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If the answer is in the affirmative, no matter how remote, the Councilmember should disclose such facts to the City Attorney, or to the City Manager who will seek the opinion of the City Attorney, as to whether a potential violation of the Appearance of Fairness Doctrine exists. The City Attorney, or the City Manager, shall communicate such opinion to the Council Member and the Mayor.

**Anyone, including a member of the public, seeking to disqualify a Council Member** from participating in a decision on the basis of a violation of the Appearance of Fairness Doctrine must raise the challenge as soon as the basis for disqualification is made known or reasonably should have been made known prior to the issuance of the decision; upon failure to do so, the Doctrine may not be relied upon to invalidate the decision. RCW 42.36.080. The party seeking to disqualify the Council Member shall state with specificity the basis for disqualification; for example: demonstrated bias or prejudice for or against a party to the proceedings, a monetary interest in outcome of the proceedings, prejudgment of the issue prior to the hearing, the City Manager shall direct the City Attorney to interview the Council Member and render an opinion as to the likelihood that an Appearance of Fairness violation would be sustained in superior court. Should such challenge be made in the course of a quasi-judicial hearing, the Mayor shall call a recess, if necessary, to permit the City Attorney to make such interview and render such opinion.

**When Council conducts a hearing** to which the Appearance of Fairness Doctrine applies, the Mayor, or in the case of a potential violation by that individual, the Mayor Pro Tem, will ask if any Council Member knows of any reason which would require such member to excuse themselves pursuant to the Appearance of Fairness Doctrine. The form of the announcement is as follows:

“All Council Members should now give consideration as to whether they have: (1) a demonstrated bias or prejudice for or against any party to the proceedings; (2) a direct or indirect monetary interest in the outcome of the proceedings; (3) a prejudgment of the issue prior to hearing the facts on the record; or (4) ex parte contact with any individual, excluding Administrative staff, with regard to an issue prior to the hearing. If any Council Member should answer in the affirmative, then the Council Member should state the reason for their answer at this time so that the Chair may inquire of the City Attorney as to whether a violation of the Appearance of Fairness Doctrine exists.”

**The Mayor shall have authority** to request a Councilmember to excuse themselves on the basis of an Appearance of Fairness violation. **If two or more Council Members believe that another Council Member is in violation of the Appearance of Fairness Doctrine,** such Council Members may move to request a Council Member to excuse themselves on the basis of an Appearance of Fairness violation. In making such request, the Mayor or other Council Members shall take action that is consistent with the opinion of the City Attorney.

**Notwithstanding the request** of a party, the Presiding Officer or other Council Members, the Councilmember may participate in any such proceeding.

**If an Appearance of Fairness challenge to a Council Member would cause a lack of a quorum** or would result in a failure to obtain a majority vote as required by law, any such challenged Council Member shall be permitted to fully

participate in the proceeding and vote as though the challenge had not occurred, if the Council Member publicly discloses the basis for disqualification prior to rendering a decision. Such participation shall not void the decision by reason of violation of the Appearance of Fairness Doctrine. RCW 42.36.090.

**While conducting a quasi-judicial hearing** the Presiding Officer will afford equal time (generally fifteen minutes per side) to proponents, opponents and neutral parties who testify about the matter under consideration.

**Written materials** may be submitted by parties to quasi-judicial hearings or others as permitted by the Presiding Officer. Written materials should be submitted to the Assistant to the City Manager at least one week prior to the quasi-judicial hearing to ensure a full opportunity for consideration by the Council.

#### **8.0 Consequences of Violation of the Appearance of Fairness Doctrine**

The remedy for an action taken by the City Council in violation of the Appearance Fairness Doctrine is to **void the action.**

#### **9.0 Actions That Do NOT Violate the Appearance of Fairness Doctrine**

**No member of the Council may be disqualified** by the Appearance of Fairness Doctrine for conducting the business of their office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body. RCW 42.36.02. This means, for example, that the Mayor and Council may exercise a power of appointment to office, such as making an appointment to the Planning Commission, without violating the Appearance of Fairness Doctrine.

**Candidates for the City Council** may express their opinions about pending or proposed quasi-judicial actions while campaigning. RCW 42.36.040.

A candidate for the City Council who complies with all provisions of applicable public disclosure and ethics laws shall not be limited under the Appearance of Fairness Doctrine from **accepting campaign contributions** to finance the campaign, including outstanding debts. RCW 42.36.050.

During the pendency of any quasi-judicial proceeding, **no Councilmember may engage in ex parte (outside the hearing) communications with proponents or opponents about a proposal involved in the pending proceeding, unless** the Councilmember: (a) places on the record the substance of such oral or written communications; and (b) provides that a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication shall be made at each hearing where action is taken or considered on the subject. This does not prohibit correspondence between a community member and their elected official if the correspondence is made a part of the

records, when it pertains to the subject matter of the quasi-judicial proceedings. RCW 42.36.060.

**Participation by a member of the Council in earlier proceedings that result in an advisory recommendation** to the Council shall not disqualify that person, under the Appearance of Fairness Doctrine, from participating in any subsequent quasi-judicial proceeding. RCW 42.36.070. This means, for example, that the Mayor and Council may attend events such as open houses or workshops on an issue, and may still participate in Council's quasi-judicial decision on the issue.