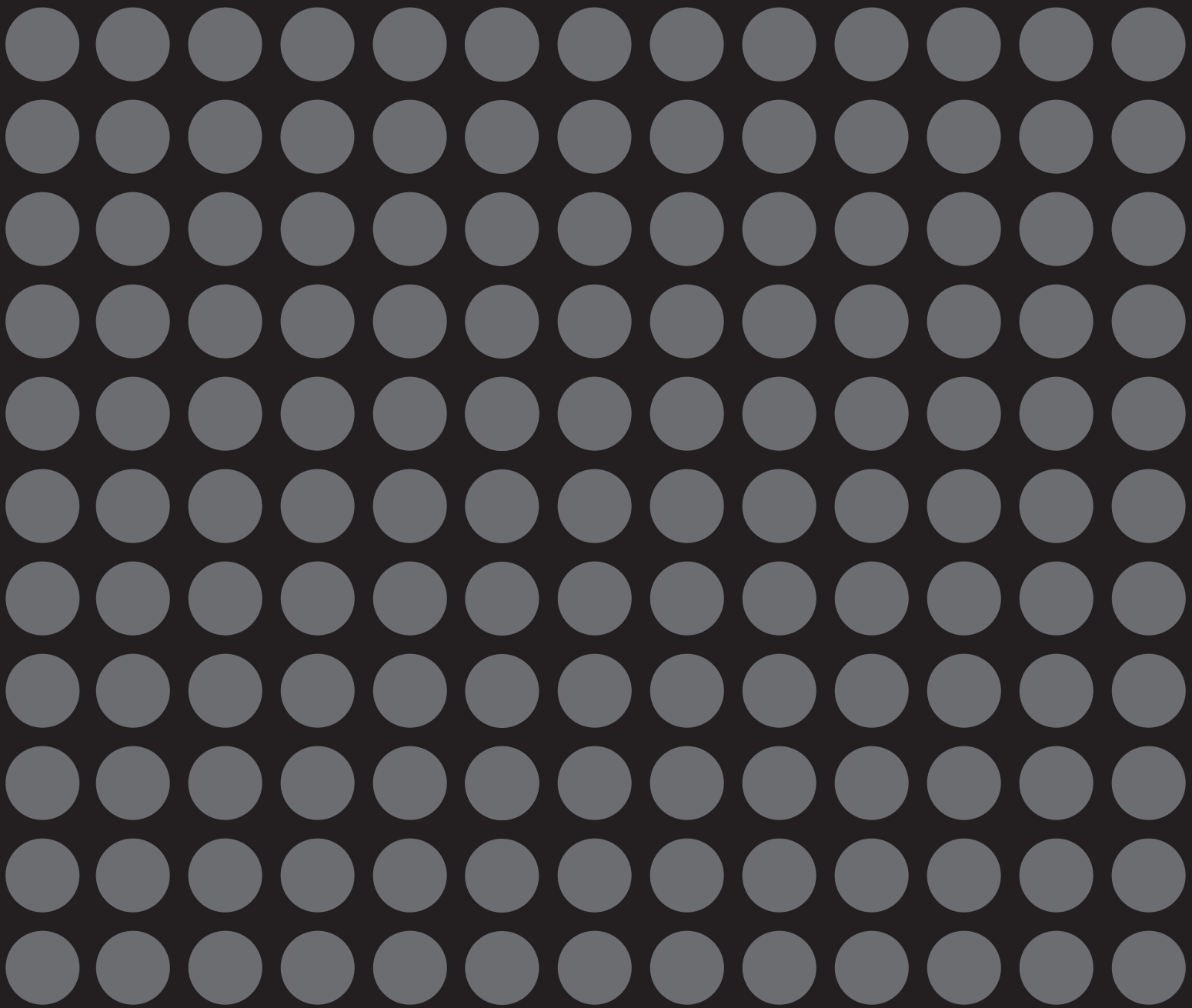
The Appearance of Fairness Doctrine

in Washington State



MRSC

The Appearance of Fairness Doctrine in Washington State

MRSC
2601 Fourth Avenue, Suite 800
Seattle, WA 98121-1280
(206) 625-1300
(800) 933-6772

www.MRSC.org

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Preface

This publication is designed to provide an overview of the appearance of fairness doctrine as it is applied in Washington State.

All municipal officials in Washington face concerns about making sure that meetings and hearings are conducted in a fair manner. This publication is intended to serve as a resource and convenient handbook for elected and appointed municipal officials.

It reviews how the appearance of fairness doctrine developed in Washington State – first by court-made law, and later by state legislation – and provides a number of suggestions for assuring compliance with the law. It also contains a section on commonly asked questions, and includes sample checklists for conducting hearings. The appendix contains the full text of the appearance of fairness statutes, samples of meeting procedures for quasi-judicial hearings, and an outline of cases that illustrate how the doctrine has been applied in Washington.

Special acknowledgement is given to Pamela James, Legal Consultant, for her work in preparing this publication. Appreciation is also given to Holly Stewart for her excellent work in designing and preparing the document for publication. Special thanks to Paul Sullivan, Legal Consultant, and Connie Elliot, Research Associate, who reviewed the draft and provided helpful advice.

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Introduction to the Appearance of Fairness Doctrine

The appearance of fairness doctrine is a rule of law requiring government decision-makers to conduct non-court hearings and proceedings in a way that is fair and unbiased in both appearance and fact. It was developed as a method of assuring that due process protections, which normally apply in courtroom settings, extend to certain types of administrative decision-making hearings, such as rezones of specific property. The doctrine attempts to bolster public confidence in fair and unbiased decision-making by making certain, in both appearance and fact, that parties to an argument receive equal treatment.

Judicially established in Washington State in 1969, the doctrine requires public hearings that are adjudicatory or quasi-judicial in nature meet two requirements: hearings must be *procedurally fair,*[1] *and must appear to be conducted by impartial decision-makers*.[2]

In 1982, the Washington State Legislature codified the portion of the appearance of fairness doctrine that applies to land use proceedings. The next sections will address how Washington courts have defined the doctrine, the statutory provisions of the doctrine, types of proceedings to which the doctrine applies, recognized violations of the doctrine, and suggestions for compliance.

The appearance of fairness doctrine is designed to guarantee that strict procedural requirements are followed so that quasi-judicial hearings are not only fair, but also appear to be fair. The goal of the doctrine is to instill and maintain confidence in the fairness of government proceedings.

[1] *Smith v. Skagit Co.*, 75 Wn.2d 715, 740, 453 P.2d 832 (1969).

[2] *Buell v. Bremerton*, 80 Wn.2d 518, 523, 495 P.2d 1358 (1972).

History of the Doctrine in Washington State

Court-Developed Doctrine

The appearance of fairness doctrine developed in Washington in the context of zoning hearings. In several 1969 cases, the Washington State Supreme Court invalidated local land use regulatory actions because either the hearings appeared unfair, or public officials with apparently improper motives or biases failed to disqualify themselves from the decision-making process. The court decided that the strict fairness requirements of impartiality and procedural fairness mandated in judicial hearings should be applied when administrative bodies hold quasi-judicial hearings that affect individual or property rights.

This application reflected the court's belief in the importance of maintaining public confidence in land use regulatory processes. As stated in *Chrobuck v. Snohomish County*:[3]

> Circumstances or occurrences arising within such processes that, by their appearance, undermine and dissipate confidence in the exercise of zoning power, however innocent they might otherwise be, must be scrutinized with care and with the view that the evils sought to be remedied lie not only in the elimination of actual bias, prejudice, improper influence or favoritism, but also in the curbing of conditions that, by their very existence, create suspicion, generate misinterpretation, and cast a pall of partiality, impropriety, conflict of interest or prejudgment over the proceedings to which they relate.

Washington courts have consistently contrasted the differences between the political process, which is designed to be responsive to public opinion, and the judicial process, which is designed to ensure that disputes are resolved according to sound legal principles. The *Chrobuck* court stated the doctrine in this manner:

> ... public officers impressed with the duty of conducting a fair and impartial fact-finding hearing upon issues significantly affecting individual property rights as well as community interests, must so far as practicable, consideration being given to the fact that they are not judicial officers, be open minded, objective, impartial and free of entangling influences or the taint thereof. . . . They must be capable of hearing the weak voices as well as the strong. To permit otherwise would impair the requisite public confidence in the integrity of the

[3] 78 Wn.2d 858, 480 P.2d 489 (1971).

planning commission and its hearing procedures.[4]

Legislation Not Subject to Appearance of Fairness Doctrine

Our courts have not imposed the appearance of fairness doctrine on legislative or political proceedings. This is probably due to the recognition that legislators most often act in policy-making roles and are often influenced by their personal predilections and biases as well as those of the people they represent. Because legislators are expected to respond to variations in public opinion, frequent informal contact between elected officials and the public is recognized as necessary for the on-going business of democratic government. The elaborate procedural safeguards imposed by courts are not necessary for legislative proceedings because, ultimately, it is the voters who protect the process of legislation.

The Importance of Impartial Decision-Makers

As developed in case law, the appearance of fairness doctrine is intended to protect against actual bias, prejudice, improper influence, or favoritism. It is also aimed at curbing conditions that create suspicion, misinterpretation, prejudgment, partiality, and conflicts of interest. If an action is subject to the appearance of fairness doctrine, then all legally required public hearings, as well as the participating public officials, will be scrutinized for apparent fairness.

From the earliest Washington cases, our courts have demanded that decision-makers who determine rights between specific parties must act and make decisions in a manner that is free of the suspicion of unfairness. The courts have been concerned with "entangling influences" and "personal interest" which demonstrate bias, and have invalidated local land use decisions because either the hearings appeared unfair or public officials with apparently improper motives failed to disqualify themselves from the decision-making process.

In *Buell v. Bremerton*[5] the state supreme court identified three major categories of bias that it recognized as grounds for the disqualification of decision-makers who perform quasi-judicial functions: personal interest, prejudgment of issues, and partiality.

Personal Interest

Personal interest exists when someone stands to gain or lose because of a governmental decision. Our courts have found personal interest to exist in the following situations:

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[4] *Chrobuck v. Snohomish Co.*, 78 Wn.2d 858, 480 P.2d 489 (1971).

[5] 80 Wn.2d 518, 524, 495 P.2d 1358 (1972).

- **Financial Gain** – In *Swift v. Island County*,[6] the condemned conflict arose from the fact that the chairperson of the board of county commissioners was also a stockholder and chairperson of the board of the mortgagee of the affected development.

- **Property Ownership** – In *Buell v. Bremerton* (Appendix B), a planning commission member was disqualified because the value of his land increased due to rezone of property next to his land.[7] (But where property is too far away to be directly benefitted by rezone, no violation occurs.)[8]

- **Employment by Interested Person** – A planning commissioner involved in a rezone decision, was employed by a bank holding a security interest in land, that doubled in value due to the rezone.[9] (But past employment of an official by a rezone applicant is not a violation.)[10]

- **Prospective Employment by Interested Person** – Prospective employment for city councilmember which might appear to be based on his decision (retained as attorney for successful land use applicant).[11]

- **Associational or Membership Ties** – Any "entangling influences impairing the ability to be or remain impartial."[12]

- **Family or Social Relationships** – Relationships between a decision-maker and parties to a hearing, or non-parties who have an interest in the outcome of the proceeding, should be disclosed and made part of the record.

Prejudgment of Issues

Although public officials are not prohibited from expressing opinions about general policy, it is inappropriate for decision-makers to be close-minded before they even hear testimony on a contested matter. Decision-makers need to reserve judgment until after all the evidence has been presented.

Impartiality in a proceeding may be undermined by a decision-maker's bias or prejudgment toward a pending application. In *Anderson v. Island County*, the state supreme court overturned a decision because a councilmember had prejudged a particular issue. He had made an unalterable decision before the hearing was held, evidenced by telling the applicant during the hearing that he was "just

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[6] 87 Wn.2d. 348, 552 P.2d 175 (1976).

[7] *Buell, supra*.

[8] *Byers v. The Board of Clallam County Commissioners*, 84 Wn.2d 796, 529 P.2d 823 (1974).

[9] *Narrowsview Preservation Association v. Tacoma*, 84 Wn.2d 416, 526 P.2d 897 (1974); Hayden v. Port Townsend, 28 Wn. App. 192, 622 P.2d 1291 (1981).

[10] *Narrowsview, supra*.

[11] *Fleming v. Tacoma*, 81 Wn.2d 292, 502 P.2d 327 (1972).

[12] *Save A Valuable Environment (SAVE) v. City of Bothell*, 89 Wn.2d. 862, 576 P.2d 401 (1978).

wasting his time" talking. (By statute, candidates can express opinions on proposed or pending quasi-judicial matters; but once elected to office they are expected to be able to draw the line between general policy and situations in which general policy is applied to specific factual situations.)[13]

Partiality

Partiality is anathema to fair hearings and deliberations. The existence of hostility or favoritism can turn an otherwise carefully conducted hearing into an unfair proceeding. Partiality can also cost a city incalculable hours of wasted staff time and energy.

For example, in *Hayden v. Pt. Townsend*, 28 Wn. App. 192 (1981), the planning commission chairperson, who advocated a particular rezone for his business, relinquished his position as chair of the hearing, and did not vote or otherwise participate in his official capacity. Nevertheless, an appearance of fairness violation occurred because the planning commission chairperson acted as an advocate of the rezone by joining the hearing audience, acting as an agent of the rezone applicant, questioning witnesses, and advising the acting chairman on procedural matters.

In *Buell v. Bremerton*, an appearance of fairness violation occurred because a planning commission member continued to participate even though the rezone would have been approved without his vote, and the planning commission approval was merely a recommendation to council. In reviewing the continuing participation of the disqualified member, the court found that the "bias of one member infects the actions of other members." "The importance of the appearance of fairness has resulted in the recognition that it is necessary only to show an interest that might have influenced a member of the commission and not that it actually so affected him."[14]

Because each fact-situation requires a subjective evaluation, a great deal of confusion is caused by the different applications of the doctrine. No doubt the unpredictable nature of court application of the doctrine helped encourage the legislature to standardize the doctrine's application in land use matters.

While most of the early appearance of fairness cases involved zoning matters, our courts have also applied the doctrine to civil service and other types of administrative proceedings involving quasi-judicial hearings. See attached summary of Washington appearance of fairness cases, Appendix B.

Test for bias:

- Has the decision been made solely on the basis of matters of record?
- Would a fair-minded person, observing the proceedings, be able to conclude that everyone had been heard who should have been heard?
- Did decision-makers give reasonable faith and credit to all matters presented, according to the weight and force they were reasonably entitled to receive?[15]

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[13] *Chrobuck, supra*.

[14] *Buell* at 523.

[15] *Smith v. Skagit Co., supra*.

The Statutory Doctrine

Types of Proceedings to Which it Applies

In 1982, the state legislature enacted what is now chapter 42.36 RCW, codifying the appearance of fairness doctrine. The statutory doctrine applies only to local *quasi-judicial* land use actions, as defined in RCW 42.36.010:

> ...those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards that determine the legal rights, duties or privileges of specific parties in a hearing or other contested case proceeding.

The primary characteristics of a quasi-judicial matter are that:

- the decision has a greater impact on a limited number of persons or property owner, and has limited impact on the community at large;
- the proceedings are aimed at reaching a fact-based decision by choosing between two distinct alternatives; and
- the decision involves policy application rather than policy setting.

The following types of land use matters meet this definition: subdivisions, preliminary plat approvals, conditional use permits, SEPA appeals, rezones of specific parcels of property, variances, and other types of discretionary zoning permits if a hearing must be held.

The statutory doctrine does **not** apply to the following actions:

- adoption, amendment, or revision of comprehensive plans
- adoption of area-wide zoning ordinances
- adoption of area-wide zoning amendments
- building permit denial.

As a practical matter, if both legislative and adjudicative functions are combined in one proceeding, and any showing of bias is present, the appearance of fairness rules should be followed.

Basic Requirements of the Statute

Applies Only to Quasi-Judicial Proceedings

> **RCW 42.36.010** – Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies....

The appearance of fairness doctrine applies only to *quasi-judicial* actions of local decision-making bodies when a hearing is required by statute or local ordinance.[16]

Public officials act more like judges than administrators or legislators when they participate in quasi-judicial hearings. This means that they must listen to and evaluate testimony and evidence presented at a hearing; they must determine the existence of facts; they must draw conclusions from facts presented; and then decide whether the law allows the requested action. A quasi-judicial proceeding involves policy *application*, rather than policy *making*.

"Quasi-judicial actions" are defined to include:

> ...actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding.

The principle characteristics of quasi-judicial proceedings:

- generally have a greater impact on *specific individuals* then on the entire community.
- aimed at arriving at a fact-based decision between two distinct alternatives, i.e., pro or con.
- decision involves policy application rather than policy setting.

The following matters have been determined by the courts to be quasi-judicial if a public hearing must be held: conditional uses, variances, subdivisions, rezoning a specific site, PUD approval, preliminary plat approval, discretionary zoning permits, appeal of a rezone application, other types of zoning changes that involve fact-finding and the application of general policy to a discrete situation.

Before proceeding with a hearing: Determine whether the intended action will produce a general rule or policy that applies to an open class of individuals, interests, or situations (and is thus legislative), or whether it will apply a general rule of policy to specific individuals, interests, or situations (and is therefore quasi-judicial).

[16]RCW 42.36.010; affirmed in *Raynes v. Leavenworth*, 118 Wn.2d 237, 821 P.2d 1204 (1992).

Does Not Apply to Policy-Making or Legislative Actions

> **RCW 42.36.010** – Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

Policy-making is clearly the work of legislative bodies and doesn't resemble the ordinary business of the courts. The doctrine *does not* apply to local legislative, policy-making actions of the type that adopt, amend, or revise comprehensive, community, or neighborhood plans or other land use planning documents. It also does not apply to the passage of area-wide zoning ordinances, or to the adoption of zoning amendments that are of area-wide significance.

Even though a zoning amendment might affect specific individuals, if it applies to an entire zoning district, it will be considered legislative, not quasi-judicial. As the court noted in *Raynes v. Leavenworth*:

> The fact that the solution chosen has a high impact on a few people does not alter the fundamental nature of the decision.[17]

The courts have also determined the following matters to be legislative (e.g., political or policy decisions) and therefore not subject to the appearance of fairness doctrine: comprehensive plans, initial zoning decisions, amendments to the text of zoning ordinances, street vacations, revision of a community plan viewed by the court to be "in the nature of a blueprint and policy statement for the future,"[18] determining where to place a highway interchange.[19]

Special Rules Apply During Elections

> **RCW 42.36.050** – A candidate for public office who complies with all provisions of applicable public disclosure and ethics laws shall not be limited from accepting campaign contributions to finance the campaign, including outstanding debts; nor shall it be a violation of the appearance of fairness doctrine to accept such campaign contributions.

During campaigns, candidates for public office are allowed to express their opinions about pending or proposed quasi-judicial actions, even though they may be involved in later hearings on these same actions. Candidates are also allowed to accept campaign contributions from constituents who have quasi-judicial matters pending before the decision-making body as long as candidates comply with applicable public disclosure and ethics laws.[20]

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[17] *Raynes, supra*. at 249.

[18] *Westside Hilltop Survival Committee v. King County*, 96 Wn.2d 171, 179, 634 P.2d 862 (l981).

[19] *Harris v. Hornbaker*, 98 Wn.2d 650, 658 P.2d 1219 (1983).

[20] *Improvement Alliance v. Snohomish Cy.*, 61 Wn.App. 64, 808 P.2d 781 (1991).

Ex Parte Contacts Are Prohibited

Ex parte literally means "one sided." Ex parte contact involves a one-sided discussion without providing the other side with an opportunity to respond and state their case.

RCW 42.36.060 – During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

(1) places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(2) provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication is related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision, if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official, if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

A basic principle of fair hearings is that decisions are made entirely on the basis of evidence presented at the proceedings. All parties to a conflict should be allowed to respond and state their case. Consequently, while a quasi-judicial proceeding is pending, no member of a decision-making body is allowed to engage in *ex parte* (one-sided or outside the record of the hearing) communications with either proponents or opponents of the proceeding.

A decision-maker is allowed to cure a violation caused by an ex parte communication by:

- placing the substance of any oral or written communications or contact on the record; and
- *at each hearing* where action is taken or considered on the subject, (1) making a public announcement of the content of the communication, and (2) allowing involved parties to rebut the substance of the communication.

This rule does not prohibit written correspondence between a citizen and an elected official on the subject matter of a pending quasi-judicial matter, *if* the correspondence is *made a part of the record of the proceedings*.

No Disqualification for Prior Participation

RCW 42.36.070 – Participation by a member of a decision-making body in earlier proceedings that result in an advisory recommendation to a decision-making body shall not disqualify that person from participating in any subsequent quasi-judicial proceeding.

A decision-maker (such as a councilmember who was formerly a planning commission member) who participated in earlier proceedings on the same matter that resulted in an advisory recommendation to another decision-making body (e.g., the city council) is not disqualified from participating in the subsequent quasi-judicial proceedings.

Challenges Must Be Timely

> **RCW 42.36.080** – Anyone seeking to rely on the appearance of fairness doctrine to disqualify a member of a decision-making body from participating in a decision must raise the challenge as soon as the basis for disqualification is made known to the individual. Where the basis is known or should reasonably have been known prior to the issuance of a decision and is not raised, it may not be relied on to invalidate the decision.

If information is disclosed indicating violation of the doctrine, opponents or proponents can decide whether to request disqualification or waive their right to challenge the alleged violation. Challenges based on a suspected violation of the appearance of fairness doctrine have to be raised as soon as the basis for disqualification is made known, or reasonably should have been known, prior to the issuance of the decision, otherwise they cannot be used to invalidate the decision.

Rule of Necessity

> **RCW 42.36.090** – In the event of a challenge to a member or members of a decision-making body which 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 member(s) shall be permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the member or members publicly disclose the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

If members of a decision-making body are challenged as being in violation of the doctrine so that there are not enough members to legally make a decision, the "rule of necessity" allows challenged members to participate and vote. Before voting, though, the challenged officials must publicly state why they would, or might have been, disqualified.

Fair Hearings Have Precedence

> **RCW 42.36.110** – Nothing in this chapter prohibits challenges to local land use decisions where actual violations of an individual's right to a fair hearing can be demonstrated.

Even though some conduct might not violate the statutory provisions of the appearance of fairness doctrine, a challenge could still be made if an unfair hearing actually results. For instance, although RCW 42.36.040 permits candidates to express opinions on pending quasi-judicial matters, if opinion statements made during a campaign reflect an intractable attitude or bias that continues into the post-election hearing process, a court might determine that the right to a fair hearing has been impaired, even if no statutes were violated.

The safest approach: avoid any appearance of partiality or bias.

Because it is often difficult to sort out the many functions of local decision-making bodies, a clear line cannot always be drawn between judicial, legislative, and administrative functions.[21] If the proceedings seem similar to judicial proceedings then they probably warrant the special protections called for by the appearance of fairness doctrine.

[21]See *Buell v. Bremerton, supra*. in which the court determined that participation was likely to influence other members and affect their actions.

Guidelines for Avoiding Fairness Violations

Officials who participate in quasi-judicial hearings need to:

- become familiar with fair-hearing procedures;
- be aware of personal and employment situations that might form the basis for a challenge;
- strive to preserve an atmosphere of fairness and impartiality – even if a given decision may seem to be a foregone conclusion;
- evaluate whether a financial interest or bias would limit ability to function as an impartial decision-maker;
- make sure decisions are made solely on the basis of matters of record;
- make sure that ex parte contacts are avoided; and
- make sure the information about the contact is placed on the record, if ex parte contacts occur.

One method of ensuring fair hearings is to adopt policies and rules for quasi-judicial matters. Some municipalities have adopted rules requiring that a decision maker respond to questions prior to commencement of a quasi-judicial hearing. (Sample policies are contained in Appendix C.)

The Test for Fairness

Would a fair minded person in attendance at this hearing say (1) that everyone was heard who should have been heard, and (2) that the decision-maker was impartial and free from outside influences?

Officials Who Are Subject to the Doctrine

The doctrine applies to all local decision-making bodies including:

- members of governing board or council;
- hearing examiners;
- planning commissions;
- boards of adjustment;
- civil service boards; and
- any other body that determines the legal rights, duties or privileges of specific parties in a hearing or other contested case proceeding.

Officials and Employees Who Are Not Subject to the Doctrine

Department heads, planning department staff, and other municipal officials who don't conduct hearings or engage in quasi-judicial decision-making functions are not subject to the doctrine. *(Although exempt from the doctrine's ex parte contact prohibition, they might still be subject to its other requirements to make sure that all hearings are fair. RCW 42.36.110.)*

Actions That Are Exempt from the Doctrine

Purely legislative matters, such as:

- the adoption, amendment, or revision of a comprehensive, community, or neighborhood plan;
- adoption of area-wide zoning ordinances; and
- adoption of zoning amendments of area-wide significance.

Remedy for Violation of the Doctrine

A decision-maker who has had *ex parte* contacts is allowed, by statute, to cure the violation by publicly stating the nature and substance of the contact on the record of the hearing *and* by advising the parties of any *ex parte* contact and giving each party a chance to respond *at each* subsequent hearing at which the matter is considered.

The statutory doctrine requires a suspected violation to be raised at the time of the hearing, otherwise any objection will be considered waived. However, if there is no opportunity for the parties to respond to the disclosure of the contact, then the violation can't be cured, and the decision-maker should disqualify him or herself from the rest of the proceedings.

A disqualified decision-maker may not vote and, perhaps more importantly, *may not participate in the hearing and deliberation process, even if not voting*.

If a violation is proved, the challenged decision will be invalidated. A new hearing must be conducted without the participation of the disqualified decision-maker. Because the result of conducting a new hearing is often eventual reinstatement of the original decision, the practical result of an invalidation is often tremendous delay and duplicative work for all the parties.

Commonly Asked Questions

How does a local government decide whether a matter is *quasi-judicial*?

Quasi-judicial actions are defined by state statute to be: "...those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards *which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding*." RCW 42.36.010.

Which land use matters are *legislative actions*?

Legislative actions include adoption, amendment, or revision of comprehensive, community, or neighborhood plans or other land use planning documents, or adoption of zoning ordinances or amendments that are of area-wide significance. See RCW 42.36.010.

What is an *ex parte* communication?

An ex parte communication is a one-sided discussion between a decision-maker and the proponent or opponent of a particular proposal that takes place outside of the formal hearing process on a quasi-judicial matter. No member of a decision-making body is allowed to engage in ex parte communication when quasi-judicial matters are pending.

How is it determined whether a matter is *pending*?

"Pending" means after the time the initial application is filed or after the time an appeal is filed with the local government. Thus, if a matter would come before the decision-maker *only* by appeal from a decision by the hearing examiner or planning commission, it is not considered pending with respect to councilmembers or until an appeal is filed. It would, however, be pending with respect to the hearing examiner or planning commissioners.

Is a council hearing on the adoption of an area-wide *zoning ordinance* subject to the appearance of fairness doctrine?

No. Even though it requires a public hearing and affects individual landowners, this type of proceeding is *legislative* rather than *adjudicatory or quasi-judicial*.

◖ Is a *rezone hearing* subject to the doctrine?

Yes. The decision to change the zoning of particular parcels of property is adjudicatory and the appearance of fairness doctrine applies. (See *Leonard v. City of Bothell*, 87 Wn. 2d 847, 557 P.2d 1306 (1976).

◖ Is an *annexation* subject to the appearance of fairness doctrine?

No. An annexation is a legislative action and not a quasi-judicial action.

◖ Does the appearance of fairness doctrine apply to *preliminary plat approval*?

Yes, preliminary plat approval is quasi-judicial in nature and must be preceded by a public hearing. Therefore, it is subject to the doctrine of appearance of fairness. See *Swift v. Island County*, 87 Wn.2d 348, 552 P.2d 175 (1976).

◖ Does the appearance of fairness doctrine apply to a *final plat approval*?

A public hearing is not required for final plat approval. The doctrine only applies to quasi-judicial land use matters for which a hearing is required by law.

◖ Does the doctrine apply to *street vacations*?

No. Even though a hearing is held, this is a legislative policy decision, not an adjudicatory matter.

◖ Which *local officials are subject to the doctrine*?

According to RCW 42.36.010, council members, planning commission members, board of adjustment members, hearing examiners, zoning adjusters, or members of boards participating in quasi-judicial hearings that determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding" are all subject to the doctrine.

◖ Are any local government *officials or employees exempt* from the appearance of fairness rule?

Even though required to make decisions on the merits of a particular case, department heads and staff persons are not subject to the appearance of fairness rules.

◖ If a decision-maker announces before the hearing has even been held that her/his *mind is already made up* on a matter, what should be done?

The member should disqualify her/himself. (See *Chrobuck v. Snohomish County*, 78 Wn.2d 858, 480 P.2d 489 (1971).

◖ May a decision-maker *meet with a constituent* on matters of interest to the constituent?

Yes, as long as there is no discussion of quasi-judicial matters pending before the council. See RCW 42.36.020; *West Main Associates v. City of Bellevue*, 49 Wn.App 513, 742 P.2d 1266 (1987).

◖ May the *city council and planning commission meet jointly* to consider a presentation by a developer?

If no specific application has been filed by the developer, the council probably may meet jointly with the planning commission to consider a proposal by a developer. The appearance of fairness doctrine has been held by the courts to apply only to situations arising during the *pendency* of an action. If no application has been filed, no action is pending before the city. But if a formal application for a rezone has been filed, a joint meeting would probably violate the doctrine.

◖ May councilmembers meet with a developer *prior* to an application for a project?

Yes, if no application has been filed. A member of a decision-making body is not allowed to engage in ex parte communications with opponents or proponents of a proposal *during the pendency of a quasi-judicial proceeding* unless certain statutory conditions are met. In *West Main Associates v. Bellevue*, 49 Wn. App. 513, 742 P.2d 1266 (1987), the court indicated that ex parte communications were not prohibited until an actual appeal has been filed with the city council relating to a quasi-judicial matter.

◖ May decision-makers *discuss a quasi-judicial matter outside of council chambers*?

If a situation occurs in which communication with a decision-maker occurs outside of the local government's hearing process, the decision-maker should place the substance of the written or oral communication on the record, make a public announcement of the content of the communication, and allow persons to rebut the substance of the communication. Failure to follow these steps could result in an overturning of the decision, should it ever be challenged in court.

◖ Is there an appearance of fairness problem if a *planning commission member owns property within an area proposed for rezone*?

It would violate the appearance of fairness doctrine if a planning commission member who owns property in the area to be rezoned participates in the hearing and/or votes. In the leading case on this issue, *Buell v. Bremerton*, 80 Wn.2d 518, 495 P.2d 1358 (1972), a planning commissioner owned property adjacent to an area to be rezoned. The court determined that the commissioner's self-interest was sufficient to invalidate the entire proceeding.

◖ May a planning commission member who has *disqualified himself on a rezone action*, discuss the application with other planning commission members?

A planning commission member who has disqualified himself on a specific action should not attempt to discuss the application with other planning commission members either inside or outside of the hearing process. See *Hayden v. Port Townsend*, 28 Wn. App. 192, 622 P.2d 1291 (1981).

◖ If a councilmember has disqualified herself from participation in a council hearing because she is an applicant in a land use matter, may she *argue her own application in writing before the council*?

Our courts have ruled that once a member relinquishes his or her position for purposes of the doctrine, he or she should not participate in the hearing. A disqualified decision-maker should not join the hearing audience, act on behalf of an applicant, or interact in any manner with the other members. See *Hayden v. Port Townsend*, 28 Wn. App. 192, 622 P.2d 1291 (1981).

◖ May a *relative of a decision-maker*, who is also a developer, act as an agent for that decision-maker in presenting the proposal to council?

Yes, a relative would be allowed to act as the agent in these circumstances.

◖ May the *spouse of a disqualified decision-maker* testify at the quasi-judicial hearing?

If the decision-maker disqualifies him or herself on a quasi-judicial issue coming before the council, his/her spouse may testify as long as the councilmember leaves the room and does not attempt to vote or participate in the deliberations.

◖ May a decision-maker vote on a legislative issue if her *husband is a planner for the local government* and the issue could indirectly affect his work?

Yes. If the vote is on a legislative matter, then the appearance of fairness doctrine does not apply.

◖ May a *city staff person* present a development proposal to the planning commission and city council *on behalf of a developer* who is also a city councilmember?

The staff member can present a report and recommendation to the council or planning commission on behalf of the city. It is not appropriate for city staff to present both the city and the developer's position.

◖ In a situation in which the *chairman of the planning commission is a realtor and represents a client* wishing to purchase property in an area of the city that is being considered for a rezone, may the chairman participate in the hearing and vote on the rezone application?

The fact that the chairman is a realtor does not in itself disqualify him from participation in rezone hearings. However, his representation of a client wanting to purchase property in the area being considered for a rezone constitutes sufficient reason for disqualification from participation.

◖ Will a violation of the appearance of fairness doctrine invalidate a decision, even if the *vote of the "offender" was not necessary to the decision*?

Yes. Our courts have held that it is immaterial whether the vote of the offender was or was not necessary to the decision.

◖ Are *contacts between a decision-maker and city staff members* considered to be ex parte contacts prohibited by the appearance of fairness doctrine?

The role of a local government department is to create a neutral report on a proposal and issue a recommendation to grant or deny a proposal that is subject to further appeal or approval. Contacts with staff would only be prohibited if the department involved is a party to quasi-judicial action before the council or board.

◖ May a councilmember participate in a vote on *leasing city property to an acquaintance*?

Because the lease of city property is not a quasi-judicial matter and does not involve a public hearing, the appearance of fairness doctrine does not apply. (Note: There could be a potential conflict of interest question if the councilmember is likely to reap financial gain from the lease arrangements.)

◖ May a *councilmember who is running for mayor* state opinions during the campaign regarding quasi-judicial matters that are pending before the council and that will be decided before the election?

RCW 42.36.040 provides that "expression of an opinion by a person subsequently elected to a public office, on any pending or proposed quasi-judicial actions" is not a violation of the appearance of fairness doctrine. However, this statute has never been interpreted by any appellate court, and it is unclear how it applies to an *incumbent* councilmember who might speak during his or her campaign (for mayor in this case) concerning a quasi-judicial matter that will be decided by the current council before the upcoming election. It would be best for the councilmember running for mayor not to speak on the pending matter. To do so could compromise the fairness of the hearing on the matter. RCW 42.36.110 operates to protect the right to a fair hearing despite compliance with other requirements of chapter 42.36 RCW. Although RCW 42.36.040 clearly allows *non*-incumbents running for office to speak on such a matter, the rights of the parties to a fair hearing might outweigh the right of an incumbent to speak out.

◖ A *councilmember who is also chair of the local housing authority* would like to participate in a hearing at which the council is asked to review a proposed low-income housing project. If she can't participate as a councilmember, can she make her views known as a private citizen?

Because the council will be meeting as a quasi-judicial body, the appearance of fairness doctrine is implicated. Consequently, the councilmember should not only refrain from participation and voting on the issue but should also physically leave the room when the remaining councilmembers discuss the matter. This removes any potential claim that the councilmember has attempted to exert undue influence over the other councilmembers.

◖ If a councilmember is disqualified from participation on appearance of fairness grounds and *discusses the issue with another councilmember*, may the second councilmember still participate and vote?

If the first councilmember is disqualified, then any discussion between the disqualified member and the other councilmember could be construed as an ex parte communication. If the content of the conversation is placed on the record according to the requirements of RCW 42.36.060, the other member could probably participate.

◖ May a *councilmember attend a planning commission hearing* on a quasi-judicial matter?

Although RCW 42.36.070 provides that participation by a member of a decision-making body in an earlier proceeding that results in an advisory recommendation to a decision-making body does not disqualify that person from participating in any subsequent quasi-judicial proceeding, such participation could potentially affect the applicant's right to a fair hearing. RCW 42.36.110 provides:

> Nothing in this chapter prohibits challenges to local land use decisions where actual violation of an individuals' right to a fair hearing can be demonstrated.

Out of perhaps an excess of caution, this office generally recommends that city councilmembers not attend planning commission hearings on quasi-judicial matters because it is possible that their attendance might give rise to a challenge based on the appearance of fairness doctrine. We are not aware of any court decisions in which such a challenge has been adjudicated.

◖ Can a candidate for municipal office *accept campaign contributions* from someone who has a matter pending before the council?

Yes. Candidates may receive campaign contributions without violating the doctrine. RCW 42.36.050; *Improvement Alliance v. Snohomish Co.*, 61 Wn.App. 64, 808 P.2d 781 (1991). However, contributions must be reported as required by public disclosure law. Chapter 42.17 RCW.

◖ Aren't elected officials supposed to be able to *interact with their constituents*?

Absolutely. Accountability is a fundamental value in our representative democracy and requires public officials to be available to interact with their constituents. The statute addresses this by limiting the doctrine to quasi-judicial actions and excluding legislative actions.

◖ *Can a quorum be lost through disqualification* of members under the appearance of fairness doctrine?

No. If a challenge to a member, or members of a decision-making body would prevent a vote from occurring, then the challenged member or members may participate and vote in the proceedings provided that they first disclose the basis for what would have been their disqualification. This is known as the "doctrine of necessity" and is codified in RCW 42.36.090.

◖ What should a decision-maker do if an *appearance of fairness challenge is raised*?

The challenged decision-maker should either refrain from participation or explain why the basis for the challenge does not require him or her to refrain.

◖ Are there any *limitations* on raising an appearance of fairness challenge?

Yes. Any claim of a violation must be made "as soon as the basis for disqualification is made known to the individual." If the violation is not raised when it becomes known, or when it reasonably should have been known, the doctrine cannot be used to invalidate the decision. RCW 42.36.080.

◖ If a violation is proved, what is the *remedy*?

The remedy for an appearance of fairness violation is to invalidate the local land use regulatory action. The result is that the matter will need to be reheard. Damages, however, cannot be imposed for a violation of the doctrine. See *Alger v. City of Mukilteo*, 107 Wn. 2d 541, 730 P.2d 1333 (1987).

◖ Does the appearance of fairness doctrine prohibit a decision-maker from *reviewing and considering written correspondence* regarding matters to be decided in a quasi-judicial proceeding?

No. Decision-makers can accept written correspondence from anyone *provided* the correspondence is disclosed and made part of the record of the quasi-judicial proceeding. RCW 42.36.060.

◖ What *local government department oversees application* of the appearance of fairness doctrine?

No person or body has the authority to oversee application of the appearance of fairness doctrine to members of a decision-making body. It is up to the individual members to determine whether the doctrine applies to them in a particular situation and to disqualify themselves if it does. Some local governing bodies have established rules that allow the votes of the membership to disqualify a member in the event of an appearance of fairness challenge. A governing body probably has the authority to establish such a rule based upon its statutory authority to establish rules of conduct.

Appendix A
Chapter 42.36 RCW

Laws/Statutes Designed to Promote Fairness and Openness in Government

- **Chapter 42.17 RCW – PUBLIC DISCLOSURE ACT**
- **Chapter 42.30 RCW – OPEN PUBLIC MEETINGS ACT**
- **Chapter 42.36 RCW – APPEARANCE OF FAIRNESS DOCTRINE - LIMITATIONS**
  (Full Text Follows)

Chapter 42.36 RCW
APPEARANCE OF FAIRNESS DOCTRINE – LIMITATIONS

RCW 42.36.010
Local land use decisions.

Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case 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 or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

RCW 42.36.020
Members of local decision-making bodies.

No member of a local decision-making body may be disqualified by the appearance of fairness doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body.

RCW 42.36.030
Legislative action of local executive or legislative officials.

No legislative action taken by a local legislative body, its members, or local executive officials shall be invalidated by an application of the appearance of fairness doctrine.

RCW 42.36.040
Public discussion by candidate for public office.

Prior to declaring as a candidate for public office or while campaigning for public office as defined by RCW 42.17.020(5) and (25) no public discussion or expression of an opinion by a person subsequently elected to a public office, on any pending or proposed quasi-judicial actions, shall be a violation of the appearance of fairness doctrine.

RCW 42.36.050
Campaign contributions.

A candidate for public office who complies with all provisions of applicable public disclosure and ethics laws shall not be limited from accepting campaign contributions to finance the campaign, including outstanding debts; nor shall it be a violation of the appearance of fairness doctrine to accept such campaign contributions.

RCW 42.36.060
Quasi-judicial proceedings – Ex parte communications prohibited, exceptions.

During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

(1) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and

(2) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

RCW 42.36.070
Quasi-judicial proceedings - Prior advisory proceedings.

Participation by a member of a decision-making body in earlier proceedings that result in an advisory recommendation to a decision-making body shall not disqualify that person from participating in any subsequent quasi-judicial proceeding.

RCW 42.36.080
Disqualification based on doctrine - Time limitation for raising challenge.

Anyone seeking to rely on the appearance of fairness doctrine to disqualify a member of a decision-making body from participating in a decision must raise the challenge as soon as the basis for disqualification is made known to the individual. Where the basis is known or should reasonably have been known prior to the issuance of a decision and is not raised, it may not be relied on to invalidate the decision.

RCW 42.36.090
Participation of challenged member of decision-making body.

In the event of a challenge to a member or members of a decision-making body which 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 member(s) shall be permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the member or members publicly disclose the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

RCW 42.36.100
Judicial restriction of doctrine not prohibited - Construction of chapter.

Nothing in this chapter prohibits the restriction or elimination of the appearance of fairness doctrine by the appellate courts. Nothing in this chapter may be construed to expand the appearance of fairness doctrine.

RCW 42.36.110
Right to fair hearing not impaired.

Nothing in this chapter prohibits challenges to local land use decisions where actual violations of an individual's right to a fair hearing can be demonstrated.

Appendix B

Summary of Washington Appearance of Fairness Doctrine Cases

Summary of Washington Appearance of Fairness Doctrine Cases

Case	Body/Action	Conflict	Decision
Smith v. Skagit County, 75 Wn.2d 715, 453 P.2d 832 (1969)	Planning Commission/ Rezone	Planning commission met with proponents and excluded opponents in executive session.	Violation of appearance of fairness doctrine. Amendments to zoning ordinance to create an industrial zone were void - cause remanded to the superior court for entry of such a decree.
State ex. rel. Beam v. Fulwiler, 76 Wn.2d 313, 456 P.2d 322 (1969)	Civil Service Commission/Appeal from discharge of civil service employee (chief examiner of commission)	Challenge to hearing tribunal composed of individuals who investigated, accused, prosecuted, and would judge the controversy involved.	An appellate proceeding before the commission would make the same persons both prosecutor and judge and the tribunal must, therefore, be disqualified. A fair and impartial hearing before an unbiased tribunal is elemental to the concepts of fundamental fairness inherent in administrative due process.
Chrobuck v. Snohomish County, 78 Wn.2d 858, 480 P.2d 489 (1971)	Planning Commission - Board of County Commissioners/ Comprehensive plan amendment and rezone	Chairman of planning commission and chairman of county commissioners visited Los Angeles with expenses paid by petitioner. Chairman of county commissioners announced favorable inclination prior to hearing. New planning commission member previously testified on behalf of petitioner and signed advertisement to that effect, then participated to some extent at commission hearings but disqualified himself from voting.	Violation of appearance of fairness doctrine. Rezone set aside - land returned to original designation. Planning commission functions as an administrative or quasi-judicial body. Note: Cross-examination may be required if both parties have attorneys.
Buell v. Bremerton, 80 Wn.2d 518, 495 P.2d 1358 (1972)	Planning Commission/ Rezone	Chairman of planning commission owned property adjoining property to be rezoned. Property could have been indirectly affected in value.	Violation of appearance of fairness doctrine. Overrules *Chestnut Hill Co. v. Snohomish County*. Action by city council rezoning property on planning commission recommendation improper.
Fleming v. Tacoma, 81 Wn.2d 292, 502 P.2d 327 (1972)	City Council/Rezone	Attorney on council employed by the successful proponents of a zoning action two days after decision by city council.	Violation of appearance of fairness doctrine. Rezone ordinance invalid. Overrules *Lillians v. Gibbs*.
Anderson v. Island County, 81 Wn.2d 312, 501 P.2d 594 (1972)	Board of County Commissioners/Rezone	Chairman of county commission was former owner of applicant's company. Chairman told opponents at public hearing they were wasting their time talking.	Violation of appearance of fairness doctrine. Reversed and remanded for further proceedings.
Narrowsview Preservation Association v. Tacoma, 84 Wn.2d 416, 526 P.2d 897 (1974)	Planning Commission/ Rezone	Member of planning commission was a loan officer of bank which held mortgage on property of applicant. Member had no knowledge his employer held the mortgage on the property.	Appearance of fairness doctrine violation; thus zoning ordinance invalid. Court also held, however, acquaintances with persons or casual business dealings insufficient to constitute violation of doctrine.

Case	Body/Action	Conflict	Decision
Byers v. The Board of Clallam County Commissioners, 84 Wn.2d 796, 529 P.2d 823 (1974)	Planning Commission/ Adoption of interim zoning ordinance	Members owned property 10-15 miles from area zoned and there was no indication that such property was benefited directly or indirectly by rezone.	No violation of appearance of fairness doctrine. Ordinance held invalid on other grounds.
Seattle v. Loutsis Investment Co., Inc., 16 Wn. App. 158, 554 P.2d 379 (1976)	City/Certiorari to review findings of public use and necessity by court in condemnation action	Alleged illegal copy made of a key to the condemned premises and unauthorized entries by city employees and other arbitrary conduct by city employees violated appearance of fairness doctrine.	Court held appearance of fairness doctrine applies only to hearings and not to administrative actions by municipal employees. Cites *Fleming v. Tacoma*.
King County Water District No. 54 v. King County Boundary Review Board, 87 Wn.2d 536, 554 P.2d 1060 (1976)	Boundary Review Board/Assumption by city of water district	Alleged ex parte conversations between member of the board and persons associated with Seattle Water District and Water District No. 75 about the proposed assumption by city of Water District No. 54.	No appearance of fairness violation. Record does not indicate conversations took place and court could not conclude there was any partiality or entangling influences which would affect the board member in making the decision.
Swift, et al. v. Island County, et al., 87 Wn.2d 348, 552 P.2d 175 (1976)	Board of County Commissioners/ Overruling planning commission and approving a preliminary plat	A county commissioner was a stockholder and chairman of the board of a savings and loan association that had a financial interest in a portion of the property being platted.	Violated appearance of fairness doctrine.
Milwaukee R.R. v. Human Rights Commission, 87 Wn.2d 802, 557 P.2d 307 (1976)	State Human Rights Commission Special Hearing Tribunal/ Complaint against railroad for alleged discrimination	Member of hearing tribunal had applied for a job with the commission.	The board's determination held invalid because it had appearance of unfairness.
Fleck v. King County, 16 Wn. App. 668, 558 P.2d 254 (1977)	Administrative Appeals Board/permit to install fuel tank	Two members of the board were husband and wife.	Fact that two members of board were husband and wife created appearance of fairness problem.
SAVE (Save a Valuable Environment) v. Bothell, 89 Wn.2d 862, 576 P.2d 401 (1978)	Bothell Planning Commission/Rezone	Planning commission members were executive director and a member of the board of directors, respectively, of the chamber of commerce which actively promoted the rezone.	Violation of appearance of fairness. Trial court found that the proposed shopping center, which would be accommodated by the rezone, would financially benefit most of the chamber of commerce members and their support was crucial to the success of the application. The planning commission members' associational ties were sufficient to require application of the doctrine.

Case	Body/Action	Conflict	Decision
Polygon v. Seattle, 90 Wn.2d 59, 578 P.2d 1309 (1978)	City of Seattle, Superintendent of Buildings/Application for building permit denied	Announced opposition to the project by the mayor, and a statement allegedly made by the superintendent, prior to the denial, that because of the mayor's opposition, he would announce that the permit application would be denied.	The appearance of fairness doctrine does not apply to administrative action, except where a public hearing is required by law. The applicable fairness standard for discretionary administrative action is actual partiality precluding fair consideration.
Hill v. Dept. L & I, 90 Wn.2d 276, 580 P.2d 636 (1978)	Board of Industrial Insurance Appeals/Appeal by industrial insurance claimant	The chairman of the appeals board had been supervisor of industrial insurance at the time the claim had been closed.	No violation of appearance of fairness doctrine. The chairman submitted his uncontroverted affidavit establishing lack of previous participation or knowledge of the case.
City of Bellevue v. King County Boundary Review Board, 90 Wn.2d 856, 586 P.2d 470 (1978)	Boundary Review Board/Approval of annexation proposal	Use of interrogatories on appeal to superior court to prove bias of board members.	Holding that the use of such extra-record evidence was permissible under the specific circumstances present, the majority opinion observed: "Our appearance of fairness doctrine, though relating to concerns dealing with due process considerations, is not constitutionally based ...."
Evergreen School District v. School District Organization, 27 Wn. App. 826, 621 P.2d 770 (1980)	County Committee on School District Organization/Adjustment of school district boundaries	Member of school district board that opposed transfer of property to the proponent school district participated as a member of the county committee on school district organization.	Decision to adjust school district boundaries is a discretionary, quasi-legislative determination to which the appearance of fairness doctrine does not apply.
Hayden v. Port Townsend, 28 Wn. App. 192, 622 P.2d 1291 (1981)	Planning Commission/ Rezone	Planning commission chairman, who was also branch manager of S & L that had an option to purchase the site in question, stepped down as chairman but participated in the hearing as an advocate of the rezone.	Participation of planning commission chairman as advocate of rezone violated appearance of fairness doctrine.
Somer v. Woodhouse, 28 Wn. App. 262, 623 P.2d 1164 (1981)	Department of Licensing/ Adoption of administrative rule	During two rules hearings, the Director of the Department of Licensing sat at the head table with the representatives of an organization that was a party to the controversy, some of whom argued for adoption of the rule proposed by the department. The minutes of the rules hearings also bore the name of the same organization.	The appearance of fairness doctrine is generally not applicable to a quasi-legislative administrative action involving rule-making.

Case	Body/Action	Conflict	Decision
Westside Hilltop Survival Committee v. King County, 96 Wn.2d 171, 634 P.2d 862 (1981)	County Council/ Comprehensive plan amendment	Prior to modification of the comprehensive plan, there were ex parte contacts between one or two councilmembers and officials of the proponent corporation, and two councilmembers had accepted campaign contributions in excess of $700 from employees of the proponent corporation. These councilmembers actively participated in, and voted for, adoption of the ordinance modifying the comprehensive plan to allow construction of an office building on a site previously designated as park and open space.	Comprehensive plans are advisory only, and a local legislative body's action to determine the contents of such a plan is legislative rather than adjudicatory. Legislative action in land use matters is reviewed under the arbitrary and capricious standard and is not subject to the appearance of fairness doctrine.
Hoquiam v. PERC, 97 Wn.2d 481, 646 P.2d 129 (1982)	Public Employment Relations Commission (PERC)/Unfair labor practice complaint	Member of PERC was partner in law firm representing union.	Law firm's representation of the union did not violate the appearance of fairness doctrine where commissioner, who was a partner in the law firm representing the union, disqualified herself from all participation in the proceedings.
Dorsten v. Port of Skagit County, 32 Wn. App. 785, 650 P.2d 220 (1982)	Port Commission/Increase of moorage charges at public marina	Alleged prejudgment bias of commissioner who was an owner or part owner of a private marina in competition with the port's marina.	The port's decision was legislative rather than judicial and the appearance of fairness doctrine did not apply.
Harris v. Hornbaker, 98 Wn.2d 650, 658 P.2d 1219 (1983)	Board of County Commissioners/Board's determination of a freeway interchange - adoption of six-year road plan	Alleged prejudgment bias of certain county commissioners.	Deciding where to locate a freeway interchange is a legislative rather than an adjudicatory decision, the appearance of fairness doctrine does not apply.
Medical Disciplinary Board v. Johnston, 99 Wn.2d 466, 663 P.2d 457 (1983)	Medical Disciplinary Board/Revocation of medical license	Challenge to the same tribunal combining investigative and adjudicative functions, and the practice of assigning a single assistant attorney general as both the board's legal advisor and prosecutor.	The appearance of fairness doctrine is not necessarily violated in such cases. The facts and circumstances in each case must be evaluated to determine whether a reasonably prudent disinterested observer would view the proceeding as a fair, impartial, and neutral hearing and, unless shown otherwise, it must be presumed that the board members performed their duties properly and legally. (In a concurring opinion, Justices Utter, Dolliver, and Dimmick asserted that the majority's analysis of the appearance of fairness doctrine merely reiterates the requirements of due process and thereby causes unnecessary confusion.) (In a dissenting opinion, Justices Rosellini and Dore argued that the combination of investigative, prosecutorial, and adjudicative functions within the same tribunal constitutes an appearance of fairness violation.)

Case	Body/Action	Conflict	Decision
Side v. Cheney, 37 Wn. App. 199, 679 P.2d 403 (1984)	Mayor/Promotion of police officer to sergeant	Mayor passed over first-listed officer on civil service promotion list who had also filed for election for position of mayor.	Appearance of fairness doctrine does not apply to mayor who did not act in role comparable to judicial officer. Mayor's promotion decision was not a quasi-judicial decision.
Zehring v. Bellevue, 103 Wn.2d 588, 694 P.2d 638 (1985)	Planning Commission/ Design review	Member of commission committed himself to purchase stock in proponent corporation before hearing held in which commission denied reconsideration of its approval of building design.	Appearance of fairness doctrine does not apply to design review. Doctrine only applies where a public hearing is required and no public hearing is required for design review. Court vacates its decision in earlier case (*Zehring v. Bellevue*, 99 Wn.2d 488 (1983), where it held doctrine had been violated.)
West Main Associates v. Bellevue, 49 Wn. App. 513, 742 P.2d 1266 (1987)	City Council/Denial of application for design approval	Councilmember attended meeting held by project opponents and had conversation with people at meeting, prior to planning director's decision and opponent's appeal of that decision to council.	Appearance of fairness doctrine prohibits ex parte communications between public, quasi-judicial decision-makers only where communication occurs while quasi-judicial proceeding is pending. Since communication at issue occurred one month prior to appeal of planning director's decision to the council, it did not occur during the pendency of the quasi-judicial proceeding and doctrine was thus not violated.
Snohomish County Improvement Alliance v. Snohomish County, 61 Wn. App. 64, 808 P.2d 781 (1991)	County Council/Denial of application for rezone approval	Two councilmembers received campaign contributions during pendency of appeal.	Contributions were fully disclosed. The contributions were not ex parte communications as there was no exchange of ideas. RCW 42.36.050 provides that doctrine is not violated by acceptance of contribution.
Raynes v. Leavenworth, 118 Wn.2d 237, 821 P.2d 1204 (1992)	City Council/Amendment of zoning code	Councilmember was real estate agent for broker involved in sale of property to person who was seeking amendment of zoning code. Councilmember participated in council's consideration of proposed amendment.	Text amendment was of area-wide significance. Council action thus was legislative, rather than quasi-judicial. Appearance of fairness doctrine does not apply to legislative action. Limits holding of *Fleming v. Tacoma*, 81 Wn.2d 292, 502 P.2d 327 (1972) through application of statutory appearance of fairness doctrine (RCW 42.36.010), which restricts types of decisions classed as quasi-judicial.
Trepanier v. Everett, 64 Wn. App. 380, 824 P.2d 524 (1992)	City Council/ Determination that environmental impact statement not required for proposed zoning ordinance	City both proposed new zoning code and acted as lead agency for SEPA purposes in issuing determination of nonsignificance (DNS).	Person who drafted new code was different from person who carried out SEPA review. In addition, there was no showing of bias, or circumstances from which bias could be presumed, in council's consideration of legislation proposed by executive.

Case	Body/Action	Conflict	Decision
State v. Post, 118 Wn.2d 596, 837 P.2d 599 (1992)	Community Corrections Officer/Preparation of presentence report	Presentence (probation) officer is an agent of the judiciary; that officer's alleged bias is imparted to judge.	Probation officer is not the decisionmaker at sentencing hearing; judge is. Appearance of fairness does not apply to probation officer. In addition, no actual or potential bias shown.
Jones v. King Co., 74 Wn. App. 467, __P.2d__ (1994)	County Council/Area-wide rezone	Action has a high impact on a few people; therefore, it should be subject to appearance of fairness doctrine.	Area-wide rezoning constitutes legislative, rather than quasi-judicial action under RCW 42.36.010 regardless of whether decision has a high impact on a few people or whether local government permits landowners to discuss their specific properties.
Lake Forest Park v. State, 76 Wn. App. 212, __P.2d__ (1994)	Shorelines Hearings Board/Shoreline substantial development permit	Reconsideration of the record allegedly prejudiced the SHB against the city.	When acting in a quasi-judicial capacity, judicial officers must be free of any hint of bias. However, a party claiming an appearance of fairness violation cannot indulge in mere speculation, but must present specific evidence of personal or pecuniary interest.
Bjarnson v. Kitsap Co., 78 Wn. App. 840 (1995)	County Commissioner/ Rezone and planned unit development	Member of decision-making body had *ex parte* communications during pendency of rezone.	Improper conduct of member was cured if remaining members of board conduct a rehearing and there is no question of bias or the appearance of bias of remaining members.
Opal v. Adams Co., 128 Wn.2d 869 (1996)	County Commissioner/ Adequacy of environmental impact statement for unclassified use permit for regional landfill	Member of decision-making body had numerous *ex parte* contact with proponents of project during pendency of application.	While *ex parte* contacts are improper unless disclosed, any violation of the Appearance of Fairness Doctrine was harmless since the purpose of disclosure is to allow opponents to rebut, and this was fully addressed by opponents in the public hearings.

Notes:
Adapted from a chart originally prepared by Lee Kraft, former City Attorney of Bellevue.
Court decisions may have rested on grounds other than appearance of fairness doctrine alone.

Appendix C

Sample Council Meeting Procedures for Quasi-Judicial Meetings

Snohomish County Website

Appearance of Fairness Doctrine

Why can't County Council members talk to constituents about local land use issues (except in a formal public hearing)?

The appearance of fairness doctrine restricts county council members from discussing the merits of certain types of land use matters that will or could be heard by the council on appeal from the county Hearing Examiner.

In hearing such land use appeals, the county council acts in a quasi-judicial capacity, that is like a court, and the council is therefore required to follow certain Constitutional due-process rules. Specifically, the courts have ruled that discussions about a pending case should occur only at a formal public hearing where all interested parties have an equal opportunity to participate.

Citizens, however, are welcome to discuss any issue with the county council's staff. Please call 425-388-3494.

City of Poulsbo Council Rules of Procedure

5.3 **VOTES ON MOTIONS:** Each member present shall vote on all questions put to the Council except on matters in which he or she has been disqualified for a conflict of interest or under the appearance of fairness doctrine. Such member shall disqualify himself or herself prior to any discussion of the matter and shall leave the Council Chambers. When disqualification of a member or members results or would result in the inability of the Council at a subsequent meeting to act on a matter on which it is required by law to take action, any member who was absent or who had been disqualified under the appearance of fairness doctrine may subsequently participate, provided such member first shall have reviewed all materials and listened to all tapes of the proceedings in which the member did not participate.

6.2 **CONFLICT OF INTEREST/APPEARANCE OF FAIRNESS**
Prior to the start of a public hearing the Chair will ask if any Councilmember has a conflict of interest or Appearance of Fairness Doctrine concern which could prohibit the Councilmember from participating in the public hearing process. A Councilmember who refuses to step down after challenge and the advice of the City Attorney, a ruling by the Mayor or Chair and/or a request by the majority of the remaining members of the Council to step down is subject to censure. The Councilmember who has stepped down shall not participate in the Council decision nor vote on the matter. The Councilmember shall leave the Council Chambers while the matter is under consideration, provided, however, that nothing herein shall be interpreted to prohibit a Councilmember from stepping down in order to participate in a hearing in which the Councilmember has a direct financial or other personal interest.

7.7 **COMMENTS IN VIOLATION OF THE APPEARANCE OF FAIRNESS DOCTRINE:** The Chair may rule out of order any comment made with respect to a quasi-judicial matter pending before the Council or its Boards or Commissions. Such comments should be made only at the hearing on a specific matter. If a hearing has been set, persons whose comments are ruled out of order will be notified of the time and place when they can appear at the public hearing on the matter and present their comments.

10.4 **DISCLOSURE, AVOIDING THE APPEARANCE OF IMPROPRIETY:** While state statutory provisions regarding the Appearance of Fairness Doctrine govern our conduct in quasi judicial matters, Councilmembers will also attempt to avoid even the appearance of impropriety in all of our actions. When we are aware of an issue that might reasonably be perceived as a conflict, and even if we are in doubt as to its relevance, we will reveal that issue for the record. We pledge that we will step down when required by the Appearance of Fairness Doctrine, that is, when an objective person at a Council meeting would have reasonable cause to believe that we could not fairly participate.

City of Des Moines Council Rules of Procedure

APPEARANCE OF FAIRNESS DOCTRINE

RULE 15. Appearance of Fairness Doctrine and its Application.

(a) Appearance of Fairness Doctrine Defined. "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).

(b) Types of Hearings to Which Doctrine Applies. The appearance of Fairness Doctrine shall apply only to those actions of the Council which are quasi-judicial in nature. Quasi-judicial actions are defined as actions of the City Council which 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 areawide 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 which 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, subdivisions, street vacations, and special land use permits.

(c) Obligations of Councilmembers, Procedure.

(1) Councilmembers should recognize that the Appearance of Fairness Doctrine does not require establishment of a conflict of interest, but whether there is an appearance of conflict of interest to the average person. This may involve the Councilmember or a Councilmember's business associate or a member of the Councilmember'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 Councilmember's employer with the proponents or opponents, announced predisposition, and the like.

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 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 Manager shall communicate such opinion to the Councilmember and to the Presiding Officer.

(2) Anyone seeking to disqualify a Councilmember 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. The party seeking to disqualify the Councilmember 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 hearing the facts on the record, or ex parte contact. Should such challenge be made prior to the hearing, the City Manager shall direct the City Attorney to interview the Councilmember 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 Presiding Officer shall call a recess to permit the City Attorney to make such interview and render such opinion.

(3) The presiding Officer shall have sole authority to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. Further, if two (2) or more Councilmembers believe that an Appearance of Fairness violation exists, such individuals may move to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the Presiding Officer or other Councilmembers shall give due regard to the opinion of the City Attorney.

(4) Notwithstanding the request of the Presiding Officer or other Councilmembers, the Councilmember may participate in any such proceeding.

(d) Specific Statutory Provisions.

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

(2) 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.

(3) 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 citizen and his or her elected official if the correspondence is made a part of the record, when it pertains to the subject matter of a quasi-judicial proceeding. RCW 42.36.060.

(e) Public Disclosure File. The City Clerk shall maintain a public disclosure file, which shall be available for inspection by the public. As to elected officials, the file shall contain copies of all disclosure forms filed with the Washington State Public Disclosure Commission.

As to members of the Planning Agency, the file shall contain for each member a disclosure statement. The Planning Agency disclosure statement shall list all real property and all business interests located in the City of Des Moines in which the member or the member's spouse, dependent

children, or other dependent relative living with the member, have a financial interest.

(f) Procedure on Application. Any person making application for any action leading to a quasi-judicial hearing shall be provided with a document containing the following information: (1) the names and address of all members of the City Council, the Planning Agency, and Community Land Use Councils, (2) a statement that public disclosure information is available for public inspection regarding all such members, and (3) a statement that if the applicant intends to raise an appearance of fairness issue, the applicant should do so at least two weeks prior to any public hearing. The applicant shall acknowledge receipt of such document.

San Juan County

PUBLIC HEARING PROCEDURES

Section 8.1 Appearance of Fairness Doctrine. Definition, Application, Disclosures/Disqualifiers:

(a) Appearance of Fairness Doctrine Defined. 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. Where there is a showing of substantial evidence to raise an appearance of fairness question, the court has stated: It is the possible range of mental impressions made upon the public's mind, rather than the intent of the acting governmental employee, that matters. The question to be asked is this: Would a disinterested person, having been apprised of the totality of a Council Member'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.

(b) Types of Hearings to Which the Doctrine Applies. RCW 42.36.010 states:

> Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body…which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case 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 or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

Street vacations are typically legislative actions, unless clearly tied to, and integrated into, a site-specific development proposal which is quasi-judicial in nature.

Section 8.2 Obligations of Council Members - Procedure.

(a) Immediate self-disclosure of interests that may appear to constitute a conflict of interest is hereby encouraged. Council Members should recognize that the Appearance of Fairness Doctrine does not require establishment of a conflict of interest, but whether there is an appearance of conflict of interest to the average person. This may involve a Council Member's business associate, or a member of the Council Member's immediate family. It could involve ***ex parte*** (from one party only, usually without notice to, or argument from, the other party) 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. Prior to any quasi-judicial hearing, each Council Member 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

Council Member should disclose such fact to the County Attorney as to whether a potential violation of the Appearance of Fairness Doctrine exists.

(b) Anyone 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. 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 hearing the facts on the record, or ex parte contact. Should such challenge be made prior to the hearing, the Prosecuting Attorney, after interviewing the Council Member, shall 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 Council Member shall either excuse him/herself or a recess should be called to permit the Prosecuting Attorney to make such interview and render such opinion.

(c) In the case of the Council sitting as a quasi-judicial body, the Chair shall have authority to request a Council Member to excuse him/herself on the basis of an Appearance of Fairness violation. Further, if two (2) Council Members believe that an Appearance of Fairness violation exists, such individuals may move to request a Council Member to excuse him/herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the Chair or other Council Members shall give due regard to the opinion of the Prosecuting Attorney.

Section 8.3 Specific Statutory Provisions.

(a) County Council Members shall not express their opinions about pending or proposed quasi-judicial actions on any such matter which is or may come before the Council.

(b) County Council Members who comply 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)

(c) Members of local decision-making bodies. No member of a local decisionmaking body may be disqualified by the Appearance of Fairness Doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body. (RCW 42.36.020)

(d) *Ex Parte* communications should be avoided whenever possible. During the pendency of any quasi-judicial proceeding, no Council Member may engage in *ex parte* communications with proponents or opponents about a proposal involved in the pending proceeding, unless the Council Member: (1) places on the record the substance of such oral or written communications concerning the decision or action; and (2) undertakes to assure 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 citizen and his or her elected official, if the correspondence is made a part of the record, when it pertains to the subject matter of a quasi-judicial proceeding. (RCW 42.36.060)

(e) Procedure on Application. Any person making application for any action leading to a quasi-judicial hearing before the County Council shall be provided with a document containing the following information: (1) the names and address of all members of the County Council, (2) a statement that public disclosure information is available for public inspection regarding all such Council Members, and (3) a statement that if the applicant intends to raise any appearance of fairness issue, the applicant should do so at least two (2) weeks prior to any public hearing, if the grounds for such issue are then known, and in all cases, no later than before the opening.

Spokane County Boundary Review Board – Rules of Procedure

APPEARANCE OF FAIRNESS

Ex Parte Communications

In accordance with RCW 42.36.060, members shall abstain from any and all communications with persons or governmental or private entities which are, or expected to be, parties to an action before the Board.

This restriction is limited to matters before the Board, or which may come before the Board. If a member receives a letter or other written communication relating to a matter before the Board from a source other than the Boundary Review Board Office, that member shall transmit the material to the Director for inclusion in the record.

Members shall avoid conversations with any party to the action except when such conversation is on the record. It shall be the duty and responsibility of each member to publicly disclose at the earliest opportunity any communication between said member and a party to a matter before the Board.

Disclosure

It shall be the duty and responsibility of each member to disclose at the earliest opportunity any possible ex parte communications thereof to the Chair and Legal Counsel. Upon such disclosure, the member may withdraw from the Board proceedings and shall leave the room in which such proceedings ensue. If a member chooses not to withdraw, the Chair shall, at the earliest opportunity upon the opening of a public hearing, disclose to the parties present the occurrence and nature of the possible violation.

Procedures to be followed by Board/Chair with reference to Appearance of Fairness: Ex-Parte Communications and Disclosure

Upon discovery of the existence of ex-parte communications, the Chair shall, at each and every subsequent hearing on the proposal request that the member:

Place on the record the substance of any written or oral ex-parte communication concerning the decision of action; and

Provide a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related.

City of Pullman – Quasi-Judicial Hearing Procedures

Information sheet for those attending Quasi-Judicial Public Hearings of the Pullman Planning Commission. For many issues, the Planning Commission is required by law to hold what are known as "quasi-judicial" public hearings. Quasi-judicial hearings involve the legal rights of specific parties and usually pertain to one particular parcel of land. In these cases, the Commission acts like a judge by determining the legal rights, duties, and privileges of specific parties in the hearing (hence the term "quasi-judicial"). The fundamental purpose of a quasi-judicial hearing is to provide the affected parties due process. Due process requires notice of the proceedings and an opportunity to be heard. This information sheet has been prepared to help you understand what the Commission does during the course of these public hearings and why it follows these procedures. (Please note that the provision of a hearing notice to affected parties, while part of the entire process, is not included in the information below because this document addresses only those steps that occur during the public hearing itself.)

PUBLIC HEARING PROCEDURES	**WHY IS THIS DONE?**
1. The Planning Commission chair opens the hearing.	This step advises everyone present that the hearing is starting.
2. The chair reads the rules of procedure for the hearing. Procedures require administering an oath or affirmation to tell the truth to everyone who speaks. The chair can administer the oath or affirmation to all speakers while reading the rules of procedure or individually to each speaker prior to speaking.	The rules of procedure provide the organizational structure for the hearing process. The oath is administered to ensure the integrity of the evidence provided.
3. The chair asks questions to disclose any "Appearance of Fairness" issues for Commission members and to allow persons in the audience the opportunity to disclose conflicts affecting Commission members' abilities to be impartial.	The "Appearance of Fairness" questions are asked so that any Commission member may disclose conflicts, and so that, when appropriate, Commission members may disqualify themselves because of these conflicts.
4. Planning staff presents its "staff report," in which it summarizes background information and recommendations on the matter under consideration. Often the Commission asks questions of staff following presentation of this report.	The staff report furnishes information to the public and Commission to assist in all participants' understanding of the matter.
5. The chair requests public testimony. The applicant and other proponents are called first, followed by opponents and neutral parties. Proponents and opponents then have an opportunity to respond. It is likely that time limits will be imposed on this public testimony. When this testimony is concluded, the chair closes the public input portion of the hearing.	Accepting comment from affected parties is a key component of the hearing process. Time limits are imposed to promote an efficient hearing and to facilitate the presentation of well-organized, concise testimony.
6. The Commission members discuss the merits of the case. Often the Commission asks more questions of staff or witnesses at this time. Sometimes this procedure is combined with step #7 below.	The Commission seeks consensus during this stage of the hearing so that it can proceed to making a final decision.
7. The Commission members formulate a written record of their decision called a "resolution." First, the Commission members adopt "Findings of Fact" and "Conclusions," based on the evidence presented at the	The Commission must ensure that it has appropriate documentation citing not just its decision, but also the reasons why it is making this decision. It must be careful to utilize only the evidence presented at the

hearing, in order to provide a written justification for their decision. Although staff usually provides a draft resolution to the Commission before the hearing, the Commission sometimes finds it necessary to prepare additional or different "Findings of Fact" and "Conclusions"; if this occurs, it can take some time because Commission members often must write complex statements. Then, once "Findings of Fact" and "Conclusions" have been adopted, the Commission makes its decision on the matter. The Commission's decisions are always made in the form of recommendations to the City Council.	hearing, and the evidence used to justify a decision must be substantial in light of the entire record.