

**TITLE V**

**DEALING WITH OTHER GOVERNMENTAL AGENCIES**

**CHAPTERS:**

- 5.02 THE "INTERGOVERNMENTAL CONNECTION"**
- 5.04 INTERLOCAL RELATIONS**
- 5.06 STATE-LOCAL RELATIONS**
- 5.08 FEDERAL-LOCAL RELATIONS**

## CHAPTER 5.02

### THE "INTERGOVERNMENTAL CONNECTION"

#### Sections:

- 5.02.010 Introduction**
- 5.02.020 Local Government Associations**
- 5.02.030 National Organizations**

**5.02.010 Introduction.** Cities are "connected" financially and legally to a complex, interlocking and interdependent system of governments -- federal, state and local. As do other local government officials, City Recorders must devote their attention and energies not only to the internal affairs of their organization, but also to a somewhat bewildering array of intergovernmental concerns. As part of the local government arena, City Recorders deal constantly with other local government officials and agencies and with state and federal agencies on administrative matters of mutual concern. Public officials at all three levels -- local, state and federal -- need to work together and see each other as members of the same team, rather than adversaries or competitors. Only by working together will local, state and federal agencies make the system "whole" and accountable to the public.

**5.02.020 Local Government Associations.** When special problems arise, including problems that indicate the need for policy or program revision by another government at the same or a different level, Recorders and other local officials may need to establish direct contact with legislative committees or headquarter offices of state or federal agencies. Service organizations that have special expertise in intergovernmental relations can be very helpful to local officials trying to make effective contacts with state and federal agencies. One such organization with intergovernmental relations expertise is the League of Oregon Cities (LOC). The LOC is readily available to City Recorders for information and assistance on intergovernmental matters. This organization, which maintains a full-time staff in Salem, is supported primarily by dues paid by member cities. LOC was organized in 1925 and is governed by a 16-member board made up of the president, vice-president, immediate past president, treasurer and twelve members elected at large at LOC's annual conference.

The LOC has a Legislative Committee that represents Oregon cities before the state legislature. Other legislative services provided are a legislative bulletin, bill tracking, events and activities listings, and legislative alerts. Other committees represented are the Nominations Committee, Resolutions Committee, and Policy Committees; which consist of the following subjects: Community Development; Energy; Finance & Taxation; General Government; Legal Advocacy; Personnel; Telecom, Cable & Broadband, Transportation; and Water/Wastewater.

The LOC publishes a monthly newsletter, and also provides services such as Web Services, the LOC Capital Access Program for asset acquisition of services and property, Legal Services, the Oregon Local Leadership Institute (O.L.L.I.), Group Purchasing, Codification services partnerships, and Email Discussion Lists, such as the listserve for the Oregon City County Management Association (OCCMA), and a listserve for city, county, and special district chief administrators and human resource professionals. It also provides Conference Calling/On-line Meeting Services, and an Intern Placement Program, as well as the City Administrator Recruitment Service. (CARS).

The LOC jointly formed the City County Insurance Services, or CIS, with the Association of Oregon Counties, to meet the risk management and employee benefit needs of cities, counties and other eligible local governments. CIS provides property/liability and workers' compensation programs (CIS Trust) and employee benefits coverage (EBS and AOCIT Trusts). They also offer claims management, legal defense, risk management, loss prevention services and Healthy Benefits.

Several statewide professional public employee organizations are affiliated with the League including, but not limited to, the Oregon Mayors' Association (OMA), Oregon Section of the International City/County Management Association (O-ICMA), Oregon Municipal Finance Officers Associations (OMFOA), Oregon City Attorneys Association (OCAA), Oregon Planning Directors Association (OCPDA), Oregon Association of Municipal Recorders (OAMR), the Oregon Association of Water Utilities (OAWU), and the Association of Oregon Redevelopment Agencies (AORA).

**5.02.030 National Organizations.** Many national organizations serve city interests in federal government affairs. For instance, with headquarters in Washington, D.C., the National League of Cities (NLC), U.S. Conference of Mayors (USCM), International City/County Management Association (ICMA), Government Finance Officers Association (GFOA) and the National Institute of Municipal Law Officers (NIMLO) are funded through dues paid by individual cities and, in some cases, by state organizations. They also may receive federal grants for a portion of their revenue. They hold annual conventions, mid-year legislative conferences, and other national and regional meetings of many kinds. They help keep cities informed of federal affairs through weekly newspapers and other publications. Please refer to Chapter 7, for links to the Local Government Associations and National Organizations.

## CHAPTER 5.04

### INTERLOCAL RELATIONS

#### Sections:

- 5.04.010**      **General Legal Relations**
- 5.04.020**      **Specific Statutory Relations**
- 5.04.030**      **Interlocal Contracts and Agreements**
- 5.04.040**      **Intergovernmental Councils**

**5.04.010 General Legal Relations.** The city-county "connection" is mostly defined by law, but some aspects of these interlocal relations are negotiated voluntarily by city and county officials. Legal questions sometimes arise concerning the jurisdiction of county governments inside city limits. Some of these questions are covered by statute. For example, applicability of a county ordinance adopted under the counties' statutory delegation of powers is limited to areas outside cities of the county unless the cities contest by action of the City Council or by the city voters. Some county charters also have provisions that limit a county's exercise of powers inside cities. Even in the absence of such provisions, the Attorney General has ruled that "ordinances of 'home rule' counties would not...be effective within a city which has relegated to itself under its charter the power to regulate the same subject."

**5.04.020 Specific Statutory Relations.** Many state laws, both mandatory and permissive, regulate city-county relations in specific matters. For example, cities in Oregon do not assess property or collect their own property taxes -- state law mandates that function to counties on a county-wide basis. State law also requires counties to conduct city elections; stipulates that an area newly annexed to a city retains county zoning until the city changes it; and regulates city-county relations in other ways. Counties also administer a number of services that extend to residents of cities as well as unincorporated areas -- public health and mental health programs; property document recording; solid waste disposal; food stamp distribution; etc.

Friction sometimes arises in city-county relations. The issues are often financial, such as the "double taxation" issues when cities complain that city property owners pay county taxes but some county services are provided only outside cities. County roads annexed to cities remain a county responsibility until the city voluntarily takes over, and there are city-county disagreements over the level of maintenance that should be provided on such roads. There are also disagreements as to the timing and conditions of transfer of a county road to the city, including the standards to which the roads must be improved prior to transfer. City Council and county governing bodies in many areas hold joint periodic meetings to keep communications open on these and other issues.

**5.05.030 Interlocal Contracts and Agreements.** Most interaction among local governments is carried out under formal contracts or agreements -- usually called interlocal or intergovernmental agreements (IGA). They often involve the provision of specific services or facilities and are very common among governmental entities. Cities may be involved in intergovernmental contracts or agreements with counties, school districts, special districts or even neighboring cities. Cities often shift from in-house to intergovernmental service delivery. Individual cities in Oregon have reported being a party to more than 100 intergovernmental agreements. Intergovernmental agreements are

regulated under ORS Chapter 190, which specifically authorizes any unit of local government to enter into an agreement with any other unit or units of local government for the performance of any or all functions and activities that a party to the agreement has authority to perform. Local governmental entities may also cooperate with an agency of the state or federal government, but the subject agreements must be reviewed by the Attorney General prior to execution. Typical examples of intergovernmental agreements would be those that provide for sale of water by a city or water district to another city or water district, for firefighting services by a fire district to a city, for jail services from a county to a city or for equipment sharing between a county and a city.

**5.04.040 Intergovernmental Councils.** The federal agencies designed intergovernmental councils to assist in area-wide planning for use of federal grant funds for specific projects such as highways, sewer systems and/or water systems. The Intergovernmental Cooperation Act of 1968 provided a statutory basis for requiring area-wide or regional planning council review of federal grant proposals. The state government also encouraged the formation of "Council of Governments" (COGs) for the purpose of coordinating local government activities with state agency planning and field operations. COGs serve as regional clearinghouses to provide local review and comment on proposed federal grant applications, environmental impact statements and other matters associated with federal activity in Oregon. (Please see 5.06.030 for a reference to the Oregon Blue Book. This is an excellent source of information and contains a listing of Intergovernmental Councils and their contact information.)

## CHAPTER 5.06

### STATE-LOCAL RELATIONS

#### Sections:

<b>5.06.010</b>	<b>Introduction</b>
<b>5.06.020</b>	<b>The Oregon Legislative Assembly</b>
<b>5.06.030</b>	<b>Executive Branch Agencies</b>
<b>5.06.040</b>	<b>Judicial Branch</b>
<b>5.06.050</b>	<b>State-Local Interaction</b>

**5.06.010 Introduction.** Even though cities in Oregon have broad grants of home rule power, cities must still work with the state legislature, state agencies and state courts. "Home rule" applies only to matters that do not affect the interest of the state as a whole or of other local governments on such matters as the environment, economic development, public health and many other areas of public concern. Conflicts sometimes are inevitable and it is occasionally necessary that they be resolved by court action.

**5.06.020 The Oregon Legislative Assembly.** The organization of the state legislature and its functions, procedures and methods are of vital importance to local government officials. Most action of the legislature has some direct or indirect effect on local government. County and city officials (including Recorders) often must deal with individual legislators, particularly from their own districts and with legislative committees. It is not uncommon for City Recorders to be designated as the "legislative liaison" for their city.

The legislature's power is broad. It may enact laws on any subject not specifically prohibited by the state or federal constitutions. It may not, however, enact laws that infringe on constitutional home rule powers and powers expressly delegated to the federal government.

Most of the work of the legislature takes place in committees, similar to city boards and commissions -- but with broader power. Committees of the legislature can amend bills, pass them out with or without recommendations as to passage, table them or simply let them die. Because of the broad discretion vested in committees, the powers of the presiding officer of each legislative chamber in appointing committees and referring bills are of crucial importance.

The legislature convenes in early January of each odd-numbered year, but activities continue during the interim through numerous interim committees, task forces and standing committees. Either the Governor or a majority of members of both chambers can call the legislature into special session. The League of Oregon Cities' legislative bulletin is an important resource cities use to keep informed of legislative developments both during and between legislative sessions.

OAMR provides its membership with the advantage of our own Legislative Committee. This committee works to stimulate interest and activity in legislation affecting municipal government and studies proposed legislation that is reported to the OAMR Executive Board and membership. This committee works closely with the League of Oregon Cities (LOC) to receive committee training and to monitor legislation that affects jurisdictions

as well as the profession of municipal recorder. This committee is an excellent source of information for the membership.

**5.06.030 Executive Branch Agencies.** Cities have many direct contacts with state agencies and it is necessary for City Recorders and other city officials to be familiar with the organization of the state executive branch and with state agencies that have a major impact on city programs and finances. It is recommended that every Recorder obtain the Oregon Blue Book from the Oregon Secretary of State's Office. It is also available at the State's website at <http://bluebook.state.or.us>. This is an excellent source of information about state government as well as federal agencies, counties, and cities.

The following are a few of the primary state agencies with programs that affect local government:

- **Department of Land Conservation and Development (DLCD):** This agency administers statewide land use goals and rules; reviews city and county comprehensive plans and land use ordinances and may appeal amendments thought to be in conflict with statewide goals or acknowledgment orders; provides grant-in-aid and technical assistance, both from its main office in Salem and field offices around the state.
- **Department of Environmental Quality (DEQ):** This state agency promulgates standards for air and water quality and enforces them through a permit system (except in Lane County where the county and its cities have established a regional air pollution authority that administers the state standards); establishes standards for noise control and conducts limited enforcement through complaint investigation; provides planning assistance; issues permits; enforces standards; administers grants-in-aid; provides technical assistance and advice on a wide range of matters such as water and air quality, solid waste and recycling.
- **Department of Revenue (DOR):** This agency promulgates rules and regulations and supervises county assessors in administration of the ad valorem tax system; appraises utility and industrial property for ad valorem tax purposes; offers official interpretations and technical advice and assistance to local governments in administering the state local budget law; offers other services, including state administration of locally enacted income, sales or employment taxes.
- **Department of Transportation (ODOT):** This is the state agency that constructs and maintains state highway systems; administers federal and state grants-in-aid for city and county street and road systems; administers federal and state grants-in-aid for transportation facilities and programs other than motor vehicles, including airports and public transit, and for various categories of parks and open space; provides technical assistance and advice regarding these and other transportation and park matters.
- **Secretary of State:** This is the state agency that prescribes local government audit standards, maintains a list of approved auditors and supervises implementation of audit recommendations; prescribes rules and supervises the administration of elections, and operates the archives division which includes the records retention program.

State agencies with programs affecting local governments may adopt rules and regulations that have the force of law. But the Administrative Procedures Act excludes agency action "directed to...other units of government which do not substantially affect

the interest of the public" from the definition of a "rule." Therefore, unless the "substantially affect" language applies, local governments do not have the same rights to notice, hearing and other procedural rights accorded to private individuals. Local governments must be vigilant in tracking agency actions and proposed rules. Much of the work of the League of Oregon Cities involves representing local government interests with respect to the numerous state agency programs that affect them.

**5.06.040 Judicial Branch.** The judicial branch of state government affects local government by 1) awarding damages, imposing penalties or issuing orders in cases to which a local government is a party; and 2) interpreting constitutional provisions, charters, laws, ordinances and rules that determine what a local government may do or not do and how it may do it.

Cities may be drawn into court in a variety of ways. Some of these include petitions for "writ of review" of their actions by the circuit court; actions for damages in tort or through contracts; and petitions for writs of mandamus or injunctions. Cities can minimize the risk of lawsuits by retaining competent counsel, keeping their legal advisors informed of their actions and following the legal advice they receive from their advisors.

**5.06.050 State-Local Interaction.** The state deals with cities in several ways, most of which can be characterized either as actions to control local governments in some way, or as actions that provide assistance to local governments. The state exercises control over cities by 1) preempting their authority or jurisdiction over certain matters; 2) imposing limitations or constraints on their activities (usually in financial matters); or 3) mandating certain functions, activities or expenditures. Varying degrees of state supervision and enforcement accompany these preemptions, limitations and mandates. The state assists local government by providing financial aid in the form of shared revenues, grants and reimbursements. It also assists cities through a variety of cooperative activities and technical assistance programs.

- **Preemption:** The state preempts a matter on which a city might otherwise act when it precludes local government regulation completely or in part. Examples of preemption specifically provided by law include energy facility siting and the regulation of real estate brokers and salespersons. Implied preemption may exist in laws even though preemption may not be specifically and expressly stated. Under certain laws (for example: the state traffic code or the state obscenity law), cities cannot enact ordinances or regulations that conflict with state law. Also, a 1986 Oregon Supreme Court case determined that the working of the city home rule amendment prevents cities from setting criminal penalties that differ from those established by state law for the same crimes.
- **Limitations:** Limitations and constraints are used extensively to regulate municipal finance policy and administration. The statutory debt limits and limits on the length of time for which a serial levy may be approved, are examples of this kind of state action. The state has also imposed limitations and constraints in other areas of local concern, including the conduct of local elections, political activity of public employees and public contracting.
- **Mandates:** Mandates differ from preemptions and limitations in that they require some specified city action, while preemptions prevent city actions and limitations determine the extent or manner in which cities may act on an otherwise discretionary matter. Mandates generally include any state action that requires

increased city expenditures. Mandates may be imposed either by statute or administrative rule and they may take the form of either direct orders or conditions attached to an otherwise voluntary action, such as acceptance of a grant-in-aid. Examples of mandates are laws and regulations requiring cities to prepare and implement comprehensive plans, provide unemployment and workers' compensation for their employees and enforce certain state standards for operations of local lock-ups and other corrections facilities. We can all accept that some state mandates are necessary because they deal with matters of statewide concern that require uniformity of treatment -- for example, public health and safety and property tax administration. However, most cities object to mandates that impose additional costs, but provide no additional state revenue with which to meet the added costs -- and unfortunately, this seems to be an ongoing problem. Fortunately, as noted in 5.02.020, organizations such as the LOC help as an advocate for municipalities in matters relating to mandates that add costs without corresponding revenue sources.

- **Supervision:** State supervision of city activity is always associated with state mandates, although not all mandates are made subject to supervision by any particular state agency. However, in some cases, specific state agencies are charged with the responsibility of enforcing certain state mandates.
- **Financial Aid:** State payments as a percent of total city revenues have been stable or declining over the past several years. Cities cite various reasons to support their entitlement to state payments, including the need to compensate for state-mandated expenditures; restrictions imposed by the state on the ability of cities to raise money from property taxes; and various reasons related to specific programs, such as local law enforcement costs attributed to state liquor laws. The state can also specify that cities must demonstrate that they provide certain services to their citizens as terms for obtaining revenue.

## CHAPTER 5.08

### FEDERAL-LOCAL RELATIONS

#### Sections:

- 5.08.010**      **Introduction**
- 5.08.020**      **Cities and Federal Programs**

**5.08.010 Introduction.** Important and complex interactions developed between local governments and the federal government years ago despite the fact that the United States Constitution does not mention local governments. Cities are subject to the same federal constitutional limitations, and their charters and ordinances bear the same relation to federal powers, as do state constitutions and statutes.

**5.08.020 Cities and Federal Programs.** Although federal funds to cities have been reduced, cities are still subject to many federal laws and regulations. Federal powers derived from the Interstate Commerce Clause and the Fourteenth Amendment of the U.S. Constitution have been exercised to subject cities to a variety of requirements in such areas as nondiscrimination, employment policy (including minimum ages, maximum hours and occupational health and safety) and environmental quality. Many "crosscutting" federal regulations still remain applicable to cities that receive money from any federal source, including such requirements as removal of architectural barriers in public buildings and facilities, Davis-Bacon prevailing wage requirements on public contracts, historic preservation requirements and uniform relocation requirements. In addition, many cities that garner federal funds from agencies such as the United States Department of Agriculture (USDA) or under USDA's Rural Utility Services (RUS) are held to strict guidelines on their use of the funds, and how the funds are paid back to the program. This includes the ability in municipalities with enterprise funds, to review and dictate to a city how its rates are established in order to be sufficient for the city to pay back its debt obligations.