

# Dillingham: Moving forward

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# Three Broad Topics

## (Training/Policy) Roles and Responsibilities

- Council/Manager
- ? Documents to Councilmembers
- ? Council code of conduct
- Staff
- Attorney

## (Policy formation) Legislation

- ? Defining “family”
- ? “personal conflict of interest”

## (Training) Procurement Next steps

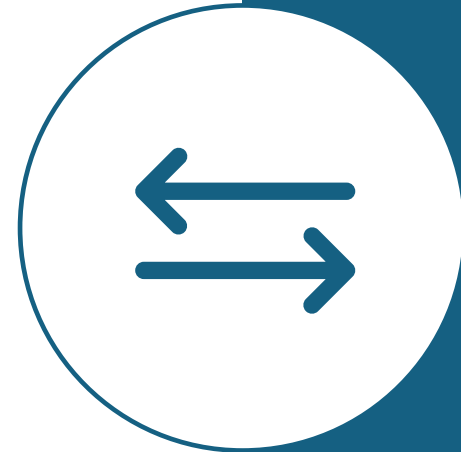
- Audit consequences
- Staff work

**DMC**  
**2.21.060 Interference**  
**with city manager**  
**prohibited.**

“Except for the purposes of inquiry, the council and its members and mayor or other official of the city shall deal with the administrative service solely through the city manager, and neither the council nor any council member nor mayor nor other city official shall give orders to any subordinate of the city manager, either publicly or privately. Neither the city council nor any of its members nor the mayor shall dictate the appointment of any person to office or employment by the city manager, except as permitted by state law or the ordinance of this city, or in any manner interfere with the city manager or prevent him from exercising his own judgment in the selection of officers and employees in the administrative service.”

# Roles & Responsibilities: Council/Manager

- DMC 2.21.060, Council member interference
- Council policy formation v Manager operations
- Councilmembers can and should ask question, but direction requires Council action
- Information flow
  - Sources: constituents, packet, public comment, personal knowledge
  - What about City records?





# Council member requests for info/records

- (Elected only) Default: Ask the City Manager
    - May quickly produce records or identify where to find records
    - May delegate to a subordinate
    - May say too burdensome right now, and need Council direction
    - ? Need a form
    - ? Need to be “seconded”
  - (Elected only) Raise the topic at a Council meeting and direct the Manager to produce
  - (Everyone) File a public records act request
-

# Council member code of conduct

- Does DMC 2.04.030 satisfy the Council?
  - Fiduciary duty
  - Improper influence
  - Gifts & favors
  - Solicitation of money for advice or assistance
  - Use of confidential information
  - Represent case against City
  - No abuse
- ? Codify Council members access to City Attorney re conflict
  - Homer, HCC 1.18.060
  - State Executive Branch, AS 39.52.240
- ? Other communities code of conduct is broader
  - Valdez: conflicts of interest + conduct at meetings

## EXAMPLE

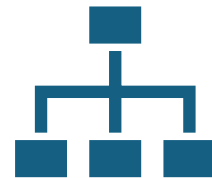
**Valdez Code of Conduct:** The City Council expects ethical and businesslike conduct of its own members and of itself as a whole. This also includes members of Committees, Boards and Commissions appointed by the City Council. Members are accountable for exercising the powers and discharging their duties honestly, in good faith and in the best interests of the City. Enforcement of the Code of Conduct is the responsibility of the Mayor and City Council.

City Council and appointed Committee, Board and Commission Members shall:

1. Be knowledgeable about the mission, goals, powers and duties as established in the City Charter and the Valdez Municipal Code.
2. Attend meetings well prepared and participate fully in all matters.
3. Accept and respect the decisions and recommendations expressed by a vote of the majority of the members.
4. Except for the purpose of inquiry, shall not become involved in specific management, personnel or administrative issues, or give orders to any subordinate of the city manager.
5. Not engage in any prohibited acts as set forth in Chapter 2.24, Code of Ethics, of the Valdez Municipal Code.
6. Not deal with an issue individually, as authority is vested in the council as a whole. A member who learns of an issue has the obligation to bring it to the city manager or to the city council.
7. Speak and act at the meetings of the council and its boards and commissions in the interests of the whole organization.
8. When debating a motion on the floor, members must confine themselves to the matter before the City Council, Board or Commission. Members should not question the motives of another member, city staff or members of the public. However, the nature or consequences of a measure may be condemned in strong terms. It should not be an individual member, but the measure that is the subject of debate.
9. Display courteous conduct with staff, speakers, and fellow council and board members.

# Roles & Responsibilities: Staff

- Manager executes the Council's policy direction and supervises the City's operations
- Investigation & audit identified opportunities for improvement
- Training:
  - Procurement
    - Process improvements, form templates, presentations to Council to clarify competitive processes
  - DMC 1.24.050, whistleblower protection
    - Protects City employees from retribution for identifying harm from or likely violation of law
  - DMC 2.21.060, Council member interference





## Roles & Responsibilities: Attorney

### **DMC 2.24.020 Duties.** The city attorney shall:

- A. Be charged with the performance of all legal services of the city including those of legal adviser to the council, the city manager, and to all departments and offices of the city;
- B. Upon the request of any municipal official or on his or her own initiative, take the necessary steps to arrange for the prosecution of violations of the city ordinances;
- C. The city attorney shall represent the city in all matters, civil and criminal, that are not prosecuted as minor infractions by the city of Dillingham. The types of infractions to be prosecuted by the city without an attorney shall be determined by resolution. Minor infractions may be prosecuted directly by Dillingham city officials without involvement of the city attorney, to the extent permitted by Alaska Statutes and the court;
- D. Draft any ordinance when requested by a city council member, the mayor, or the city manager;
- E. Perform such other duties as may be required by the city council or the ordinances of the city;
- F. Attend the meetings of the city council as required;
- G. Report to the city council promptly all suits brought against the city;
- H. Call to the attention of the city council and the city manager all matters of law affecting the city;
- I. Render all opinions in writing, insofar as practicable;
- J. Maintain a record of all of his or her written opinions rendered and turn such record over to his successor in office;
- K. Appear before the State Legislature or any legislative committee when required by the city council or city manager, and represent, answer for, defend and advocate the interests and welfare of the city whenever the same may be directly or incidentally affected;
- L. Approve as to form any bond presented to the city attorney, given by or on behalf of any city officer or other person who is required by any law, ordinance or contract, or by order of the city council to give bond; and
- M. Advise and assist the city clerk in the preparation, publication, maintenance, distribution and supplementation of the Dillingham Municipal Code.

(Ord. 77-7 § 2 (part), 1977; Ord. 84-8, 1984; Ord. 86-8 § 1, 1986; Ord. 86-23 § 1, 1986.)

# Other Municipal Attorney duties

## AS 29.20.370 Municipal Attorney

- The municipal attorney is the legal advisor of the governing body, the school board, and the other officials of the municipality. The municipal attorney represents the municipality as attorney in civil and criminal proceedings. The school board may hire independent counsel when in its judgment independent counsel is needed.

## Nome 2.40.030(d)

- 11 duties: legal advisor, prosecute code violations, represent City, draft legislation, alert Council of legal matters, other duties as assigned

## FNSB 2.12.010

- AS 29.20.370, draft legislation, attend certain meeting, not file appeal w/o Assembly consent

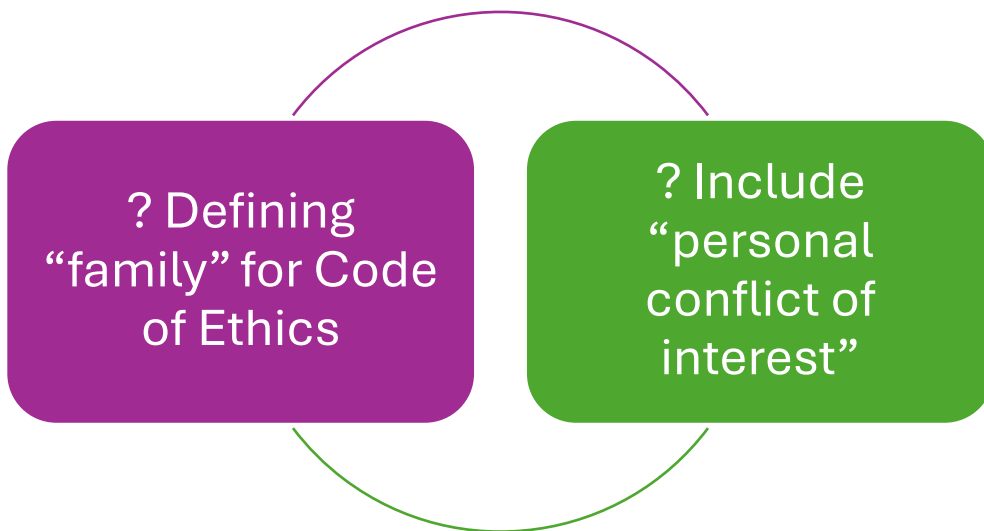
## Anchorage, Charter 5.04

- There shall be a municipal attorney appointed by the mayor and confirmed by the assembly. The attorney serves at the pleasure of the mayor. The attorney shall advise and assist the municipal government on legal matters.

## Juneau, Charter 3.13 & CBJC 3.15.010

- The assembly shall appoint the municipal attorney.
- The municipal attorney shall be responsible for providing legal services for the municipality.

# (Policy formation) Legislation



# Conflicts of Interest/Ethics

## **Big Picture (DMC 2.04.010-030):**

“A conflict of interest occurs when a council member has a direct personal interest, usually financial, in a matter before the Council. It is okay to have a conflict of interest, but it is wrong to fail to report it and request to be excused from voting on the matter.”

AK DCCED, *A Primer for City Council Members* at 13 (Sept 2017)

## **AS 29.20.010(a) Conflict of interest.**

A city “shall adopt a conflict of interest ordinance that provides that a member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter”

# Dillingham Code: Conflicts

## 2.03.010 Conflict of interest—Generally.

Every council member, or member of a board or commission of the city shall declare any substantial direct financial interest which he has in an official action of the body and shall ask to be excused from voting on the issue. Other municipal officials or employees may not participate in an official action of the city in which the official or employee has a **substantial financial interest**.

## 2.03.020 Conflict of interest—Voting.

- A member intending to abstain from voting shall state the reason for abstaining before the roll call. The presiding member of the council or other municipal body shall determine whether the affected member's participation or vote on the issue would constitute a conflict of interest. The decision of the presiding officer may be overridden by the majority vote of the governing body. If a question is raised under this section at any meeting, then the question shall be determined before the main question is voted upon. The affected member or members may not vote on the determination of conflict of interest.



# What is a “substantial financial interest”?

- Not defined in DMC 2.04.020
  - Gift is anything of value. DMC 2.04.030(C)
- Not defined in AS 29.20.010
- The State (DCRA) suggests (AS 39.50.030, APOC)
  - \$1,000 of income is a substantial financial interest
  - Gift of >\$250 is a substantial financial interest
- AS 39.52.120 & 960(9) uses narrow “financial interest”
- AS 39.52.130(b) defines gift >\$150

# ? Defining “family” for Code of Ethics

- DMC 2.04.020 Definitions

“Official or employee” means any person, officer or employee holding a position by election, appointment, or employment in the service of the city, whether paid or unpaid, including members of any board, committee, or commission thereof; provided, however, that independent contractors shall not be considered public officials or employees. **Acts of any family member of a public official or employee, when done with the knowledge and consent of the public official or employee, shall be deemed to be acts of such official or employee for purposes of applying the prohibitions and restrictions of this ordinance.** (Ord. 98-5 § 1 (part), 1998.)

# Other Alaska “family” definitions

- **Traditional**

- Spouse, domestic partner, child, parent, sibling, grandparent, aunt & uncle, and mother & father in law. AS 39.52.960(11) (AK Exec Branch); 2 AAC 64.990(12) (Office of Admin Hearing).

- **Narrow + household**

- “a municipal officer's spouse, minor children and dependents, or a regular member of the officer's household.”  
[Juneau 01.45.360](#)

- **Narrow**

- “member's immediate family” means the member's spouse, children, parents, and siblings. 7 AAC 24.350(d)(2) (HHS Advisory Council)



# Personnel Rules re Family

3.95. NEPOTISM No person shall be appointed to a City position when he or she or any member of their family is the Mayor or serves as a member of the City Council. No employee shall hold a position over which a member of his/her family exercises direct supervisory control.

Family is defined to include: spouse, children, parents and grandparents, brother and sister, parents and grandparents of spouse, brother-in-law, sister-in-law, and such person of a half or step relationship.

# ? Include “personal conflict of interest”

## DMC 2.04.010(B) Code of Ethics Policy and Purpose

It is essential to the proper operation of democratic government that public officials and employees be independent and impartial; that governmental decisions and policy be made through proper channels; that public office not be used for private gain; and that there be public confidence in the integrity of government. Public officials and employees must serve their government in a fiduciary capacity and **must not bestow special consideration upon any person merely because of that person’s relationship to an official or employee.** The attainment of these ends is impaired whenever there exists conflict between the **private interests of a public official or employee** and his or her duties as such. **The public interest therefore requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of elected officials and government employees.**

# ? Include “personal conflict of interest”

- *Acevedo v. City of N. Pole*, 672 P.2d 130, 133 (Alaska 1983) (a municipality must address substantial financial conflicts & may address other conflicts)
- Other AK governments specifically address “personal conflicts”
  - “personal interest” means an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit. AS 39.52.960 (Ex. Branch Ethics)
  - “*Personal interest* means an interest other than a financial interest, and includes any material advantage in the form of a promise, service, privilege, exemption, patronage, or advancement. A municipal officer shall be deemed to have a personal interest in the affairs of any person, other than any not for profit organization, if the officer owes a fiduciary duty to that person.”  
Juneau [CBJC 01.45.360](#)

## Why have a procurement code?

“While we have never addressed the interests underlying the [municipality’s] procurement code, we have stated generally that the purposes of competitive bidding are

to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to insure that the [municipality] receives the best work or supplies at the most reasonable prices practicable.

The requirement of public bidding is for the benefit of property holders and taxpayers, and not for the benefit of the bidders; and such requirements should be construed with the primary purpose of best advancing the public interest.”

*Laborers Loc. No. 942 v. FNSB*, 956 P.2d 422, 434 (Alaska 1998)

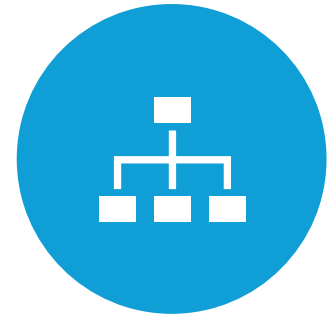
# Procurement: Next Steps



A PROCUREMENT  
VIOLATION CAN IMPACT THE  
CITY AUDIT



AN AUDIT FINDING CAN  
NEGATIVELY EFFECT  
GRANTS, CAPITAL PROJECTS



MANAGER WORKING ON  
TRAINING, PROCESS  
IMPROVEMENT, TEMPLATES



# Quasi-Judicial (BOE)

Need to clearly articulate reasons for decision

No ex-parte contact with parties

When sitting as a judge, you cannot have discussion with one side without the other side present.

Grocery store, school events, etc.

# Ex Parte Communication Problems

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**Overarching  
concept of  
fairness and  
impartiality:**

Avoid, Stop early, Too  
late/publicly disclose,  
recuse/DQ



**Grocery store?...**  
“I cannot discuss  
the tax appeal.  
Please talk with  
the Assessor or  
the Board of  
Equalization.”



**Emails/Phone  
calls to  
individual  
Council  
members**



**Internal Council:  
Council member  
to Council  
member?**



**Assessor?  
Start with  
Manager**



# Ex Parte Communication Best Practices



## Avoid ex parte contact



## De minimis ex parte contact...disclose or disqualified

Prior to PZC hearing, summarize ex parte contact in writing

At PZC hearing,

- must orally disclose ex parte contact in detail
  - Must state if you are still unbiased
- Applicant, abutters, and public can object
- If no objection, the Commissioner can participate. See AS 22.20.020(b)
  - If objection, then Commission decides what to do. See AS 22.20.020(c)



## Extensive ex parte contact...Disclose, likely disqualified

AS §  
29.26.250.  
Grounds  
for recall

“Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.”



# Hostile work environment

**Concept:** *offensive conduct (unwelcome), and that is severe and pervasive enough to alter the conditions of employment based on a protected trait (race, gender, etc)*

*Harassment* means unwanted communication or conduct by a supervisor, coworker, or other person that is based on protected traits rather than job-related factors, and that adversely affects the employment relationship or the work environment.

*Hostile work environment* is considered prohibited harassment or sexual harassment that has become severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.