


MEMORANDUM

TO: Acting City Clerk Flynn
FROM: Sam Severin, MCS, City Attorneys
RE: Location and Minutes of the December 7, 2024, Council Meeting
DATE: January 29, 2025



You have asked about the propriety of a December 7 special meeting of the City Council. It was held in the Bristol Bay Economic Development Corporation (BBEDC) Boardroom. I understand the location was picked due to superior technological capabilities at BBEDC. You have indicated that some Council members are objecting to the meeting being held at BBEDC and may refuse to approve the meeting minutes for the December 7 meeting.

Analysis:

1. Meeting location

The Code articulates where the Council can meet for regular and special meetings:

2.09.010 Regular meetings.

B. The usual place of council meetings shall be at the offices of the city at the City Hall David B. Carlson Chambers; provided, however, that in the event of any condition which renders the meeting room unfit to conduct any regular meeting of the council, the meeting may be moved to another facility suited to the public. (emphasis added with underlining)

2.09.020 Special meetings.

A. Special meetings of the council are those meetings which are called by the mayor or any two members of the council for a time different than that fixed for the regular council meetings. The location of all special council meetings shall be the same as that authorized for regular meetings. (emphasis added with underlining)

2.09.030 Location change.

Notwithstanding the provisions of Sections 2.09.010 and 2.09.020, if after having been lawfully assembled in a location properly designated, council determines that a condition exists which renders the location unsuitable, it may recess the meeting and reconvene at a more suitable location. The location to which the meeting shall be reconvened shall be made public prior to recess and suitable notices posted at the place originally designated by the clerk. (emphasis added with underlining)

The December 7 meeting was a special meeting. Importantly, DMC 2.09.020, via DMC 2.09.010, allows any special Council meeting to occur in Chambers or in “another facility suited to the public.” I understand the Council Chambers was determined unfit due to technology needs and the BBEDC facility was better suited for the December 7 meeting. The location of the December 7 meeting appears to comply with Dillingham code.

Had the December 7 meeting been held out of town, in an extremely small room, or at a location that otherwise called into question the suitability and availability to the public, that would be contrary to code and might run afoul of the Open Meetings Act. A complaint from the public has not been shared with me, nor has any other complaint about the “suitability” of the meeting space.

Additionally, reliance on DMC 2.09.030 is not necessary to decide the question about the December 7 issue. That code section allows the Council to change the meeting location after the Council is assembled. DMC 2.09.030 is indicative of the flexibility contemplated broadly by all of these code sections. For fairness to the public, changing locations in the middle of a meeting should be a last resort.

Finally, there is a presumption of validity to proceedings of local government.¹ Therefore, I am not currently aware of any facts or circumstances to suggest the December 7 meeting location was improper.

2. Impact of Not Approving the Minutes

I understand that some Council members are interested in the requirements to adopt the December 7 Council meeting minutes. In short, the City Clerk drafts the minutes, and the Council adopts the minutes—without a formal vote.

The Code provides a helpful starting position:

2.09.120 Minutes.

A. Minutes of all meetings shall be taken and kept in the journal of the proceedings of the council which shall be open for public inspection. All minutes of the council shall be distributed by the city clerk to the public desiring same. One copy of the minutes shall be given free of charge to any person requesting it in person or by mail.

¹ *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1118 (Alaska 1978); *McCormick v. City of Dillingham*, 16 P.3d 735, 738–39 (Alaska 2001).

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B. Unless a reading of the minutes of a council meeting, regular or special, is requested by a member of the council, minutes may be approved without a reading if the clerk has previously furnished each member with a copy.

C. A council member may request, through the mayor, the privilege of having a verbatim record of his/her statement on any subject under consideration by the council, either at a regular or special meeting, entered in the minutes. Unless a majority of the council members present object to this request, it shall be entered in the minutes.

While DMC 2.09.120 provides helpful information about meeting minutes, Alaska statutes and Robert's Rules of Order 12th Edition (RRO) describe more details about the minutes and how the Council adopts the minutes.

AS 29.20.160(e) and AS 29.20.380(a)(1) require the City Clerk to keep a journal of the Council meetings. The journal is a legacy legislative term for a compilation of the minutes from each Council meeting.² While the minutes should not be a verbatim transcript of what was said, they need to reflect action items and other required information.³

The City Clerk is simply a neutral scribe to record the Council's actions.⁴ The City Clerk should (sign the minutes and) include the draft minutes in the packet for the

² RRO 12th ed. at 48:1 ("The official record of the proceedings of a deliberative assembly is usually called the minutes, or sometimes--particularly in legislative bodies--the journal.").

³ RRO 12th ed. at 48:2 ("the minutes should contain mainly a record of what was done at the meeting, not what was said by the members"); RRO 12th ed. at 48:6 ("The use by the secretary of a recording device can be of great benefit in preparing the minutes, but a transcription from it should never be used as the minutes themselves."); e.g., AS 29.26.070(c) (requiring the "minutes" of a municipal governing body to reflect the election results); AS 29.20.160(b) (requiring the "journal" to record if a Council member waived notice of a special meeting).

⁴ RRO 12th ed. at 48:2 ("The minutes must never reflect the secretary's opinion, favorable or otherwise, on anything said or done.").

Council's subsequent meeting.⁵ The City Clerk's draft minutes do not become the official minutes until approved by the Council.⁶ When the agenda item for the minutes is up, the Mayor should ask "Are there any corrections to the minutes?" RRO 12th ed. at 41:10 ("A formal motion to approve the minutes is not necessary, although such a motion is not out of order."). A Council member may note a correction, which is handled by unanimous consent unless objected to.⁷ After any proposed correction(s) have been disposed of, the Mayor can then say "There being no corrections [or no further corrections] to the minutes, the minutes are approved."⁸ Importantly, the Council approves the minutes "without any formal vote, even if a motion for their approval has been made."⁹ At that point, the City Clerk's version of the minutes, as corrected and approved by the Council, become part of the Council's journal.¹⁰

If a Council member is concerned about the veracity of corrections to the minutes, even if approved by the Council, the statutory and Robert's Rules process provides concerned Council members with protection. Because the City Clerk's initial draft is presumed to be accurate and because any corrections, including objections, to the draft minutes are recorded in the subsequent meeting's minutes, a concerned Council member can later prove they objected and show what happened.

Therefore, while a Council member may object to the location of the December 7 meeting in the minutes, the December 7 minutes are automatically approved—without an affirmative vote—simply when the corrections, if any, are done. Of course, if a council member has an objection to the propriety of a meeting, they should make that objection. Ideally the objection would be resolved prior to taking action in the meeting. Here, the objection could be noted in the minutes for the meeting in which the objection is stated (i.e. Councilmember Smith noted his opinion that the December 7 special meeting should have been held in Council Chambers).

⁵ RRO 12th ed. at 48:7.

⁶ RRO 12th ed. at 41:12.

⁷ RRO 12th ed. at 41:10.

⁸ RRO 12th ed. at 41:11.

⁹ RRO 12th ed. at 41:11.

¹⁰ RRO 12th ed. at 41:12.