

MEMORANDUM

TO: City Council, Mayor, Staff
FROM: Sam Severin
RE: Individual Councilmember's Ability to Direct Staff or the City Attorney
DATE: February 3, 2025

Two related questions have recently come to my attention regarding council member ability to direct employees or the city attorney. The first question was whether the city clerk should provide records to an individual council member, or whether the council member should fill out a public records request form. The second was whether individual council members should be able to call the city attorney for advice about city business.

Both can be answered by a close reading of the code. The code's use of the terms "council" and "council member" is deliberate, and the terms mean different things. "Council" is the body as a whole. "Council member" refers to an individual. For example, the city attorney's duties are established at DMC 2.24.020. It states:

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;
- ...
- 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;
- ...
- 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;

Some sections have been omitted for brevity. While Dillingham's code is more detailed than other cities, it is similar to cities across the state. The critical distinction here can be seen by comparing subsection D to all other subsections. Subsection D specifies that the city attorney is to draft any ordinance when requested by "a city council member." This is the only request that is authorized to come from an individual.

Regarding the city clerk, DMC 2.27.010 states "There shall be a city clerk who shall be appointed by the city council. The clerk shall serve for the primary benefit of the council under the day to day supervision of the city manager."

Thus, like the city attorney, the city clerk does not generally take direction from an individual city council member. For an individual council member to direct the clerk is contrary to DMC 2.21.060, Interference with City Manager Prohibited.

This separation of powers concept is consistent with Title 29 and municipal government practices and city codes across the state. Title 29 states:

Alaska Statute 29.20.400(a) provides that the "governing body [of a municipality] may establish municipal departments and distribute functions among them."

AS 29.29.050

(a) The legislative power of a borough is vested in the assembly. The legislative power of a city is vested in the council.

AS 29.20.160.

(d) Actions of a governing body are adopted by a majority of the total membership of the body.

AS 29.20.500

The manager may hire necessary administrative assistants and may authorize an administrative official to appoint, suspend, or remove subordinates. As chief administrator the manager shall

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

A Department of Community and Regional Affairs publication, A Primer for City Council Members, has been recently circulated amongst the city council. It states:

When providing instructions to staff to perform assignments, the council must go through the manager, mayor, or administrator, and not directly from the council to

the staff member. Following the chain of command allows the manager, mayor, or administrator to know what staff members are doing, manage workloads, and make staff assignments appropriately. Individual council members should not give instructions to staff without the prior consent of the full council, because one member's instructions may not represent the shared viewpoint or position of the full council.

While these are matters of city code and state law, it largely comes down to orderly function of government and efficient use of resources, as the DCRA publication states. For example, if my office responds to a request from an individual council member which is not supported by the rest of the council as a body, that would not be a good use of attorney fees. I am always glad to answer phone calls, but am ethically obligated to take direction and provide advice only to a client. In the context of elected municipal officials, that client relationship, as stated in the code, is generally limited to the council as a whole and not to individual council members.

There is also a degree of practical reality that must be considered. For example, a council member calling the clerk because they are having trouble with a link to a council packet could be appropriate. But, asking or directing the clerk to use a new or different format for sending the packet, on a standing basis, for the convenience of one council member, would be inappropriate. However, if the council member wants the policy on packets changed, there are solutions. For example, a council member can raise the issue at a council meeting and the entire council can discuss and vote on the packet policy change. The manager would then have direction from the entire council and need to change the packet formatting.