

**MEMORANDUM**  
**COMMUNICATION BETWEEN STAFF AND COUNCIL MEMBERS**

To: City Council/Mayor

From: Robert C. Muth, City Attorney

Date: September 16, 2024

RE: Council Member's Roles and Responsibilities

This memorandum is a reminder to all Council members as to their role as elected legislators. I hope everyone will remember from *School House Rock*® of the three branches of government and their respective roles to afford the necessary checks and balances to government activities. The idea of checks and balances was first proposed by the Greek statesman, Polybius. During the Age of Enlightenment, French philosopher, Baron de Montesquieu, in *The Spirit of Laws*, discussed the need for the separation of powers to prevent despotism. Separation of such powers is necessary to a functioning municipality.

Local legislative authority afforded to a City Council is generally limited to what the state specifically grants to the city. However, in the City of Stevenson, as a code city, there are more powers afforded the municipality called "home rule" which allow for the council to exercise authority not specifically granted by the state, provided the state has not specifically prohibited the power/right from the local authority. In short, the Council is a legislative body which creates ordinances and adopts resolutions to assist the city in operating as a whole and productive municipality.

The legislative role is juxtaposed against the mayor's role as the Chief Executive. Policies – i.e., ordinances and resolutions - created by the Council are separate from the administration or enforcement of those policies and regulations. All administrative authority is vested in the office of the mayor, not the Council. In short, codes and ordinances are policy, while enforcement of those codes and ordinances is the responsibility of the executive branch, not the Council. With respect to building and development projects, the Council will create codes and adopt a comprehensive plan which become policy for the city; the actual implementation/issuance of permits or administration of the work to implement those policies is left to the executive branch.

The City of Stevenson has adopted a City Council Rules of Procedure for how the Council is to interact with the city staff employees. Section 13 of the Rules of Procedure expressly states: **Council Members shall not attempt to coerce or influence City staff in the selection of personnel, the awarding of contracts, the selection of consultants, the processing of development applications or the granting of City permits. Nor shall any individual Council Member interfere with the operating rules and practices of any City Department. No individual Council Member shall direct the City Administrator to initiate any action or prepare any report that is significant in nature or initiate any significant project or study without the consent of a majority of the Council.**

These restrictions are here for a particularly important reason. RCW 35A.12.100, in code cities with city managers such as Stevenson, prohibits city council interference with city administration. “The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so, provided by ordinance or charter. He or she shall see that all laws and ordinances are faithfully enforced, and that law and order is maintained in the city and **shall have general supervision of the administration of city government and all city interests.** All official bonds and bonds of contractors with the city shall be submitted to the mayor or such person as he or she may designate for approval or disapproval. He or she shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he or she may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council.”

There is no legitimate avenue for any Council member to contact staff directly either to discuss or advocate for any citizen who has business with the city. Without the proper communications, individual Council members who interject themselves into the general supervision of the administration of city government expose both the city and the individual council members to legal exposure. Such conduct endangers taxpayer dollars and will cause a significant increase in the city’s insurance expenses. An overreaching result is also to create a difficult/hostile work environment within the city staff who does not answer directly to Council members.

When a Council member injects himself/herself into the executive process, they are doing so on behalf of a resident. First, and foremost, a single Council member may not under any circumstances take a position they are acting for Council – by involving yourself in the day-to-day operations without a Resolution expressly authorizing the individual Council member to act, the Council member is exceeding his/her authority.

Furthermore, and more importantly when a Council member advocates for a change or different interpretation of the implementation of an ordinance or code, the Council member is in violation of RCW 42.23.070(1) – “No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.” This is an absolute prohibited act by any Council member.

Should Council members continue to advocate directly to staff on behalf of residents, the city is at risk financially. This risk is avoidable with compliance with the city’s published Rules of Procedure and the existing statutes in the revised code of Washington. Staff will be provided with a template email in response to any direct inquiry from a Council member to re-direct any such communication to the Mayor and/or City Manager as required by the published and adopted Rules of Procedure.

When a council member attempts to interject themselves into any executive function, it opens the City up to liability and more importantly to personal liability to the council member who has chosen to interject themselves into the process. The Washington Supreme Court has held

members of a city council do not have absolute legislative immunity on section 1983 claims and can be held personally liable. *Missing Springs, Inc. v. City of Spokane*, 134 Wash. 947 (1998). In *Mission Springs*, the Supreme Court found the City Attorney had provided well founded advice to the Council on how to conduct themselves, and the Council disregarded the advice, make the individual council members liable personally for their actions in interfering with code enforcement and processing of applications. RCW 64.40.020 creates a cause of action for damages to obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority. A county is an agency for the purpose of this statute. RCW 64.40.010(1). “[C]onclusory action taken without regard to the surrounding facts and circumstances is arbitrary and capricious...” *Hayes v. City of Seattle*, 131 Wash.2d 706, 717–18 (1997).

When a council member takes a position contrary to the process in which staff is administering the application of a code or ordinance, the council member as exceeded his/her authority.

A similar result follows under the federal code 42 USC sec. 1983. Municipal liability for section 1983 purposes attaches when the municipality acts through official policy. *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). An act undertaken by a municipal legislative body is an act of the municipality. Thus, the action of the Council is not only that of the individuals, but also the act of the municipality as well. Municipalities enjoy no qualified immunity from suit.

In sum, this memo is a reminder to Council members to cease direct communication with staff regarding any operating rules or practices of the city’s day to day operation. Council members are reminded their obligation is to make policy by passing legislation during public meetings. For day-to-day operations and policy implementation, the mayor and city manager are the “boss” and lead the city, all under the guidance of legislation passed/adopted by the Council in open session.

The city certainly hopes the Council members for the collective good will heed these restrictions and act in accordance with both state law as well as the City’s published rules of procedure.

Thank you.