

## INFORMATION MEMO

# Role with It: Individual Versus Council Authority

*Learn common ways councilmembers may overstep their proper role and the personal liability that may ensue. Understand your role as an individual councilmember versus your role as part of the entire city council.*

### RELEVANT LINKS:

See Handbook, [Elected Officials and Council Structure and Role](#), Section II-A, *Role of the Individual Councilmember* and Section II-B, *The Council's Authority*.

## I. Role of an individual elected official

The cornerstone of city government in Minnesota is the elected city council. The city council passes ordinances and adopts policies that determine a community's present and future well-being.

Councilmembers and mayors perform their statutory duties, almost without exception, as a member of a council as a whole. The entire council, not individual councilmembers, supervise administrative officers, formulate policies, enter into contracts and exercise city powers. Indeed, preparing for and attending meetings and voting on policy represent the key duties of elected officials. For statutory cities, Minnesota's statutes specifically list out council duties, which include full authority to make and second motions, participate in discussions, and vote on the matters before council.

## II. Tips for meetings

It is not uncommon for elected officials to struggle with the transition from an individual candidate to a member of a decision-making body. The following basic tips for meetings can ease that transition:

- Read the packet before the meeting and share any possible questions or concerns with staff ahead of time.
- Be mindful that staff work for the city and act on the direction of the council as a whole, not at the discretion of individual councilmembers or the mayor.
- Arrive to meetings on time.
- Learn and use the city's rules of process to help ensure clear communication in meetings.
- Proactively learn how to get things on the agenda.
- Approach every agenda item with the belief that everyone has something to contribute and likely has information that you do not have. Listen to others and be curious about their perspective.
- Avoid making assumptions, choosing instead to listen with a true

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

## RELEVANT LINKS:

curiosity.

- Focus on the policy at hand, not the person, and put personal feelings aside.
- Acknowledge others' reasoning and explain your own. Try to find commonality of interests.
- Keep cell phones and other distractors off the dais.

Focus on progress toward the overall goals of the city, not individual positions.

Since councilmembers collectively make decisions, how councilmembers behave in meetings matters a great deal. With the right mindset and clear policy in place, public meetings can result in efficient decision making.

### III. Team leadership

Councils represent a team – both with each other and with staff. Highly cohesive teams have more success achieving the goals they have set for themselves, than teams that suffer from distrust. Lack of civility within a team working environment impacts team performance by causing unnecessary stress and tension among team members. Leaders of highly cohesive teams do the following:

- Cut people slack – remember, whatever the situation, it likely may be new for some, if not everyone, and may be causing angst for all.
- Don't play the blame game. Don't play the power game. Councils and Council-Staff represent a TEAM.
- Focus on process, not the people involved.
- Assume good motives of others.
- Listen to learn, rather than pretending to listen while formulating a counter argument.
- Ask expansive questions and be patient with silence while waiting for a response. Compromise is good but understanding all the underlying interests may lead to a new idea that meets everyone's needs.
- Practice interpersonal empathy. Remember empathy does not mean giving up your beliefs; rather, it means listening, respecting others positions and validating their worth.
- Identify individual strengths of team members and recognize their unique contributions to validate belonging.
- Learn to delegate with clear expectations to empower others.
- Celebrate success – all success. Realize success comes in all shapes and sizes.

## IV. Councilmembers and city employees

While the council handles the mission and policy objectives for the city, staff handle the administrative and management side of things. Sometimes, these roles unintentionally get blurred in city government. Relationships between the council and city employees can create situations where councilmembers may overstep their proper role, causing potential liability for the councilmember and the city. Generally, councilmember duties include upholding their oath, modeling respectful behavior, participating in council meetings and votes, working with staff to get educated on issues, and serving as a liaison between the city and residents. Individual councilmembers do not have administrative authority and they cannot directly give orders or otherwise supervise city employees, unless specifically directed to do so by the council. Councilmembers should remember that staff work for the entire council (as a whole), not for one individual councilmember.

Occasionally, councilmembers (including mayors) can lose sight of their collective role and try to handle matters individually. In doing so, those city officials' actions can cause discord on the council, can make staff feel untrusted or unappreciated and, in some instances, can subject councilmembers and the city to liability for taking unauthorized actions on the part of the city.

City employees face the unique challenge of working for an entity governed by a collective body, the makeup of which can change from year to year. Many cities have found that adopting clear practices or policies regarding the below and frequently communicating them to elected officials have led to better governance:

- Elected officials follow a common, communication method for them to get information to or from staff.
- Staff check-in with the elected officials after packets go out but before council meetings to gather or answer questions.
- Elected officials provide staff with a heads-up, when feasible, about concerns or additional questions prior to the meeting.
- Elected officials use a designated staff person to distribute information to other elected officials before the meeting to ensure more robust discussion during meeting without violating the Open Meeting Law.
- Staff realize that Council may not always follow staff recommendation and, in those instances, accept and implement the Council decision.

## RELEVANT LINKS:

[Minn. Stat. § 412.221](#), listing powers of the council.

[Minn. Stat. § 412.201](#), requiring council approval of contracts for Standard Plan and Plan A cities.

[Plymouth Foam Products, Inc. v. City of Becker](#), 944 F. Supp. 781 (D. Minn. 1996).

[Minn. Stat. § 412.611](#). For further discussion of Plan B cities, see discussion III below.

[Minn. Stat. § 410.16](#).

### A. Role scenario

The following employment scenario helps demonstrate how an individual councilmember, who just wants to do the right thing for the city, can overstep his or her role in dealing with employee discipline and termination, potentially exposing the city to liability.

Imagine the council has ongoing concerns with the municipal liquor store manager. Citizens complain the store is closed when it should be open and that the staff drinks on the premises. One councilmember decides to address the situation herself. She continuously stops by the store and even drives by the manager's house to make sure he is not home when he should be working. During one visit to the store, the councilmember finds the staff, including the manager, drinking in the back of the store. Knowing the council would agree, she terminates the manager on the spot. To make this situation easier, she negotiates a severance package with him. The councilmember then relates the incident to several friends, making some exaggerated descriptions of what happened.

Even though the liquor store manager's actions raise many liability concerns for the city, the councilmember acted beyond the scope of her authority and her actions also present problems for the city.

### B. Investigating and terminating employees

In the scenario above, did the councilmember have authority to investigate or terminate the store manager? No.

In Minnesota, state statutes or city charters set forth city council powers. In statutory Standard Plan and Plan A cities, the statutes give the entire council control over city matters, including the power to control city finances, to make contracts, to enact ordinances, and to oversee city personnel. The statutes do not allow an individual councilmember to independently investigate employees or terminate employment. In the optional statutory Plan B cities, known as the council-manager plan, the council determines all matters of policy, and a city manager heads up the administrative branch with responsibility to the council for the proper administration of all affairs relating to city.

In charter cities, the charter dictates a councilmember's role. State law allows charter cities to adopt any form of government, if it is not inconsistent with state statutes or the state constitution. In almost all charter cities, the charter gives authority to the council rather than to individual councilmembers. However, councilmembers from charter cities should consult their charters to determine their proper roles.

## RELEVANT LINKS:

*Sovereign v. Dunn*, 498 N.W.2d 62 (Minn. Ct. App. 1993) (discussion of delegations of duties and inapplicability of open meeting law based on lack of decision making authority).

[Minn. R. 1250.0400, subd. 2.](#)

[Minn. Stat. § 13.43, subd. 2.](#)

See Handbook, [Elected Officials and Council Structure and Role](#), Section III, *Mayor*.

### C. Delegating authority to councilmembers

Could the council, in our liquor store scenario, have delegated some of its authority to individual councilmembers? It depends, but unlikely based on the nature of the actions.

Individual councilmembers can perform those duties the council, as a whole, **legally** assigns to them. However, a statutory city council cannot legally delegate any of its discretionary powers, defined by case law as powers involving the exercise of judgment, like making independent hiring or firing decisions. Charter cities also likely cannot delegate any discretionary authority, unless the charter specifically allows the delegation. Councilmembers should act carefully so as to not overstep boundaries.

On a related matter, the League often receives calls about whether an individual councilmember can review an employee's private personnel documents. Individuals whose job duties reasonably require access to private data may, in certain instances, view the data. However, since **individual** councilmembers **do not** have authority over city personnel, they cannot, as a matter of course, access this private information. The council could authorize an individual councilmember to view the data, such as in instances when councilmembers serve on the personnel committee and need to do so for a review. Keep in mind that state law does classify some employee information as public, and councilmembers, like any member of the public, can have access to that information. Cities should work with their city attorneys to understand what employee data represents public data and what employee data qualifies as private personnel data.

### D. Mayor's power to investigate or terminate employees

Like councilmembers, in most cities, a mayor usually does not have authority to investigate or terminate an employee. Contrary to common misconceptions, statutory city mayors do not have more decision-making power than other councilmembers. The mayor serves as the official head of the city, and he or she presides over council meetings. The mayor in a statutory city does not break tie votes of the council, with one exception. Statutory city mayors do have authority to break a tie vote on an appointment from council to fill a council vacancy. The mayor also has authority to make some other appointments, such as park board members, often subject to council approval. As outlined above, the mayor of a statutory city does not have individual authority over city staff.

## RELEVANT LINKS:

[Minn. Stat. § 412.201.](#)

*Jewell v. Bertha*, 97 N.W. 424 (Minn. 1903). *Plymouth Foam Products, Inc. v. City of Becker*, 944 F. Supp. 781 (D. Minn. 1996).

[Minn. Stat. §§ 412.601 - .751.](#)

Similarly, a majority of charter cities have a weak-mayor form of government, in which the mayor's powers generally do not exceed those of other councilmembers. A few charter cities give the mayor limited additional powers, such as control over the police department. However, three charter cities—St. Paul, Duluth, and St. Cloud—follow a strong-mayor format where the mayor has administrative authority over city matters, including city personnel. Mayors of these cities probably could investigate and remove employees without council approval. Mayors in charter cities should review their charters to determine the extent of their authority over employees.

### E. Negotiating employee severance packages

In the liquor store scenario, did the councilmember lawfully negotiate a severance package? No, individual councilmembers may not independently negotiate contracts or agreements, such as a severance package with the liquor store manager. State law provides the “council” must authorize contracts. Minnesota case law not only states that this power cannot be delegated, it also prevents a city from being bound by a contract made by an individual councilmember. Councilmembers from charter cities should consult their charters, but most charters probably do not authorize an individual councilmember to execute contracts.

The full council could later ratify the contract. If the council does not ratify the contract, the individual councilmember potentially could bear the personal liability for claims raised by the contracting party, such as detrimental reliance or promissory estoppel. Accordingly, all councilmembers should make clear to individuals interested in contracting with the city that the city can only enter into a contract with the vote of council.

## V. Councilmembers and employees in Plan B cities

Plan B cities have a council-manager form of government. A number of charter cities also use this structure. Like Standard Plan and Plan A cities, the council exercises policy-making and legislative authority. However, for Plan B cities, Minnesota's statutes grant city managers additional, administrative duties. For example, the council appoints the manager who, in turn, appoints and supervises the city staff. Therefore, in a Plan B city, the city manager makes initial hiring and firing decisions, with later approval of the council needed still being required. Additionally, regarding expenditures, a city manager in a Plan B city serves as the city's purchasing agent for contracts under \$20,000, unless the city council provides for a lower limit, which provides the city manager some discretion in spending.

## RELEVANT LINKS:

Handbook, [City Administrative Staff](#).

[Minn. Stat. 412.651](#).

[Minn. Stat. § 466.07](#).

See Handbook, [Liability](#),  
Section II-E, *Official Immunity*.

See Handbook, [Liability](#),  
Section III-B, *Protection from Defamation*.

[Minn. Stat. § 13.08](#).  
[Minn. Stat. § 13.09](#).

People often confuse city managers with city administrators, but the statutes treat these two positions very differently. Minnesota statutes define the duties of the city manager position and recognize the position as integral to the Statutory B city. The city administrator position, on the other hand, is a position created by council, not by statute. The duties of the administrator vary from city to city, with some administrators also serving as city clerk. A statutory city council cannot delegate any discretionary authority to a city administrator. A charter city council may do so only if the charter allows delegation.

## VI. Potential personal liability for councilmembers

Subject to certain limitations, state law generally requires cities to defend and indemnify councilmembers (and employees) for lawsuits arising out of their official duties, as long as the councilmember or employee did not act in bad faith, malfeasance, or willful neglect of their duties.

The doctrine of official immunity protects public officials from suits based upon discretionary actions performed in the course of their official duties. For example, a councilmember, acting in good faith, likely would not have liability over the question of calling for special assessments. Neither official immunity nor the statute applies when a councilmember acts with malice or in bad faith.

In the liquor store manager scenario above, immunity may not protect the councilmember because she acted outside the scope of her duties.

The liquor store scenario highlights other possible issues, such as providing a basis for the employee to allege defamation, intrusion upon seclusion, harassment, retaliation, or data practices violations. For example, the law states that a defamatory statement is one that is false, made to a third party, and harms the reputation of the subject. In the scenario provided, depending on what was said, a councilmember's exaggerated rendition of the termination and severance to her friends may rise to the level of defamation. A councilmember has protection through immunity from claims of defamation if the councilmember made statements, in good faith, during a proper occasion and based on probable cause. Here, none of these factors apply. Also, the councilmember in the scenario likely disclosed private personnel data in retelling the events surrounding the termination and severance to her friends, possibly subjecting the city to civil liability for the disclosure.

## RELEVANT LINKS:

[Research@lmc.org](mailto:Research@lmc.org)  
651.281.1200 or  
800.925.1122

[pwhitmore@lmc.org](mailto:pwhitmore@lmc.org)  
651.281.1224.

## VII. Further Assistance

If you have questions about the role of an individual councilmember or the city council as a whole, you should discuss the matter with your city attorney. In addition, the League's Research and Information Services Department can answer questions about the role of council members in different types of cities. The League of Minnesota Cities Insurance Trust Collaboration Services also offers specialized support for cities, like on-site collaboration workshops, that can further educate elected officials about their roles, responsibilities, and good governance.