

INFORMATION MEMO

Role with It: Individual Versus Council Authority

Learn common ways council members overstep their roles and the personal legal responsibility that may result. Understand your role as an individual council member 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 Council member* and Section II-B, *The Council's Authority*.

I. Role of an individual elected official

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

The city council as a group, not individual council members and mayors, perform the duties required by law. The entire city council, not individual council members, supervises administrative officers, makes policies, enters into contracts, and exercises city powers. Generally, preparing for and attending meetings and voting on policy are elected officials' key duties. For statutory cities, Minnesota law lists specific council duties, including the authority to make and second motions, participate in discussions, and vote on matters before the council.

II. Tips for meetings

Elected officials sometimes struggle to transition from an individual candidate to a member of a decision-making body. Tips can ease this transition:

- Before the meeting, read the packet and share any possible questions or concerns with staff.
- Remember that staff work for the city and act at the direction of the council as a whole, not at the direction of individual council members or the mayor.
- Arrive to meetings on time.
- Learn and use the city's bylaws and rules of procedure.
- Learn how to add items to the agenda.
- Listen to others and be curious about their perspective.
- Put personal feelings aside and find shared interests.
- Acknowledge others' reasoning and explain your own.
- Put away cell phones and other distractions.
- Focus on progress toward city goals.

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:

Because council members make decisions as a group, how council members behave during meetings is important. With the right mindset and clear policy in place, public meetings can result in efficient decision making.

III. Team leadership

City councils and staff are a team. Close-knit teams have more success achieving their goals than teams that lack trust. Disrespect affects team performance by causing stress and tension among team members. Leaders of close-knit teams:

- Cut people slack.
- Do not blame others. Council members and staff are a team.
- Focus on the process, not the people involved.
- Assume that others have good intentions.
- Listen to learn, instead of pretending to listen while thinking of their next statement or counter argument.
- Ask questions and be patient while waiting for a response. Silence allows others to think. Compromise is good but understanding everyone's point of view may lead to a new idea that meets everyone's needs.
- Practice empathy. Empathy does not mean giving up your beliefs. Empathy is the ability to take on other peoples' perspectives and to understand, feel, and share their experience.
- Identify each team member's strengths and recognize their unique contributions to create a sense of belonging.
- Empower others by delegating with clear expectations.
- Celebrate success! Success comes in all shapes and sizes.

IV. Council members and city employees

While the council handles city policy, staff handles city administration and management. Sometimes, the line between these roles is blurry – council members and staff may overstep, causing potential legal responsibility for the council member and the city. Generally, council member duties include upholding their oath, modeling respectful behavior, participating in council meetings and votes, working with staff to educate themselves about city issues, and connecting the city and its residents. Individual council members do not have administrative authority. This means that they cannot give direct orders to or supervise city employees, unless allowed by the council. Council members should remember that staff work for the council as a group not for one individual council member.

RELEVANT LINKS:

Sometimes, council members (including mayors) forget about their role as a team member and try to take action individually. This can cause conflict, making staff feel distrusted or unappreciated. Sometimes, this can also make council members and the city legally responsible for taking unauthorized actions.

City employees have the unique challenge of working for a public body, whose members change from year to year. Many cities find that adopting clear policies and practices leads to better city governance. These policies and practices often include:

- Elected officials follow a communication protocol to give or receive information to or from staff.
- Staff check-in with elected officials after packets go out but before council meetings to gather or answer questions.
- Elected officials inform staff about concerns or additional questions before the meeting.
- Elected officials select a staff person to give information to other elected officials before the meeting to allow for in-depth discussion without violating the Open Meeting Law.
- Staff understand that the council may not always follow staff recommendations and, in those instances, accept the council's decision.

A. Role scenario

The following employment scenario helps demonstrate how an individual council member, who just wants to do the right thing for the city, can overstep their role when dealing with employee discipline and termination, potentially exposing the city to legal responsibility.

Imagine the council has ongoing concerns with the municipal liquor store manager. Citizens complain that the store is closed when it should be open and that the staff drinks on the premises. One council member 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 council member finds the staff, including the manager, drinking in the back of the store. Knowing that the council would agree, she terminates the manager on the spot. To make this situation easier, she negotiates a severance package with him. The council member then tells several friends about the incident, making some exaggerated descriptions of what happened.

Even though the liquor store manager's actions raise many concerns about legal responsibility for the city, the council member acted beyond the scope of her authority and her actions also present problems for the city.

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](#).

[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. 1205.0400](#), subp. 2.

[Minn. Stat. § 13.43](#), subd. 2.

B. Investigating and terminating employees

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

In Minnesota, state law or city charters set forth city council powers. In statutory Standard Plan and Plan A cities, the law 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 law does not allow an individual council member to independently investigate employees or terminate employment. In the optional statutory Plan B cities, which have the council-manager plan, the council determines all matters of policy, and a city manager heads up the administrative branch and is responsible to the council for the proper administration of all city affairs.

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

C. Delegating authority to council members

In the liquor store scenario, could the council have delegated some of its authority to individual council members? It depends, but it is unlikely based on the nature of the actions.

Individual council members can perform the duties that the council, as a whole, **legally** assigns to them. However, a statutory city council cannot legally delegate any of its discretionary powers, which are 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 for it. Council members should act carefully to avoid overstepping their boundaries.

On a related matter, the League often receives calls about whether an individual council member can review an employee's private personnel documents. Individuals whose job duties reasonably require access to private data can, in certain instances, view the data. However, since **individual** council members **do not** have authority over city personnel, they cannot access this private information. The council could authorize an individual council member to view the data, such as in instances when council members serve on the personnel committee and need to do so for a review.

RELEVANT LINKS:

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

[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).

Keep in mind that state law does classify some employee information as public, and council members, like any member of the public, can access that information. Cities should work with their city attorneys to understand what employee data is public data and what employee data is private personnel data.

D. Mayor's power to investigate or terminate employees

Like council members, mayors usually do not have authority to investigate or terminate an employee. Statutory city mayors do not have more decision-making power than other council members. The mayor serves as the official head of the city and presides over council meetings. The mayor in a statutory city does not break tie votes of the council unless it is to break a tie vote on an appointment to fill a vacancy. The mayor also has authority to make some other appointments, like 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.

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 council members. 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 plan 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 council member lawfully negotiate a severance package? No, individual council members cannot independently negotiate contracts or agreements, such as a severance package with the liquor store manager. State law requires that the council must authorize contracts. The law not only states that this power cannot be delegated, but it also prevents a city from being bound by a contract made by an individual council member. Council members from charter cities should consult their charters, but most charters do not allow an individual council member to execute contracts.

The full council could later approve the contract. If the council does not approve the contract, the individual council member potentially could have personal legal responsibility. So, all council members should make clear that the city can only enter into a contract with the vote of council.

RELEVANT LINKS:

[Minn. Stat. §§ 412.601 - .751.](#)

Handbook, [City Administrative Staff](#).

[Minn. Stat. 412.651.](#)

[Minn. Stat. § 466.07.](#)

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

V. Council members 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 has policy-making and legislative authority. However, for Plan B cities, state law gives additional administrative duties to city manager. For example, the council appoints a city manager who then appoints and supervises city staff. Therefore, in a Plan B city, the city manager makes initial hiring and firing decisions, with later approval from the council. Additionally, a city manager in a Plan B city serves as the city's purchasing agent for contracts under \$20,000, unless the city council sets a lower limit, which gives the city manager some discretion in spending.

People often confuse city managers with city administrators, but the law treats these two positions very differently. State law defines the duties of the city manager position and recognizes that the position is essential to the Statutory B city. The city administrator position, on the other hand, is a position created by council, not by law. 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 can delegate discretionary authority to a city administrator if the charter allows it.

VI. Potential personal legal responsibility for council members

Generally, state law requires cities to defend (provide legal defense) and indemnify (compensate the other party for losses or other legal responsibilities) council members and employees for lawsuits arising out of their official duties. This is required if the council member or employee did not act in bad faith (dishonesty or fraud), malfeasance (an intentional act that is illegal and causes harm to another person), or willful neglect (the intentional or reckless failure to carry out a duty) of their duties.

Official immunity protects public officials from lawsuits based on discretionary actions performed in the course of their official duties. For example, a council member, acting in good faith, likely would not have legal responsibility for calling for special assessments. Neither official immunity nor the law applies when a council member acts with malice (intentionally committing an unlawful act) or in bad faith.

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

RELEVANT LINKS:

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

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

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The liquor store scenario highlights other possible issues like providing a basis for the employee to allege defamation (making a false statement about someone that harms their reputation), intrusion upon seclusion (invasion of privacy), harassment, retaliation (when an employer takes adverse action against an employee for engaging in protected activities like reporting discrimination), 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 liquor store scenario, depending on what was said, a council member's exaggerated version of the termination and severance to her friends might be defamation. Also, the council member likely disclosed private personnel data in retelling the events to her friends, possibly subjecting the city to legal responsibility.

VII. Further Assistance

If you have questions about the role of an individual council member or the city council as a whole, you should discuss the matter with your city attorney. Additionally, the League's Research and Information Services Department can answer questions about the role of council members in different types of cities.