



CITY OF WASILLA

290 E. HERNING AVE.
WASILLA, ALASKA 99687
PHONE: (907) 373-9050
FAX: (907) 373-0788

Code Ordinance

Requested By: Councilman
Carson

Prepared By: Municipal
Services

ORDINANCE SERIAL NO. 92-05

AN ORDINANCE OF THE CITY OF WASILLA, ALASKA AMENDING CHAPTER 3.80, EXECUTIVES, OF THE WASILLA MUNICIPAL CODE.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF WASILLA, ALASKA AS FOLLOWS:

SECTION I. Classification. This ordinance is of a general and permanent nature and shall become a part of the Wasilla Municipal Code.

SECTION II. Purpose. To amend appointment of executives.

SECTION III. Amendment. Section 3.80.030 (A) and (B) is hereby amended as follows:

A. The Council shall serve as Appointing Authority for and appoint:

1. The City Clerk; [AND]
2. The City Attorney; and
3. The Deputy Administrator.

B. The Mayor shall serve as Appointing Authority for and appoint all Department Heads [AND THE DEPUTY ADMINISTRATOR]. Department Heads are appointed subject to Council confirmation.

SECTION IV. Effective Date. This ordinance becomes effective upon adoption by the Wasilla City Council.

Introduction: _____

Public Hearing: _____

ADOPTED by the Council of the City of Wasilla on this _____ day of _____, 1992.

JOHN C. STEIN, Mayor

ATTEST:

ERLING P. NELSON, CMC
City Clerk

Not introduced

LAW OFFICE
OF
RICHARD DEUSER

RECEIVED

JAN 21 1992

City of Wasilla, Alaska

MAILING ADDRESS
165 EAST PARKS HIGHWAY
SUITE 201B
WASILLA, ALASKA 99687

PHONE AND LOCATION:
PHONE (907) 376-9484
KRENK BUILDING, PARKS HIGHWAY

MEMORANDUM

TO: Mayor John Stein and Members of the City Council

FROM: Richard Deuser

RE: Analysis of Title 29 and
Wasilla Code Regarding
Appointment Authority

DATE: January 21, 1992

At the City Council meeting of January 13, 1992, Ordinance Serial No. 92-05 was proposed. That Ordinance would alter the existing City Code so as to make the Council the appointing authority for the Deputy Administrator. At present, the appointing authority for the Deputy Administrator position is the Mayor. Questions arose as to the requirements of Title 29 concerning who is the proper appointing authority and this Memorandum is intended to advise on that issue.

The City has not adopted a Manager Plan of Government. Instead, the City operates with the Mayor as the Chief Administrator. See A.S. 29.20.250. This statute makes it clear that the Mayor, as the Chief Administrator, has those powers described by A.S. 29.20.500. In turn, Section 500 designates the scope of responsibilities and authority to include appointment, suspension, or removal of Municipal employees and administrative officials.

However, Title 29 does allow, by another statute, a limited exception to A.S. 29.20.500. For certain specified offices, the law allows the City Council to directly control hiring and firing. A.S. 29.20.360, Appointment of Officials, states:

Unless otherwise provided by ordinance, the municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrator. Unless otherwise provided by ordinance, an official described in this section serves at the pleasure of the appointing authority and, if appointed by the Chief Administrator, must be confirmed by the governing body.

Mayor John Stein and City Council Members
January 21, 1992
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Pursuant to the above-quoted statute, the existing City Ordinances vest appointment authority for two positions in the City Council. Both the City Clerk and the City Attorney are appointed by the Council pursuant to WMC 3.80.030(A).

The above statutory scheme can be described as follows. The general rule places the authority for hiring and firing with the Mayor. Limited exceptions are available for designated positions if the Council passes appropriate ordinances shifting the general rule of mayoral power to Council power. The issue then focuses on whether or not the Council is authorized to go beyond those specific offices designated in A.S. 29.20.360? Had the statute been more broadly phrased, the Council could presumably go beyond the designated positions noted in A.S. 29.20.360. The absence of more generalized language leaves the impression of statutory intent to limit the potential Council power to those specific positions noted in Section 360.

There is even a latin legal term for this maxim of statutory construction - "Expressio Unius Est Exclusio Alterius," meaning expression of one thing is the exclusion of another.

From a policy viewpoint, one can surmise the reasons behind the statutory scheme. The Mayor, as Chief Administrator, needs to develop a cooperative working relationship with the employee staff. Designating the Mayor, as Chief Administrator, as the person who is statutorily authorized to make employment decisions allows the Mayor to (a) employ persons whom the Mayor believes he can work with, and (b) demand performance accountability as the employee understands that the authority to fire is ultimately vested in the same person who hired them. It appears that the statutory scheme is intended to avoid a situation where the Mayor cannot perform his administrative duties effectively as he cannot command the effective cooperation of a staff that can only be hired and fired by direct Council action. It is noteworthy that the potential exceptions carved out by Section 360 are for positions that potentially entail significant independent responsibility not directly involved with the supervisory role of the Mayor as Chief Administrator. Clearly, that would not describe the job of Deputy Administrator which obviously works directly in association with the supervisory role of the Mayor.

Sincerely,



Richard Deuser

RD:jlm